

IN THE SUPREME COURT OF THE STATE OF NEVADA

GENARO RICHARD PERRY,
Petitioner,

vs.

RENEE BAKER, WARDEN
Lovelock Correctional Center,
Respondent.

S.Ct. No. 82060

D.C. No. C298879-

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**APPELLANT'S APPENDIX
Volume II**

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1 THURSDAY, OCTOBER 1, 2015 AT 10:39 A.M.

2
3 THE COURT: Good morning.

4 MS. SUDANA: Good morning, Your Honor.

5 THE COURT: And what have we here?

6 MS. SUDANO: Your Honor, I know that we put it on the record --

7 THE COURT: Go ahead and sit down.

8 MS. SUDANO: -- previously.

9 THE COURT: Hold on. Just, go ahead and have a seat.

10 THE DEFENDANT: Yes Ma'am.

11 MS. SUDANO: I know that we put it on the record previously that both sides
12 were waiving the jury but we do just want to have it in writing.

13 THE COURT: Yes.

14 MS. SUDANO: And so if Your Honor would sign our stipulation and order
15 after the Defendant has looked over it we would appreciate that.

16 THE COURT: Okay.

17 MS. SUDANO: May I approach to have that filed?

18 THE COURT: Yep.

19 MS. SUDANO: Thank you, Your Honor.

20 THE COURT: Do you need me to sign?

21 MS. SUDANO: Oh, yes, if you would, I apologize.

22 THE COURT: That's okay. So, it's just multiple copies of the stip and order?

23 MS. SUDANO: It is. I just wanted to have one original but I guess we have
24 them all signed.

25 THE COURT: Okay. So the clerk will file those or file the stip and return the

1 copies, I guess.

2 MS. SUDANO: Thank you.

3 THE COURT: Okay. So we've got the Instructions to discuss.

4 MR. SHETLER: Your Honor, we did phone chambers last night to let you
5 know that we were in good shape on the Instructions themselves. Ms. Sudano
6 wants to make a presentation regarding the self-defense Instructions.

7 MS. SUDANO: That's correct, Your Honor. I didn't hear any evidence
8 throughout the case even in inference of slight -- or self-defense so even though
9 those were initially included with the packet and they were presented to Your Honor,
10 at this point I don't think that there's any evidence to support the giving or the
11 including of the self-defense Instructions in this particular case. So that was
12 Instructions on pages 35 through 40.

13 THE COURT: Okay. Mr. Shetler.

14 MR. SHETLER: Your Honor, the evidence itself to support those Instructions,
15 it's a good argument that we didn't establish enough evidence to get to that point.
16 Certainly the victim did not assist us in that endeavor and Officer Braggs [sic] did not
17 -- Braggs right; did not say that she saw any evidence.

18 I will argue in closing that it's possible our officer was slightly biased,
19 with all due respect for her service, and I'll make an argument about that. I -- I'm
20 saying everything I think I can.

21 THE COURT: Right. I appreciate that. Right.

22 So, there is no evidence that Ms. Carpenter made any threat or
23 threatened any kind of violence or held a weapon or said she was going to do
24 anything to cause the Defendant harm. So, I think the State is correct that there is
25 not evidence to support the giving of those Instructions in this case. I just -- there

1 just isn't evidence of self-defense.

2 So, that's 30 -- pages 35 to 40 would be pulled then?

3 MS. SUDANO: Correct, Your Honor.

4 THE COURT: Is there any objection -- so, the State is still proposing all the
5 rest of what it had originally given though?

6 MS. SUDANO: Yes, Your Honor.

7 THE COURT: Are there any other objections by the Defense?

8 MR. SHETLER: No, Your Honor.

9 THE COURT: And have you reviewed the proposed verdict form as well?

10 MR. SHETLER: Not with my client but I have looked at that and I don't have
11 any concerns about that, but I have not done that with Mr. Perry. I'm sorry, Judge.

12 THE COURT: Do you have a copy to take a quick look at the verdict form?

13 MR. SHETLER: I do not. Thank you.

14 [Colloquy between Court and court staff not transcribed.]

15 THE COURT: While you're looking at that, Tim is going to go make a final set
16 of the Instructions and while I wait we can go off the record while they discuss the
17 verdict form.

18 [A brief recess was taken at 10:46 a.m.]

19 [Proceedings resumed at 10:48 a.m.]

20 THE COURT: Okay. Have you had an opportunity to review the verdict
21 form?

22 MR. SHETLER: I have, Your Honor and I've gone over those with my client
23 and we do not have any objections.

24 THE COURT: Okay. So, what we're going to do then is finalize the verdict
25 form and run a final set of the Instructions numbered as we would do for a jury. So

1 as I indicated, what I'd like to do is read them to myself. I don't think I need to read
2 them out loud.

3 MR. SHETLER: Right.

4 THE COURT: So, I guess, I don't know how you feel about it. I -- if I like
5 read them, the full set in chambers, and come in and say I've done that and sign it,
6 is that sufficient for you or do you think I need to sit in front of you and read them? I
7 don't want a problem later so, however you prefer.

8 MS. SUDANO: And, Your Honor, I would leave that to you. I'm certainly
9 comfortable with you going back to chambers if that's where you're more
10 comfortable to read them and then letting us know on the record that you have
11 reviewed them all.

12 THE COURT: And then I would sign them and make them part of the record.

13 MR. SHETLER: Right. I've talked with Mr. Perry about that. We're both
14 comfortable with that as well, Judge.

15 THE COURT: Okay. So I guess what I'm going to do then is take a few
16 minutes to do that in chambers and then I'll come back in and we'll do closings;
17 okay? All right. We'll take a few minutes here.

18 MR. SHETLER: Thank you

19 [A brief recess was taken at 10:49 a.m.]

20 [Proceedings resumed at 11:11 a.m.]

21 THE COURT: Okay. I think you were given the revised Instructions which
22 are numbered now one through forty-one. I believe they are in accordance with our
23 discussion a few minutes ago. Are there any concerns about that? Hearing none --

24 MS. SUDANO: No, Your Honor.

25 THE COURT: Okay. So I did, as we discussed, in chambers read to myself

1 Instructions 1 through 41. I'm going to now sign indicating that I have given myself
2 those instructions. Today's October 1st; correct?

3 MR. SHETLER: Correct.

4 MS. SUDANO: Yes, Your Honor.

5 THE COURT: Okay. Okay, so I'm giving that to the clerk and the clerk has
6 the verdict form ready to go. So with that, closing argument.

7 MS. SUDANO: Thank you, Your Honor.

8 **CLOSING ARGUMENT BY THE STATE**

9 BY MS. SUDANO:

10 Now, Your Honor, we're in a unique position here today. Obviously,
11 you understand all of the instructions that were provided to you so I'm not going to
12 go through those with you. The one thing that I do want to say first is that the
13 insinuations that you may have heard through Mr. Shetler's questions are not
14 evidence. So instead, what I'm going to do is walk through the scene that was in
15 Ms. Carpenter's house April 30th of 2014 into the morning of May 1st of 2014.

16 So you heard testimony from Ms. Carpenter that on the evening of April
17 30th of 2014 the Defendant, Genaro Perry, arrived at her house late in the evening in
18 order to pick up some medication. Because it was late she agreed to let him spend
19 the night in the house, they went to bed without much discussion. They woke up
20 early that next morning on May 1st of 2014 and they were here in Exhibit 13, the
21 master bedroom located upstairs in that residence.

22 Now, the Defendant woke up first and he still appeared to be agitated
23 from the fight or whatever had happened the night previous. Ms. Carpenter
24 originally didn't understand why he was agitated but he began threatening her
25 family, began making statements that she began to be concerned about. Prior to

1 this she had not been concerned but once she became concerned while she was
2 still sitting in that bed that's depicted there in Exhibit 13, she picked up her cell
3 phone and she attempted to make the first call to 9-1-1 of that morning.

4 Now, upon seeing her pick up that phone the Defendant took the phone
5 from her and he threw it against the wall. While he threw that phone against the wall
6 he made some statement along the lines of you're not calling the police. Now that's
7 part of the coercion charge here in this case was the taking of phone, throwing it so
8 that she could not call 9-1-1 which she was perfectly, lawfully permitted to do. Now,
9 as I've mentioned that is part of coercion count I believe here is charged as Count 5.

10 Now, after throwing the phone Ms. Carpenter got up and she tried to go
11 into the bed -- or to the bathroom, you can see that depicted here in Exhibit 14. So
12 she got up and she walked to the door to the left which was the bathroom. Before
13 she made it into the bathroom the Defendant punched her, knocked her down into
14 the ground in the bathroom. While she was down on the ground with her feet kind of
15 hanging back into that bedroom he then struck her repeatedly while she was on the
16 ground more than once she said, I believe, no more than five times. She began to
17 struggle back and was able to bite him, get released get free from that situation.
18 And then she took off through that second door, the door to the right there, out into
19 the hallway to go downstairs. Now, the incidents that took place up in that bathroom
20 in that bedroom is the first part of the battery count that Your Honor's heard about.

21 Now, when she got about halfway down the stairs the Defendant caught
22 up with her and he kicked her, he knocked her down the rest of the stairs. You can
23 see here to the left of State's Exhibit 6 that bathroom -- or that stairwell that she was
24 kicked down. When she was kicked she slid out into the middle of the kitchen that
25 you can see in Exhibit 6, and landed approximately where that blue towel was in

1 front of the stove in State's Exhibit 7. Now even though she was still on the ground
2 the Defendant continued to punch and kick her while she was there in that kitchen.
3 She had injuries consistent with being punched and kicked while she was on the
4 ground. All of the injuries were to the right side of her face. She also had injuries to
5 her hip, she had a bruised or sore rib all consisted with being kicked while she was
6 already down on the ground. Now, at some point during this struggle she's begging
7 for the Defendant to stop, she's begging that he stops beating her and he does but
8 not for any good reason.

9 Now, she testified that on top of this stove that you can see here in
10 Exhibit 9 was a steak knife. The Defendant picked that steak knife up and began
11 threatening her with it; he began swinging it at her. So that right there is the assault
12 with a deadly weapon. As used in this particular case, that knife constitutes a
13 deadly weapon, Your Honor. And he was obviously intending to hit Ms. Carpenter
14 to strike her with that knife because she did -- or because he did.

15 She testified that that's where the injuries to her hand came from. You
16 can see here in State's Exhibit 37 the bottom photo there's something that looks like
17 a cut mark there, and if you look at it it's actually consistent with being struck with a
18 serrated knife. There are two separate parts to that cut or at least two separate
19 parts to that cut that are consistent with being struck with a serrated knife.

20 Now, once the Defendant has that knife in his hand he does heed her
21 prayers and her requests to stop beating on her in the kitchen but what he does
22 instead is he drags her up, still holding the knife in her -- in his hand and puts her
23 into the living room. Now when she ends up in the living room she's just sitting there
24 on the couch in the living room. She's sitting there for approximately 50 minutes
25 while he's pacing back in front of her with the knife. Now, the entire time that he's

1 pacing back in front of her with the knife she's not free to leave. She's not free to
2 get up, go out of the house, go anywhere else in the house. So, that's our false
3 imprisonment with a deadly weapon because he still had that knife for the entire
4 time, Your Honor.

5 Now, as he's got her standing there he's making threats to her, to her
6 family, to her children, to her husband, he's telling her that he's going to kill her. For
7 some reason he picks seven p.m. that night as a time that he's going to kill her and
8 he's telling her -- he's referencing her Muslim background history and telling her
9 she's going to go see Allah tonight.

10 Now, at some point while she's up on that couch or she's sitting on the
11 couch she gets up and she goes into the bathroom downstairs, you can see here
12 the entrance to that bathroom in State's Exhibit 10. She's saying that the entire time
13 she's sitting on that couch she's trying to plan her escape, to see if she can get far
14 enough out. She doesn't think that she can so instead what she does is she tries to
15 leave some evidence behind and you can see that, you can see the blood smear on
16 the door in Exhibit 10 because she believes that the Defendant is going to kill her
17 throughout this entire thing.

18 Now, once we get into Exhibit 12, which is actually the inside of the
19 bathroom, you can still see again that blood that she was leaving intentionally
20 hoping that if things went wrong there would be enough evidence to tie it back to her
21 to what happened here. Now, once she is in that living -- or done with the bathroom
22 she goes back and she sits back on that living room couch again. The Defendant
23 still has the knife and he's still holding her there and still not letting her leave.

24 At some point though he finds the car keys; the car keys are sitting
25 somewhere downstairs and the victim, Ms. Carpenter, actually sees the Defendant

1 grab those car keys and pick them up. And he says something along the lines of I'll
2 take these and that's clearly done while he still has the knife and it's done in her
3 presence. So that right there is our robbery with use of a deadly weapon, still
4 holding onto that knife, threatening her with force if she tries to resist while he's
5 taking those car keys.

6 You know, he also makes a statement while he's taking those keys,
7 something along the lines of: I stood up for you when you got this car, implies that
8 he's going to take that car from her because he believes that he's somehow entitled
9 to it because he was there when she bought it and he helped her negotiate the
10 price.

11 Now, after they're downstairs and he's got those keys in his hand
12 already and he's still has the knife he takes her back upstairs, forces her back
13 upstairs at knifepoint into the other bathroom. And once she's back in that other
14 bathroom he goes and he gets that cell phone again, Your Honor, that same cell
15 phone that he'd previously thrown against wall. He takes it and he brings it back to
16 her in that bathroom where he's forced her up to at knifepoint, and he tells her again
17 that she's not to call the police and she's not going to be able to call the police, and
18 he takes the phone and he throws it into the toilet. Now that's the other part of the
19 coercion in this case, he was again making sure that she couldn't call the police.

20 Now, when he had her in that bathroom he also made the statement
21 that she was to stay in that bathroom until he left in the car, until she heard the car
22 drive away. And that if she left the bathroom or tried to get help prior to hearing that
23 he was going to kill her, her ex-husband, her family and things were just going to go
24 very badly for her if she left. So, based on all of those threats she stayed in the
25 bathroom while he left the house. Now, that right there is our dissuading a witness.

1 He actively told her that if she took steps to call the police or commence the
2 prosecution in this case that he would kill her or her family.

3 Now, after he leaves the bathroom she hears him go downstairs, hears
4 the garage door open, hears her car drive away and that's within about 30 seconds
5 worth of time. Now, once he leaves she's finally able to get out of the bathroom,
6 tries to go find a neighbor, she's unable to do so. She comes back in and,
7 thankfully, she pulls her phone out of the toilet and it works well enough for her to
8 make that 9-1-1 call.

9 Now, when the officers respond -- you heard from Officer Bragg that in
10 25 years' worth of doing domestic violence work this is one of the more severe
11 cases that she's ever seen. Now, Officer Bragg also corroborates all of the injuries
12 that were present on Ms. Carpenter's face. She sees the raccoon eyes, she sees
13 the cut on the hands, she sees the state that Ms. Carpenter's in. Initially she tells
14 Ms. Carpenter -- or Ms. -- Officer Bragg that she's not going to open the door
15 because she's terrified. She thinks initially that it's the Defendant who's coming
16 back to her house.

17 Now after that, after they get the scene evaluated, Carpenter's still
18 terrified. She still thinks that the Defendant is going to come back, and so she
19 actually has to call officers back a second time and they help her change her locks
20 because she's so scared that the Defendant has her keys in this case.

21 Now, what you also got from Officer Bragg and the crime scene analyst
22 was that this crime scene that we've walked through here spreads all over the
23 house. And Officer Bragg testified that from her training experience this wasn't just
24 a short interaction between these two people this was something that took a lot of
25 time. There was disarray and that was in addition to just the general clutter that was

1 in the house. There were signs of struggle there and that indicated to her again that
2 this isn't just some short interaction, it's a long struggle. She also said that
3 everything she saw at this crime scene was consistent with what Corla Carpenter
4 told her had happened in this case.

5 Now, you also heard from Officer Terry that on May 2nd of 2014, so the
6 day after all of this, he finds the car. And he finds the car here in States Exhibit 3
7 over to the left here is that Karen Court address. Over to the right is Ms.
8 Carpenter's apartment at 2461 Old Forge Lane. Now, the car is gone by the time
9 that Officer Bragg and the crime scene analyst get there and it's not found until
10 Corla remembers that she has this GPS tracking the following day in the car.

11 So, in order for there to be any inference that the Defendant isn't the
12 one who took the car you would have to believe, Your Honor, that somehow Ms.
13 Carpenter, in her state that morning, got the car over to this area on Karen Court
14 where she said she's got no connections but she knows the Defendant has ties. So
15 she drops it off there and then walks back to her apartment, which she testified was
16 approximately a mile away, in the state that she was in that morning.

17 Now, I also want to talk a little bit about the crime scene itself. You
18 heard from Ms. Carpenter that she was a paralegal and that she was thinking about
19 maybe leaving some evidence and making sure that somebody would be able to
20 see this. But do you really think that in her state, Your Honor, she would decide that
21 she needed to leave that knife in the garage; that same knife that she said that the
22 Defendant had, and in the garage right by where her car was? Do you think she
23 was in a state of mind to really plan that all out and to think enough in order to leave
24 this garage -- or that knife in the garage, that's depicted here in State's 25 and 27, to
25 leave it right by that car, to leave it with apparent blood on it where the crime scene

1 analyst are going to find it; and where the reasonable inference would be, that the
2 Defendant ran out into the garage, dropped the knife, got into the car and took off.
3 Now, I don't think that she was in any state of mind and I don't think that the
4 evidence has shown, Your Honor, that she was capable of thinking that far ahead to
5 really do something like that.

6 Now, I want to talk a little bit about the car. You heard from her that she
7 purchased it -- it was a Mercedes, a 1999 Mercedes that she purchased in March of
8 2014 for \$4200.00 which is more than the 3500 required by statute. And then after
9 this case started she went back and she looked on a Kelly Blue Book or a similar
10 site and ascertained the value as about \$5100.00. So either of those values are
11 above the \$3500.00 limit.

12 Now, as far as the grand larceny auto: You again heard the Defendant
13 make that statement when he had the car keys that was something along the lines
14 of I stood up for you when you got this car, which indicated that he thought he was
15 somehow entitled to it, that he's intending to take it because he helps her get the
16 deal, helps her get the car -- or the deal done or get the car. And so he's not
17 borrowing it, he doesn't intend to return it; he says I stood up for you so I'm taking
18 these, the keys meaning that he's also going to take the car. There's no indication
19 that he ever intended to return it. All indications show that he meant to permanently
20 deprive her of that automobile.

21 Now, the last thing that I want to talk about here are the injuries that Ms.
22 Carpenter sustained this day on May 1st of 2014. You saw in State's Exhibit 28 and
23 some of the additional exhibits her state and what she looked like, and you heard
24 from Officer Bragg that that's pretty consistent. Either Officer Bragg or the crime
25 scene analyst, one of them, said those pictures don't even really do justice to how

1 beat up she was, she actually, in person, looked even worse than that. Now, that's
2 important for a couple of reasons. This isn't -- you don't have any evidence before
3 you, Your Honor, that this was self-defense but even if there were some slight
4 inference of self-defense at some point this stopped being self-defense. Even if
5 there was some sort of altercation, which again you have no evidence of in front of
6 you, Your Honor, but even if that were the case at some point the Defendant won
7 the fight and he didn't need to continue beating her up this way. There's no
8 indication that any of this was done in any sort of mutual combat.

9 She's lying down on the ground and she's got those injuries that are
10 consistent with being kicked while she's on the ground; the injuries to the hips and
11 the ribs. And you heard from Dr. Leibowitz that the blow out fracture she sustained
12 to her right eye is always consistent with trauma, 100 percent of the time is from
13 some sort of trauma. He said 99 percent of the time it's from somebody getting
14 punched out. He also said it's possible that that comes from somebody being
15 kicked. Both of those are consistent with what Corla Carpenter told you happened.
16 She said that the Defendant punched her in the face multiple times and that while
17 she was on the ground he was kicking her while he was wearing those Nike boots or
18 his shoes.

19 Now, you also heard that that wasn't the extent of her injuries. She
20 also, still to this day, has numbness and pain and nerve damage in the right side of
21 her face. She's missing teeth, eventually she's going to have to get an implant to
22 have that done. She had to go and get physical therapy in order to deal with the hip
23 pain that she didn't have prior. She also is still undergoing surgery; she's had two
24 and she's going to have a third for the nerve damage and the nerve blocking in her
25 face. Now, she also has that diagnosis of potential glaucoma which is related back

1 to this trauma and what did she say about that; she said I haven't really gotten an
2 answer but it's possible that I'm gonna lose my eyesight as a result of this trauma
3 here.

4 Now, you also heard her say that while she was sitting on the living
5 room couch the Defendant was in front of her yelling at her making all those
6 statements and those threats to kill her. One of the things that he said was look at
7 what you made me do, look at your eye. Now, Your Honor's seen enough of these
8 cases to know that that's unfortunately not uncommon in this type of case but what
9 Your Honor --

10 MR. SHETLER: Objection, Your Honor. I believe that calls for the trier of fact
11 to make a decision beyond the evidence presented in the case.

12 THE COURT: Okay. Sustained. Let's talk about this case.

13 MS. SUDANO: Okay. Move on.

14 MS. SUDANO:

15 So, what Your Honor sees here and what Your Honor knows from that
16 statement that look at what you made me do, look at my eye, is that the Defendant's
17 action in this particular case and what he did, none of that was Corla Carpenter's
18 fault. All of the evidence that you have before you, Your Honor, indicates that the
19 Defendant was not only the initial aggressor but that he took all of these actions
20 against Ms. Carpenter simply because he was upset and he was agitated, there
21 wasn't really any good reason given to you.

22 And with that, Your Honor, when you go back to deliberate in this case
23 the State's going to ask that you find the Defendant, Genaro Perry, guilty of all
24 seven counts.

25 THE COURT: Thank you. Mr. Shetler.

1 MR. SHETLER: Thank you, Your Honor.

2 Court's indulgence one moment; let me make this a little quicker.

3 THE COURT: Uh-huh.

4 **CLOSING ARGUMENT BY THE DEFENSE**

5 MR. SHETLER:

6 Your Honor, I want to thank you for your time and the professional
7 courtesy you have extended to myself and my client here in this trial. I'm
8 cognizance of the fact that our victim is in the courtroom, and I mean no disrespect,
9 but I'm doing my job that I have to do here. I say that to the Court and to her.

10 The concern in this case and what I would ask this Court to do is to hold
11 the State to their burden. To prove my client guilty beyond a reasonable doubt of
12 the elements required for each of the charges.

13 We have an officer, who I have a great deal of respect for, I believe
14 some of her testimony indicates that she may have been slightly biased against
15 people who are charged with domestic violence. I think that she, Ms. Sudano was
16 clearly correct when she stated that she corroborated everything that Ms. Carpenter
17 stated and in fact, I think she went a little further. I think that she tried to corroborate
18 the hand injury that was documented at some point after this went down the same
19 day, four days later, it's not clear. The evidence would suggest it was the same day
20 because of the clothing.

21 The cell phone: She was adamant the cell phone was in the toilet and
22 then the toilet downstairs. She stuck on that pretty hard. It's our position that
23 perhaps the cell phone was in the toilet downstairs, or perhaps that was the story
24 that was related to the police. The evidence introduced by the victim is that the cell
25 phone was thrown into the toilet after the cell phone was already taken away from

1 her and that it remained in the toilet for some unknown period of time, but it's very
2 difficult to get any reliable time estimates out of any of the testimony that came out
3 of this trial. But after that period of time it was able somehow, to make that one
4 phone call.

5 We have the photograph taken by CSA Keller that shows our victim on
6 the bed on the mattress in the living room next to a cell phone. I'm not saying that's
7 a cell phone. The evidence doesn't say that's a cell phone. The evidence also
8 doesn't say that's not the cell phone.

9 We have the selfies. The victim wasn't able to tell us what phone those
10 were taken with or what camera it was taken with. Both items were mentioned in
11 cross-examination. I don't believe that the evidence can -- has established that the
12 cell phone was ever in the toilet beyond the victim's testimony on the stand. I asked
13 Officer Bragg several times and she was adamant that it was in the toilet and
14 possibly in the toilet when she got there. Those are inconsistent statements.

15 The crime scene: And I'm sorry, I should have referenced those. The
16 first exhibit talking about the cuts on the hand, it's Exhibit 37. The exhibit showing
17 Ms. Carpenter on the bed is Exhibit 28. Utilizing Exhibit 7 which shows the kitchen
18 area where Ms. Carpenter says she came to rest after she went down the stairs,
19 was pushed, kicked down the stairs, forced down the stairs. I believe the evidence
20 is clear that she testified she was somehow forced down the stairs quicker than
21 walking, and ended up falling coming to a stop in front of the stove.

22 She was adamant that she was curled up in a fetal position facing the
23 stove. That's not a wide kitchen. Mr. Perry, as everybody else in this courtroom, is
24 considerably smaller than I am, but there's not a lot of room in this area between the
25 refrigerator and the stove. I asked her several times how he was able -- she was

1 adamant that he was kicking her in the face. I asked her several times how that
2 could be in there and she was looking at the stove; there was no answer.

3 And this is what it comes back to, you know, the horrific events of
4 abuse that occur on a daily basis in our town. Nobody deserves to be injured. But
5 our Constitution requires that the government establish beyond a reasonable doubt
6 each element of the crime. Our Constitution requires that there is sufficient reliable
7 evidence to get to this stage. Our Constitution requires and our rules of evidence
8 require that the trier of fact make their decision just based on the evidence
9 presented in the trial.

10 And a significant element and in fact, the only remaining element we
11 have to work with on those jury Instructions is the fact that if the trier of fact believes
12 that a witness, out of respect, was inconsistent at some point in time that that could
13 be taken into consideration. It doesn't mean the witness has to be completely
14 dismissed, but it is a factor and it's a significant factor. And this Court -- that right to
15 face our accused is one of the strongest rights in the Constitution. And nobody's
16 comfortable in a courtroom setting. Nobody wants to be asked questions by a
17 lawyer, but your story's got to make sense. It's got to be a linear story that explains
18 some ideas.

19 The holes or the problems, the inconsistencies in Ms. Carpenter's
20 story are not just: I can't be sure how much time it was, I can't be sure what
21 happened. There are significant inconsistencies. She has been present many
22 times in preparing for this case. There's no doubt that the story at T.J. Maxx was
23 going to come up. It escaped her memory that she happened to have a knife in her
24 purse until I asked her later. That's a significant factor that there's a kitchen knife in
25 your purse at a department store; a significant factor, Your Honor. That's not I don't

1 remember if I had my car keys or my apartment keys.

2 The significance of the phone initially, for no -- which there's not a
3 clear reason given. And perhaps my client was a drug-addled maniac, perhaps
4 there was a dispute that was ongoing between of them, perhaps they were engaged
5 in economic transactions to generate money and interest to support the promissory
6 note --

7 MS. SUDANO: I'm going to object, Your Honor. That assumes a lot of facts
8 not in evidence.

9 THE COURT: Right --

10 MR. SHETLER: She denied all those things.

11 THE COURT: -- so you've got to focus on what the evidence is.

12 MR. SHETLER:

13 She denied all those things. But the story of this man who hurt me
14 previously, shows up at my door, I know he has a bench warrant and I know he
15 needs his medication because that causes problems for people, sounds very
16 humane and very compassionate. It also sounds somewhat inconsistent with a
17 person who may have been scared of a person who act in that fashion, who shows
18 up at her door in the middle of the night, and I mean this in absolutely no disrespect
19 to Ms. Carpenter, everybody should be able to do what they want to do, but to greet
20 a former lover at the door essentially disrobed, not direct him to the mattress in the
21 living room downstairs but he comes upstairs, gets in bed with her and again, I don't
22 need to say it again, it's -- those are not the actions of a woman, no matter how tired
23 she is, who's worried about this person.

24 She told him earlier in the text messages that she would leave his stuff
25 outside, that didn't happen. She told him earlier that she would send him to the

1 police station, that didn't happen. She knew he had a warrant. She knew the
2 weeklies where he stayed, that didn't happen. That's unusual.

3 The morning after, he's agitated. He's walking around and for no
4 reason he takes my cell phone and throws it. Okay. He says -- she said twice
5 maybe three times that he said something about my mother, and I'm not minimizing
6 it, but then he punches her in the face so hard that he fractures her eye socket,
7 maybe. Maybe that happened downstairs when we're between her and the stove
8 kicking her in the face, maybe. The doctor did say that he was pretty adamant that
9 mostly these are as a result of abuse but he also said that a kid had just gotten a
10 similar injury from a soccer ball.

11 We're going to convict a man of several felonies here and the standard
12 needs to be observed.

13 The -- Ms. Carpenter knew that my client needed his medication. She
14 didn't take any steps to do anything with it other than let him into her home.

15 She was a trained paralegal who knows what evidence is important.
16 She knows it was important to leave this blood trail on the door jam. Perhaps,
17 contrary to what Ms. Sudano says, perhaps, it's important that that knife get dropped
18 in the garage before he gets in the car because it makes more sense.

19 There's not a clear explanation of what happens between this incident
20 in the floor in the kitchen and this undetermined period of time where we're happy to
21 leave a blood trail, and where at some point my client forces her back upstairs and
22 sets her down and then throws this cell phone in the toilet and then leaves. There's
23 not a clear timeline. There's not a reason, why does it stop. Ms. Sudano said at
24 some point this fight was over. At some point it was no longer self-defense or there
25 was no longer a mutual combat -- I'm going to be very careful -- excuse me, but

1 there's no explanation as to why it changed.

2 She said he cut her hands and Officer Bragg was confident that he cut
3 her hands, and Ms. Sudano says that those injuries are in the bottom of Exhibit 37
4 are consistent with a serrated knife. I think that's a bit of a stretch. We don't know
5 when those were. We don't know when that occurred but we know the CSA did not
6 document them. The CSA is a trained professional, this is her job.

7 We know that this woman was in so much pain that she couldn't get up
8 and do standups for the CSA, which is how they do their business. And I'm sure
9 they're accommodating at the scene but they want stuff done the way they want
10 stuff done. The decision to take these photographs with her lying down, I'm sure,
11 was not made lightly but that same woman doesn't allow an ambulance to transport
12 her. She somehow gets up and walks up on this injured [sic] hip that she talked
13 about to get in the car and go to the hospital and walk into the emergency room.
14 That doesn't make sense.

15 The common sense Instruction is, of course, controlling here and it's
16 frequently all the criminal Defendants have to work with. It's important. It's -- our
17 position is it's not enough and it's not common sense enough to get to a conviction.

18 Ms. Carpenter's special training and knowledge of not only the legal
19 system but of the activities of her partner that she talked about; she talked about
20 driving him up and down Boulder Highway selling drugs. She knew where he lived
21 on Boulder Highway. She talked about specifically going and staking him out on
22 Boulder Highway weeks after this so the police could find him.

23 This just sounds like a case of overreaching. It sounds like a case
24 where whether it's a fatal attraction, whether it's a mutual combat, whether it's an
25 agreement that's gone wrong maybe a business agreement that's gone wrong.

1 There's no logical step from, I woke up to I have a fractured eye socket. And, no
2 matter what my client is involved in or doing or the allegations are against my client,
3 and his irregular activities or his irregular behavior, there's no step from I'm lying in
4 bed and he says something about my mother and I have a fractured eye socket.
5 That's not connected, Your Honor.

6 The car: Our position is that there is completely insufficient evidence to
7 connect us to the car. Ms. Sudano's explanation or discussion of this occurring
8 down the street or her getting up and doing it and then injuring herself, there's just
9 nothing there. That's too far to reach.

10 Mr. Perry may not be a model citizen and he may be a convicted felon
11 or at least prior convictions for these injuries, similar; but just as I objected to during
12 Ms. Sudano's argument, this trier of fact needs to focus on the facts of this case and
13 this trial. The State has to show these elements. The State has very skillfully
14 presented this case. Both sides are working with the evidence that they have and
15 there's insufficient evidence to convict this man of seven felonies. There's
16 insufficient evidence and the trier of fact's not be allowed to fill in gaps that don't
17 flow.

18 We're confident in this trier of facts to be able to analyze the case. And
19 once again, I thank you for your time and I again, on behalf of the victim, I do this as
20 my job and I feel for her being here.

21 Thank you.

22 THE COURT: Thank you. Final argument?

23 MS. SUDANO: Thank you, Your Honor.

24 May I have the Court's brief indulgence while I grab one more?

25 THE COURT: Sure.

1 **REBUTTAL ARGUMENT BY THE STATE**

2 BY MS. SUDANO:

3 Your Honor, Mr. Shetler stood before you and said that there was no
4 link between waking up in the morning and having a fractured eye socket. That it
5 just doesn't all add up, that something's missing. I would submit, Your Honor, that
6 you did hear some testimony and some evidence of this relationship, this domestic
7 type relationship that was going on. They'd been together for approximately six
8 months. They'd broken up, kind of on again off again relationship.

9 Now, you heard from Ms. Carpenter that they'd broken up at some point
10 before April 30th of 2014 but that prior to that, even though there was some history
11 between the two of them, she wasn't afraid of the Defendant in this case. So when
12 the Defendant wanted to come over and get his medicine she told him no but when
13 he showed up she empathized. She said you know what you need your medicine
14 that's fine. And then Mr. Shetler pointed out that she wasn't wearing a lot of clothing
15 when he arrived. She wasn't wearing a lot of clothing when she went to bed. She
16 let him sleep in the bed with her.

17 Now, we've heard that that following morning the Defendant's just
18 upset. He's just angry he's making statements about Ms. Carpenter and her family.
19 I would submit to you, Your Honor, that is it possible that he wanted to reconcile and
20 he was given some signals by this woman who's letting him sleep in her bed while
21 she's not wearing a ton of clothing that maybe she wants to reconcile? But that she
22 told you up on the stand she didn't want to reconcile. She didn't give him any
23 additional indication of that other than that just letting his stay over for the night. But
24 is it possible that that's what started this all was him wanting to reconcile and then
25 finding out that morning that she wasn't interested in reconciling? That's for your

1 Honor to determine but you're free to use your common sense in evaluating that
2 situation.

3 Now, you also heard Mr. Shetler's argument, Your Honor, that Officer
4 Bragg, who sat up here and was very happily retired, had some bias because she'd
5 worked so many domestic violence cases. But what did she tell you? She told you
6 that three or four times she's been wrong. She admitted that there have been cases
7 where she's been wrong. She also told you that she didn't believe that this was one
8 of those cases where there was anything inconsistent. So she didn't seem like a
9 witness who was biased and had to be right and had to have everything fit with her
10 version of events. No. She told you that the way that she investigated this case
11 everything seemed consistent, and this wasn't a case where she was concerned
12 about anything.

13 Now, you also heard that there was some confusion about that phone
14 being in the toilet. Now, Officer Bragg was adamant that at some point she's
15 learned the phone was in the toilet but she couldn't remember if it was in the phone
16 -- or in the toilet, excuse me, when she arrived. She was adamant that that phone
17 that she saw had a cracked screen. So I would submit to Your Honor that that
18 cracked screen is still evidence of that coercion and still corroborates the coercion
19 because regardless of when and if the phone ends up in the toilet, throwing the
20 phone against the wall, taking the phone away from the victim, throwing it against
21 the wall when she's attempting to call 9-1-1 after the Defendant's getting agitated
22 and making threats, that in-of-itself is sufficient for the coercion.

23 MR. SHETLER: Your Honor, I'm sorry, I have to object. The testimony was
24 not that the phone was thrown against the wall the testimony was that the phone fell
25 short of the wall.

1 THE COURT: That's not my recollection. So I'll rely on my recollection of the
2 evidence. Go ahead.

3 MR. SHETLER: Thank you, Your Honor.

4 MS. SUDANO: Thank you, Your Honor.

5 MS. SUDANO:

6 Now, there was also testimony and argument here about what
7 happened at the T.J. Maxx. And Mr. Shetler told you that it was inconsistent and it
8 didn't make any sense the way that Ms. Carpenter relayed to you what happened at
9 the T.J. Maxx. Two arguments that are important on that point, Your Honor, one:
10 you heard evidence of what happened at that T.J. Maxx based on the belief that this
11 was going to be a self-defense case and you were going to hear additional evidence
12 that this was self-defense. You didn't hear any of that evidence, so what happened
13 at that T.J. Maxx, respectfully, probably isn't even properly before Your Honor at this
14 point.

15 Now in addition, what happened at that T.J. Maxx, none of those facts
16 are material to what happened here, Your Honor. And the Instruction on the
17 creditability of witnesses tells you that if you believe a witness has lied or has been
18 untruthful or inconsistent about a material fact you're free to disregard their
19 testimony or limit the consideration you give to their testimony. Anything that
20 happened at that T.J. Maxx is not a material fact regarding what happened here,
21 what happened at Ms. Carpenter's house on May 1st of 2014.

22 Now, Mr. Shetler also argued that it was inconsistent. That based on
23 the prior history of Ms. Carpenter and the Defendant that she wouldn't be afraid of
24 him and she would just let him back in, but what did she say about that? She said
25 that she'd let him back into her life previously, that she'd given him chances

1 because she was just a girl trying to be in love. And that was her phrase, Your
2 Honor. That she was willing to give the Defendant chances, probably more than,
3 looking back, she wishes she had but that was just because she this girl trying to be
4 in love. And so as far as her story being inconsistent or not making sense because
5 she wasn't always afraid of the Defendant no, she was overlooking a lot of things
6 because she wanted to believe, and she wanted to believe that they could have a
7 future and that she could be his queen like he promised.

8 So, none of that is inconsistent. It doesn't require Your Honor to make
9 leaps that don't comport with your common sense. Now that's just her explanation
10 of why she kept giving him chances.

11 Now, you also heard again that your common sense is going to guide
12 and that there are too many holes for Your Honor to fill in. But I would submit that
13 your common sense, Your Honor, would tell you that Ms. Carpenter did not do this
14 to herself. That these injuries are not something that somebody's going to fabricate
15 or go to all of these lengths, which seemed to be the insinuation by Mr. Shetler, that
16 she's this paralegal and she's, for whatever reason, just particularly upset with the
17 Defendant on this day.

18 Now, you also heard testimony that she was after the fact -- after this
19 she was kind of looking around for the Defendant because she wanted to make sure
20 that he was held accountable for what had happened to her. And Mr. Shetler tried
21 to infer and argue to Your Honor that that was because of this vendetta that she
22 has. I would submit, Your Honor, that that's just because she was finally done being
23 embarrassed. She had said previously that she'd overlooked some things because
24 she was embarrassed and she just wanted to let it all go but this was kind of the
25 final straw for Corla Carpenter, Your Honor. And this, what you have before Your

1 Honor in Exhibit 30, was why she was willing to follow this man around and look for
2 him for two weeks just to make sure that he didn't get away with what he did to her.

3 And with Your Honor -- with that, Your Honor, I would submit it to you
4 for deliberation.

5 THE COURT: Thank you. Okay.

6 So, what I'm going to do is, I'll be going into chambers to deliberate. I'll
7 get the exhibits and I have the verdict form and I guess we'll give you guys a call
8 when I'm ready. I don't think it'll be too long but I will go through the evidence and
9 my notes before rendering a verdict.

10 So I guess just make sure we have your cell numbers to reach you
11 when that happens.

12 MR. SHETLER: I will, Your Honor. And I do -- just to inform, that there's a
13 prelim downstairs that's waiting for me right now --

14 THE COURT: Okay.

15 MR. SHETLER: -- so I will be in Justice Court 10.

16 THE COURT: Okay.

17 MR. SHETLER: And see if we can get that wrapped up as quickly as
18 possible, Your Honor.

19 THE COURT: Okay.

20 MR. SHETLER: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MS. SUDANO: Thank you, Your Honor.

23 [The Court retired to deliberate at 11:58 a.m.]

24 [Proceedings resumed at 12:59 p.m.]

25 THE COURT: Okay, folks. Thanks for coming back.

1 I did review my notes and the exhibits and have reached a verdict, so
2 I'm now handing the verdict to the Clerk.

3 Defendant and his counsel please stand and the Clerk will read the
4 verdict out loud.

5 THE COURT CLERK: District Court, Clark County, Nevada, the State of
6 Nevada, plaintiff, versus Genaro Richard Perry, Defendant, case number
7 C14298879-1, Department Six, Verdict.

8 I, the finder of fact in the above entitled case find the Defendant,
9 Genaro Richard Perry, as follows: Count 1, robbery with use of a deadly weapon,
10 guilty of robbery with use of a deadly weapon. Count 2, false imprisonment with use
11 of a deadly weapon, guilty of false imprisonment with use of a deadly weapon.
12 Count 3, grand larceny auto, guilty of grand larceny auto value \$3,500.00 or more.
13 Count 4, assault with a deadly weapon, guilty of assault with a deadly weapon.
14 Count 5, coercion, guilty of coercion with force. Count 6, battery resulting in
15 substantial bodily harm constituting domestic violence, guilty of battery resulting in
16 substantial bodily harm constituting domestic violence. Count 7, preventing or
17 dissuading witness or victim from reporting crime or commencing prosecution, guilty
18 of preventing or dissuading witness -- excuse me -- witness or victim from reporting
19 crime or commencing prosecution. Dated this 1st day of October, 2015, District
20 Court Judge Cadish.

21 THE COURT: Thank you. You can go ahead and have a seat.

22 Defendant will be remanded into custody without bail pending
23 sentencing. Let's go ahead and set a sentencing date.

24 THE COURT CLERK: That will be November 16th, 8:30.

25 THE COURT: Okay. Thanks for your professionalism and courtesy all week.

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MS. SUDANO: Thank you, Your Honor.

[Bench Trial, Day 3, concluded at 1:01 p.m.]

ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.


DALYNÉ EASLEY
Court Transcriber

IN THE SUPREME COURT OF THE STATE OF NEVADA

GENARO RICHARD PERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 69139
District Court Case No. C298879

FILED

JAN 18 2017

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

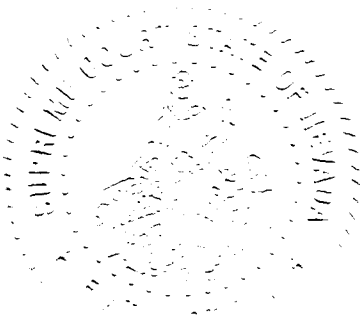
Judgment, as quoted above, entered this 14th day of December, 2016.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
January 10, 2017.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

C-14-298879-1
CCJA
NV Supreme Court Clerks Certificate/Judgn
4614711



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GENARO RICHARD PERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69139

FILED

DEC 14 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Genaro Richard Perry appeals from a judgment of conviction entered pursuant to a bench trial of robbery with the use of a deadly weapon, false imprisonment with the use of a deadly weapon, grand larceny of an automobile, assault with a deadly weapon, coercion, battery resulting in substantial harm and constituting domestic violence, and preventing or dissuading a witness or victim from reporting a crime or commencing prosecution. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Evidentiary ruling

Perry claims the district court erred by excluding testimony necessary to support his self-defense claim. "We review a district court's decision to admit or exclude evidence for an abuse of discretion." *McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Prior to trial, the district court conducted a hearing on Perry's motion to admit evidence pursuant to NRS 48.045(2). Perry sought to elicit testimony from the victim to show the victim previously chased a woman through TJ Maxx with a knife and crowbar, the victim told Perry about this prior incident, and Perry's knowledge of this prior incident affected how he responded to

the victim in the instant case. The district court found the evidence was relevant to Perry's claim of self-defense, it was clear and convincing evidence, and it was not more prejudicial than probative. However, the district court limited the admission of this evidence to "evidence about this incident of which [Perry] was aware to show . . . that it affected his state of mind" on the day of the charged offenses.

During the trial, Perry sought to present the testimony of a security guard who witnessed the TJ Maxx incident in order to bolster his self-defense claim. The district court reiterated it was only allowing evidence about the TJ Maxx incident to the extent that it affected Perry's state of mind. And the district court ruled, unless Perry had talked to the security guard, the security guard's testimony was not pertinent to the issue of self-defense. We conclude the district court did not abuse its discretion by excluding the security guard's testimony. *See Daniel v. State*, 119 Nev. 498, 515-17, 78 P.3d 890, 902-03 (2003) (discussing the admission of evidence when a defendant claims self-defense and knew of the victim's prior violent conduct).

Self-defense instructions

Perry claims the district court erred by rejecting the parties' proposed instructions on self-defense. We review a district court's exercise of discretion when settling jury instructions for abuse of discretion or judicial error. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). "[A] defendant is entitled to a jury instruction on his theory of the case so long as there is some evidence to support it, regardless of whether the evidence is weak, inconsistent, believable, or incredible." *Hoagland v. State*, 126 Nev. 381, 386, 240 P.3d 1043, 1047 (2010).

We conclude the district court abused its discretion by rejecting the instructions on self-defense because Perry presented some evidence in support of his self-defense claim through the victim's testimony. However, we further conclude the error was harmless because it is clear beyond a reasonable doubt that a rational trier of fact would have found Perry guilty absent the error. See *Gonzalez v. State*, 131 Nev. ___, ___, 366 P.3d 680, 684 (2015) (instructional errors involving a defendant's right to self-defense have constitutional dimension); *Nay v. State*, 123 Nev. 326, 333-34, 167 P.3d 430, 435 (2007) (stating the test for harmless-error analysis of an instructional error with constitutional dimension).

Sufficiency of the evidence

Perry claims insufficient evidence supports his convictions because the trier of fact did not take into consideration the evidence supporting his claim of self-defense. We review the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The trier of fact heard testimony that the victim allowed Perry to spend the night at her residence. Perry became agitated and aggressive when the victim asked him to leave the following morning. Perry grabbed the victim's cell phone, threw it against the wall, and told her she "was not going to call the police on him." Perry punched the victim in the face, and he continued to punch her after she fell backwards into the bathroom.

The victim bit Perry's hand, stood up, and ran for the staircase. Perry kicked the victim in the back as she started down the stairs, causing her to tumble down the stairs and into the kitchen. Perry

continued to kick and punch the victim while she lay in a fetal position on the kitchen floor. He grabbed a steak knife from the stove and swung the knife at the victim, striking her hands.

Perry dragged the victim into the living room and told her to sit on the love seat. He paced back and forth in front of the victim for about 50 minutes, all the while holding the knife and threatening to kill her. At some point, Perry spotted the keys to the victim's Mercedes on a coffee table and grabbed them. He then marched the victim back upstairs at knifepoint, placed her in a bathroom, told her not to leave or he would kill her, and threw her cell phone in the toilet.

After Perry drove off in the victim's Mercedes, the victim called the police and eventually went to the hospital. She suffered an orbital fracture, a broken nose, the loss of two teeth, a cut hand, and damage to the area of her right hip. She testified that she purchased her Mercedes for \$4,200 and it was valued at \$5,100.


We conclude a rational trier of fact could reasonably infer from this evidence that Perry assaulted, battered, robbed, imprisoned, and coerced his former girlfriend; he prevented her from reporting a crime and stole her car; he used a deadly weapon and caused her to suffer substantial bodily harm; and he was not acting in self-defense when he committed these criminal acts. See NRS 33.018(1); NRS 193.165(1); NRS 199.305(1); NRS 200.380(1); NRS 200.460(1); NRS 200.471(1); NRS 200.481(1); NRS 205.228(1); NRS 207.190(1); *Pineda v. State*, 120 Nev. 204, 212, 88 P.3d 827, 833 (2004) (the right to self-defense exists when there is a reasonably perceived apparent danger or actual danger); *People v. Hardin*, 102 Cal. Rptr. 2d 262, 268 n.7 (Ct. App. 2000) (the right to use force in self-defense ends when the danger ceases). It is for the trier of


fact to determine the weight and credibility to give conflicting testimony, and the trier of fact's verdict will not be disturbed on appeal where, as here, sufficient evidence supports its verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).


Cumulative error

Perry claims cumulative error deprived him of a fair trial. However, we reject this claim because there was one error and the error was harmless. *See United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000) ("One error is not cumulative error."); *Pascua v. State*, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006).

Having concluded Perry is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elissa F. Cadish, District Judge
Travis E. Shetler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: January 10, 2017
Supreme Court Clerk, State of Nevada

By A. Ingason Deputy

AA235

IN THE SUPREME COURT OF THE STATE OF NEVADA

GENARO RICHARD PERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 69139
District Court Case No. C298879

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: January 10, 2017

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Elissa F. Cadish, District Judge
Travis E. Shetler
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JAN 18 2017.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED

JAN 17 2017

CLERK OF THE COURT

Genaro Perry, 1153366

Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070

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IN THE 8th JUDICIAL DISTRICT COURT OF Clark
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF Clark

Genaro Perry

Petitioner,

vs.

State of Nevada

Respondent(s).

Case No. C298879

Dept. No. 6

Docket _____

Evidentiary Hearing
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

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#53 FEB 07 2017

CLERK OF THE COURT

AA237

(28)

1 Failure to raise all grounds in this petition may preclude you from filing future petitions
2 challenging your conviction and sentence.

3 (6) You must allege specific facts supporting the claims in the petition you file seeking relief
4 from any conviction or sentence. Failure to allege specific facts rather than just conclusions may
5 cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of
6 counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which
7 you claim your counsel was ineffective.

8 (7) If your petition challenges the validity of your conviction or sentence, the original and one
9 copy must be filed with the clerk of the district court for the county in which the conviction
10 occurred. Petitions raising any other claim must be filed with the clerk of the district court for the
11 county in which you are incarcerated. One copy must be mailed to the respondent, one copy to the
12 attorney general's office, and one copy to the district attorney of the county in which you were
13 convicted or to the original prosecutor if you are challenging your original conviction or sentence.
14 Copies must conform in all particulars to the original submitted for filing.

15 PETITION

16 1. Name of institution and county in which you are presently imprisoned or where and who you
17 are presently restrained of your liberty: SDCC

18 2. Name the location of court which entered the judgment of conviction under attack: _____

19 8th Judicial District Clark County dept VI

20 3. Date of judgment of conviction: 10-1-2015

21 4. Case number: C298859

22 5. (a) Length of sentence: 96 to 336 months

23 (b) If sentence is death, state any date upon which execution is scheduled: _____

24 6. Are you presently serving a sentence for a conviction other than the conviction under attack in
25 this motion: _____

26 Yes _____ No ☒ If "Yes", list crime, case number and sentence being served at this time: _____

27 7. Nature of offense involved in conviction being challenged: _____

1 8. What was your plea? (Check one)

2 (a) Not guilty ☒

3 (b) Guilty _____

4 (c) Nolo contendere _____

5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea
6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: _____
7 _____
8 _____

9 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

10 (a) Jury _____

11 (b) Judge without a jury ☒

12 11. Did you testify at trial? Yes _____ No ☒

13 12. Did you appeal from the judgment of conviction?

14 Yes ☒ No _____

15 13. If you did appeal, answer the following:

16 (a) Name of court: Nevada Supreme Court

17 (b) Case number or citation: 69139

18 (c) Result: case affirmed

19 (d) Date of appeal: December 14, 2016

20 (Attach copy of order or decision, if available).

21 14.) If you did not appeal, explain briefly why you did not: _____
22 _____
23 _____

24 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously
25 filed any petitions, applications or motions with respect to this judgment in any court, state or
26 federal? Yes _____ No ☒
27
28

1 16. If your answer to No 15 was "Yes", give the following information:

2 (a) (1) Name of court: _____

3 (2) Nature of proceedings: _____

4 _____

5 (3) Grounds raised : _____

6 _____

7 _____

8 (4) Did you receive an evidentiary hearing on your petition, application or motion?

9 Yes ____ No ____

10 (5) Result: _____

11 (6) Date of result: _____

12 (7) If known, citations of any written opinion or date of orders entered pursuant to each

13 result: _____

14 (b) As to any second petition, application or motion, give the same information:

15 (1) Name of Court: _____

16 (2) Nature of proceeding: _____

17 (3) Grounds raised: _____

18 (4) Did you receive an evidentiary hearing on your petition, application or motion?

19 Yes ____ No ____

20 (5) Result: _____

21 (6) Date of result: _____

22 (7) If known, citations or any written opinion or date of orders entered pursuant to each

23 result: _____

24 (c) As to any third or subsequent additional application or motions, give the same

25 information as above, list them on a separate sheet and attach.

26

27

28

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action
2 taken on any petition, application or motion?

3 (1) First petition, application or motion?

4 Yes ____ No ____

5 Citation or date of decision: _____

6 (2) Second petition, application or motion?

7 Yes ____ No ____

8 Citation or date of decision: _____

9 (e) If you did not appeal from the adverse action on any petition, application or motion,
10 explain briefly why you did not. (You may relate specific facts in response to this question. Your
11 response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response
12 may not exceed five handwritten or typewritten pages in length). _____

13 _____
14 _____
15 17. Has any ground being raised in this petition been previously presented to this or any other
16 court by way of petition for habeas corpus, motion or application or any other post-conviction
17 proceeding? If so, identify:

18 (a) Which of the grounds is the same: No

19 _____
20 (b) The proceedings in which these grounds were raised: _____

21 _____
22 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts
23 in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches
24 attached to the petition. Your response may not exceed five handwritten or typewritten pages in
25 length). _____

1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages
2 you have attached, were not previously presented in any other court, state or federal, list briefly what
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten
6 pages in length). _____
7 _____

8 19. Are you filing this petition more than one (1) year following the filing of the judgment of
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.
10 (You must relate specific facts in response to this question. Your response may be included on
11 paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five
12 handwritten or typewritten pages in length). _____
13 _____
14 _____

15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the
16 judgment under attack?

17 Yes _____ No ☒

18 If "Yes", state what court and the case number: _____
19 _____

20 21. Give the name of each attorney who represented you in the proceeding resulting in your
21 conviction and on direct appeal: Ross Smillie
22 Travis E. Shetter
23 _____
24 _____

25 22. Do you have any future sentences to serve after you complete the sentence imposed by the
26 judgment under attack?

27 Yes _____ No ☒ If "Yes", specify where and when it is to be served, if you know: _____
28 _____

Ground One

The effective assistance of counsel. Trial counsel failed to call or list witnesses.

(Strickland v Washington 966 U.S. 668 1984)

(U.S. v Tucker 716 F.2d 576 9th Cir.) This is a due process violation of petitioners 5th, 6th, 8th and 14th amendment rights to the U.S. Constitution.

Trial counsel failed to list or call defense expert Dr. Steven Gabaeff MD. Counsel had Dr. Gabaeff ready to testify at the initial jury trial, which was postponed because neither the defense doctor nor the state's doctor were available to testify at that date. Trial counsel failed to utilize Dr. Gabaeff at the bench trial.

To directly dispute Corla Carpenter's injuries (Exhibit 1) Dr. Gabaeff's notes) were Dr. Gabaeff says quote "Two different stories about the assault with result of severe fracture to (R) orbit. Unnecessary ophthalmologic care before incident and after too, including a surgery that was most likely not necessary." Followed by "This is a trumped up case of conjunctivitis milked for multiple visits and two false dx iritis and episcleritis... with pay and conjunctivitis

Ground One pg(2)

doesn't pay" finally quote "Double vision and sunken eye" quote "No documentation on that... and not noted by others".

This statement directly disputes the state's doctor's finding. It also shows the state's doctor is misdiagnosing Carpenter for fraudulent billing purposes.

Trial attorney Shetler testified in the jury trial that quote "we would ask to continue this matter because we think that having no doctor here to talk about anything for the jury is a little too risky because that is one of the aggravating factors of the crimes we're charged with".

After that statement; not to call the doctor is negligence on behalf of the trial attorney.

If Dr. Gabaëff would have testified.

The credibility of the state's doctor would be impeachable and very unbelievable. Therefore bolstering the self defense claim.

Trial counsel failed to list or all the security guard who witnessed Carpenter

Ground One pg (3)

running through TJ Max with a knife and crowbar. Wick Carpenter lied about during direct testimony and cross-examination. Thus committing perjury. For Wick she should have been impeached and brought up on charges.

The TJ-Max security guard would testify to the fact that Carpenter is a raving lunatic. By running through TJ-Max with a knife and crowbar, over the fact that a person who owed her \$. Didn't have everything that was owed to Carpenter.

If the security guard testifies. That allow's the defense to impeach the victim's credibility. And since this is a he said / she said case. That is crucial to the self-defense claim.

By not calling the guard. That prejudiced Genardo Perry.

Ground two

Ineffective assistance of counsel. Trial counsel's failure to have the knife tested for finger prints and DNA. (Strickland v Washington) (Sanborn v State 107 Nev 399, 812 P2d 1279) (US v Agurs 49 LED 2d X McGuire v State 100 Nev 153; 677 P2d 1060)

Trial counsel absolutely should have had the knife tested to prove that Carpenters fingerprints and petitioners DNA was on the knife. Combine this with the fact that petitioner was cut on his chest (see exhibit one) by carpenter. This would prove petitioners side of the story. Which is crucial to the self-defense aspect of this case.

It is crucial in a he said/she said case that all evidence is checked and verified. Since trial counsel failed to have the fingerprints and DNA tested. That is ineffective assistance at the highest level. This prejudiced the petitioner as this evidence would have had the charges lowered to a simple domestic violence on both people involved.

Ground two pg (2)

There is even the probability that Corla Carpenter should be brought up on charges for fabricating evidence (blood on the walls ect) in-order to trump up charges on the petitioner. Since Carpenter is a paralegal. She knows how to manipulate the system and the people who operate within it. Carpenter refers to the state as "her legal team".

Ground three

Ineffective assistance of counsel. Trial counsel's failure to raise the issue that the criminal complaint fails to list the address or cross roads of the incident. And the appellant attorney failed to raise the issue on direct appeal. (Strickland v Washington) (Alvarado v State 912 P2d 943) (State v Harnish 954 P2d 1180) (US v Vauvages 151 F3d 1185 9th cir)
This is a due process violation of the 5th, 6th, 8th and 14th amendment rights to the U.S. Constitution.

The state's complaint is fraudulent and doesn't follow the Nevada Rules of Court procedure. The complaint must contain a physical address at which the crime occurred. Not just the county. In this case there is ~~not~~ any address on the

Ground three pg 2

complaint. Therefore it's fraudulent and incomplete. Both trial and appeal attorney failed to raise this issue. This is negligence and ineffective assistance. The prejudice here is overwhelming.

Ground four

Ineffective assistance of counsel. Trial counsel failed to object to the removal of the self-defense instructions. (Strickland v Washington) (Weggant v Ducharme 774 F2d 1491 9th cir) (Riley v State 808 P2d 551) (Mumy v State 430 P2d 121) This is a due process violation of the 5th, 6th, 8th and 14th amendment right to the U.S. Constitution.

Trial counsel failed to object to the judge not allowing the self-defense instructions. As the judge stated the defense had not shown any evidence of self-defense. The decision of guilt has to be decided before the judge can say there was no evidence of self-defense. Trial counsel should have objected to reserve the issue for appeal. A plain objection is enough to reserve the issue for appeal. This is ineffective assistance and prejudice the petitioner as self-defense

Ground four pg 2
was the basis of the defense at trial.

Ground five

Ineffective assistance of trial counsel.

Trial counsel waived the pre-liminary hearing.
(Strickland v Washington) This is a due
process violation of the 5th, 6th, 8th and 14th
amendment rights to the U.S. Constitution.

Trial counsel was ineffective for waiving
the right to petitioners preliminary hearing.
Counsel would have been able to question
the witness on all inconsistencies. Such
as the blood on the walls and garage floor.
Also the fact that she poured bleach on
the petitioners clothes and cut his
chest with a knife. This would have
changed or dropped all charges. This
prejudiced the petitioner and cost him
30 years of his life.

Ground six

Ineffective assistance of counsel. Trial
counsel failed to have Carla Carpenter
take a psychiatric examination before
trial. (Strickland v Washington) (State v Osgood)

Ground six pg 2

2003 SD 87, 667 N.W. 2d 687 S.D. 2003)

trial counsel failed to get a pre-trial psychiatric examination of Corla Carpenter. "The purpose of a psychological or psychiatric examination of the victim is to detect any thought disorders or distortion of perceptions that might effect the credibility of the complaining witness" (State v Osgood)

In this case Carpenter is diagnosed with multiple psychiatric issues. And this was a he said/she said case. Therefore the mental status of Carpenter is crucial to this case. Also Carpenter changed her story multiple times to different people. In this particular case. Carpenter's state of mind plays a big role in the self-defense claim. By not having Carpenter tested, the trial counsel was unable to effectively cross-examine Carpenter about the fabricated crime scene. This prejudice the petitioner. A psychiatric evaluation is critical to get this case dropped or atleast the charges lowered.

Ground Seven

Ineffective assistance of counsel. Trial counsel called petitioner quote "A drug-addicted maniac". (Strickland v Washington) (Byford v State 994 P2d 700)

Ground seven pg 2

Trial counsel called petitioner "a drug-addled mainitc" In the closing argument. This destroyed any possibility of showing petitioners self-defense claim to have any credibility. The petitioner cannot overcome the prejudice at this point of the trial. Before that comment, petitioner had a chance at a rebuttal.

Ground 8

Ineffective assistance of trial counsel. Trial counsel failed to do pre-trial investigation into carpenter's past. (Strickland v Washington) (Sanborn v State 812 P2d 1297) (U.S. v Vavages 151 F3d 1185 9th cir) This is a due process violation of the 5th, 6th, 8th and 14th amendment rights to the U.S. Constitution.

Trial counsel's failure to investigate Carpenter's life/past. Corla Carpenter is inguaged in fraud by selling perscription pills. She also has many mental issues, when exposed in court would destroy her credibility. This is crucial in a he said/she said case. Especially since Carpenter used her knowlage of the justice system to up the charges on petitioner. This prejudice the petitioner as it goes to the heart of the self defense.

Ground 9

Ineffective assistance of counsel. Trial counsel failed to interview the states doctor before trial (Strickland v Washington) (Sanborn v State) (US v Agurs) This is a due process violation to the 5th, 6th, 8th and 14th amendment rights to the U.S. Constitution.

Trial counsel failed to interview the states doctor who was a expert in his field. But testified alot about the "abuse" factor in this case, with the doctor addmitt's to not being A expert in. The abuse factor in this case changes the charge from domestic violance to assault and or battery. This is huge for a case that has multiple stories to try to determin the truth.

If trial counsel would have interviewed the doctor. The defense would have been able to prepair for that portion of the trial. This prejudiced the petitioner beyond repair.

Ground 10

Ineffective assistance of trial counsel. Trial counsel failed to interview the TJ-Max security guard. (Strickland v Washington)

Ground 10 pg 2

(Sanborn v State) (US v Agur's) This is a due process violation of the 5th, 6th, 8th and 14th amendment rights to the U.S. Constitution.

Trial counsel failed to interview the TJ-MAX security guard, who's testimony is paramount to this case. As Carpenters actions inside a store with a knife and crowbar, go to the very heart of Carpenters mental status, which is what made petitioner defend himself the way he did. The security guard has seen Carpenter act like a lunatic in public. This testimony would bolster the petitioners self defense claim. By not interviewing this key witness, the trial attorney was unable to impeach Carpenter about her fabricated lie's. This prejudiced the petitioner.

Ground 11

Ineffective assistance of trial counsel. Trial counsel failed to raise the conflict of interest as the court appointed investigator is married to the justice court judge who ruled on this case. (Strickland v Washington) (Robinson v Nori's 60 F3d 457) (Page v US 884 F2d 300) (US v Agur's 49 LED 20)

Ground 11 pg 2

There's a conflict of interest as the appointed court investigator is married to the judge who ruled on the case. If the investigator had done a better job. The defense would have never waived the preliminary hearing. Thus possibly having the charges reduced or dropped all together. Also alot more investigation needed to be done on all the states witnesses, on the crime scene, the crime scene photo's and all other fabricated evidence. This prejudiced the petitioner.

Ground 12

Ineffective assistance of trial counsel. Trial counsel failed to address the overlapping charges. (Strickland v Washington) This is a due process violation of the 5th, 6th, 8th and 14th amendment rights to the US Constitution.

Trial counsel failed to file a pre-trial writ or motion to have the overlapping charges of assault with a deadly weapon and battery resulting in substantial bodily harm, dismissed as you cant be convicted of both for the same act. It is either one or the other. These overlapping charges

Ground 12 pg 2

are Carpenters idea as she is trained in criminal law. These convictions are unconstitutional together. It has to be one or the other.

Trial counsel's failure to address this has cost petitioner multiple years of his life. No doubt this prejudiced the petitioner.

Ground 13

Ineffective assistance of trial counsel. Trial counsel failed to investigate the crime scene and bleach used on petitioners clothes by Corla Carpenter. (Strickland v Washington) (Sanborn v State) (US v Agurs) This is a due process violation of the 5th, 6th, 8th and 14th amendment rights to the U.S. Constitution.

Trial counsel failed to investigate the crime scene. At which Corla Carpenter poured bleach on petitioners clothes. (Exhibit one) This shows the erratic behavior by Carpenter that would support the self-defense claim by petitioner. Anyone pouring bleach on anything, is to ruin it or change the evidence. This should have been investigated by defense counsel. This prejudiced the petitioner.

Ground 14

1
2 Ineffective assistance of counsel. Trial
3 counsel failed to investigate blood on the
4 floor and wall's. (Strickland v Washington)
5 (Sanborn v State) (US v Agurs) This is a due
6 process violation of the 4th, 5th, 6th, 8th and
7 14th amendment rights to the U.S. Constitution.

8
9 Trial counsel failed to investigate the
10 residence where Corla Carpenter fabricated
11 a crime scene. This is a failure to raise
12 the fabricated evidence defense. (Tejada v
13 Dubois 142 F3d 18 1st cir 1998)
14 Corla Carpenter went throughout the residence
15 placing blood in specific place's to fabricate
16 a story to up the charges on petitioner. Carpenter
17 also was the one to take specific pictures
18 that the state used at trial. This causes a
19 chain of custody issue with the pictures as
20 the witness is not a investigator or cop. These
21 pictures could be altered to support carpenter's
22 story. Carpenter refer's to "her legal team"
23 at the sentencing testimony. That infer's the
24 DA, prosecutor and cops are working for Carpenter.
25 That would be malicious prosecution.
26 The blood in the garage and on the knife
27 had to be tested. Because if both

Ground 14 pg 2

people's blood is on the knife and carpenter's blood is on the garage around where the car was. then that supports the self-defense claim. the lack of investigation prejudiced the petitioner and would have led to a acquittal.

Ground 15

Ineffective assistance of trial counsel. Trial counsel failed to cross-examine Carpenter about the bleach she used. (Strickland v Washington) (US v Tucker 716 F2d 576 9th Cir)

Trial counsel failed to subject the state's case to a adversarial testing process. By failing to question Carla Carpenter about the bleach she poured on petitioner's clothes in the bath tub. Nor did counsel question carpenter about the fabricated pictures, blood marks or multiple inconsistencies. By just leaving these questions un-asked. This placed the burden of proof on the petitioner. Those facts would have led to a acquittal.

Ground 16

Ineffective assistance of counsel. Trial counsel failed to correct petitioner's PSI. (Strickland v Washington) (Stockmeier v State 255 P3d 209)

This is a due process violation of the 5th, 6th, 8th and 14th amendment rights to the U.S. Constitution.

Trial counsel failed to have the PSI corrected. There are incorrect dates for past issues. Shortcomings in completed sentences and a truck load of lies in the victim impact statement.

All these caused the court to impose maximum penalties on all charges. This was not addressed in district court or direct appeal. So now I must address this in the habeas.

Trial counsel's failure to correct the PSI. Has added many more years on the petitioner's sentence. This prejudice the petitioner.

Ground 17

Ineffective assistance of counsel. Trial counsel failed to file a motion for a new trial. (Strickland v Washington) This is a due process violation of the 5th, 6th, 8th and 14th amendment rights to the U.S. Constitution.

Ground 17 pg 2

1
2 Trial counsel failed to file a motion for
3 a new trial within (7) days of the verdict
4 (NRS 176.09187)

5 Counsel should have filed a motion using the
6 fact the court ruled on the jury instructions.
7 Deciding on petitioner's guilt before the
8 verdict had been announced. Then using
9 that to limit the jury instructions. This
10 prejudiced petitioner.

Ground 18

11
12 Ineffective assistance of counsel. Trial
13 counsel failed to investigate the fraud
14 by Carpenter. (Strickland v Washington)
15 (Sanborn v State) (Agurs v U.S.) This is a
16 due process violation of the 5th 6th 8th and
17 14th amendment rights to the U.S. Constitution.
18

19
20 Trial counsel failed to investigate Corla
21 Carpenters fraud with Dr. Bruce, who
22 is currently incarcerated for the mass
23 sales of prescription pills. Carpenter was
24 a knowing participant. This goes directly
25 to Carpenters credibility. This is a he said/
26 she said case. So this investigation
27 is crucial in-order to impeach Carpenter

Ground 18 pg 2
at trial. This prejudiced petitioner.

Ground 19
Ineffective assistance of trial counsel.
Trial counsel's cumulative errors.
(Strickland v Washington) (US v Kladavris
739 F. Supp 1221) (Ramseyer v Wood 69 F3d
1434 9th Cir)

This case has set a new record for
the cumulative error effect. This
is what happens when one person
acts as a judge and jury. Even if
the court doesn't find a single ground
is enough to grant a new trial.
The cumulative errors definitely
do warrant a new trial.

Notes on Perry for Smillie and Shetler
By Steven Gabaeff, MD

Summary

Two different stories about assault with result of severe fracture to R orbit. Unnecessary ophthalmologic care before incident and after too, including a surgery that was most likely not necessary.

Extensive pain med use by AV over long time

Knife not analyzed for blood

* Her version kicked in face ... his version... punched her in face after attempted stabbing and bleach in face and eyes to stop her

* No bleach noted by cops or cloths with bleach found ... he denies stealing her car which she says he did... but found in another location locked

* He accuses her of selling pain pills, insurance fraud, abusing pain meds, pulling a knife on someone else

Physical findings c/w with either story...

- Any evidence of her pulling a knife in store?
- Insurance fraud

Ophthal turns conjunctivitis into multiple problems and tests ... looks like billing fraud ... then cross referral to colleagues and operation follow generating \$\$... that does no good and probably was not necessary

Gets 12K of dental work ... 3 crowns and 2 extractions with implants in the area of punch ... probably all related to incident but some pre-existing poor dentition were probably present

2-6-15 Email re new records ... respond review my notes ... possible report?

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Exhibit 1

INITIAL TC...12-4

~~X~~ Substantial bodily injury to eye socket ... kicked her in head ... showed up in court with eye patch ... said I need surgery but she never seemed to have it ... GBI or not?

Indigent defense

CV \$300 EIN ... 4 hours

Lawman3158@gmail.com

Initial TC/notes .2h

DEMO

AP1 James Retic 29 yo Perp in 12-9-13 incident

AV1 Tomeeka Penderson (Kenderson?) 29yo ... from the 12-9-13 incident

- This seems to be another case

AP2 Genero Perry born 1976... 5'8" 165#

AV2 Corla Carpenter born 1975... age 38 yo ... 5'2" 135#

POLICE REPORTS

PRIORS

1-26-13 incident

Subject Toumekeea Penderson in back yard with male in house with 4 juveniles ... hears crying ... male is James ... little girl comes out ... noise of him barricading himself ... may be in attic ... all kids out ... he leaves ... Mo to shelter with kids

12-9-13

Battery DV with Penderson and Retic

AV says pregnant and Fa beat her ... punching and kicking ... and biting upper R arm through sweatshirt ... with visible injury ... to hosp ... and incident closed that day

DOI

Stint of AV Tomeeka

Returned from shopping ... took phone ... against wall ... kneed her in stomach ... swung and hit chest ... she had him pinned with arm which he bit ... kneed her again and left ... 15w pregnant with his baby

- This grey material seems to be another case

DOI 5-1-14 0800

AV version... Dating on and off 6 months... ex BF ... came get to things 5-31 and stayed over ... "late" ... in am wanted to borrow \$5k to get drugs... No... he grabs knife ... threatens to kill her and family ... he lunges with knife... physical altercation ... banged head on floor and kicked her in face several times ... she tried to call ... he grabs phone and throws it... she could not leave ... he grabs keys for car... shows knife... I'm taking this... phone in toilet ... threats to kill her and ex-husband if she calls cops... take 99 Mercedes... later found at Karen Ct... police observe multiple injuries on AV

Evidence

Found knife in garage with blood

- Who's blood on knife found in garage?

Exhibit 1

DV report

- Repeats same history

Photos with DV report

Injuries to face and eyes

• Need real pics of AV at scene on disc

CSI

Blood in kitchen on floor, tissue on counter, bathroom wall ... bedding in master BeR

Written Stmt of AV 5-1

Attempted to kill me...accused me of things ... called my family names...

- No mention of the \$5K

Kicked me in head ... lunged with knife ... blacked eye with Nike boots ... threw phone and in toilet...stole car ... threats if I called police ...sells crack cocaine

PH of Lupus and sickle cell anemia

5-11-14

- A possible contact with AP

5-17-14

A found and arrested on other warrants... burglary... battery DV...strangulation...of someone else

Detective in this case finds out about arrest and books him for this 5-1 incident

5-20 Booking for 5-1-14 incident

Robbery, False imprisonment, Grand larceny, Assault with DV, threats, assault with deadly weapon

7-18-14 DEFENSE AP INTERVIEW IN JAIL

States argument with AV 4 d before DOI...on 5-1 at 0100 to house to get things ... asked to sleep ... she had MD appt in am ... he said see you later ... she said not sure she wanted him there... argument about her Mo and ex-husband... heated ...she put his cloths in bathtub and poured bleach on them

• Any cloths with bleach or smell of bleach when cops arrived

• Not mentioned in reports

Then she gets control of bleach and splashes him in face

- Any evidence of injury?

He calls her a bitch...she punches him in face and kicks ...he couldn't see with bleach in eyes

- He would have to get medical care for this

- This is very serious

She grabs knife and swings ...cuts his upper chest

- Any scar?

He grabs knife she bites his finger

• Any pics of those injuries he alleges?

He is bleeding all over from finger and chest

• Did they DNA test the blood to see who's was who's

Fight to ground and he starts hitting her in the face...she is dazed and he leaves...denied taking car...says he walked to get cab

- That doesn't seem plausible that they would find it somewhere else then locked

Says he left because warrants ...didn't want jail... and thought police would not believe him

Investigator says he has scar on chest and finger

Exhibit 1

D says that AV was arrested for chasing someone with a knife in store...states she abuses and sells prescription drugs...her MD was arrested for issuing false Rx... oxycodone...she staged and incident on the freeway to get insurance settlement

• Any proof of AV's insurance fraud? Chasing with knife?

He was going to sign plea deal at that time

MEDICAL RECORDS

- DOI 5-1-14

EYE CARE

12-17-12

Conjunctivitis on tobramycin

Meds: ... Cymbalta...vicodin...Xanax... oxycodone...Lamotrigine...fentanyl 50 mcgm/hour

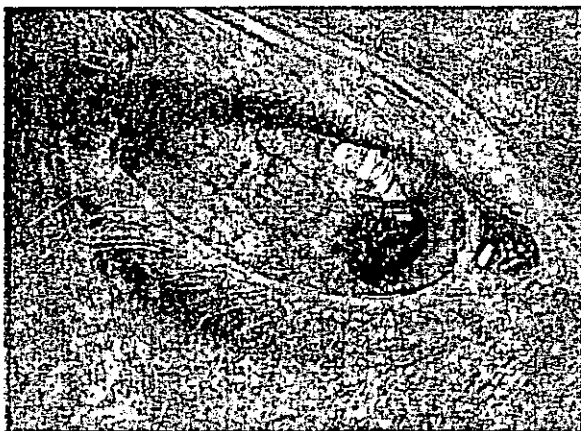
- Heavy narcotics use

Dx's episcleritis nodular OD

Research on Episcleritis

Episcleritis is a benign, self-limiting inflammatory disease affecting part of the eye called the episclera. The episclera is a thin layer of tissue that lies between the conjunctiva and the connective tissue layer that forms the white of the eye (sclera). Episcleritis is a common condition, and is characterized by the abrupt onset of mild eye pain and redness.

There are two types of episcleritis, one where the episclera is diffusely affected (diffuse episcleritis), and the other where nodules are present in the episclera (nodular episcleritis). Most cases have no identifiable cause, although a small fraction of cases are associated with various systemic diseases. Often people with episcleritis experience it recurrently. Treatment focuses on decreasing discomfort, and includes lubricating eye drops. More severe cases may be treated with topical corticosteroids or oral anti-inflammatory medications (NSAIDs).



- This sounds trumped up ... seems like conjunctivitis is more likely ...
- Many visits thereafter
- Does she have insurance?

Other medical problems ... depression and anxiety ... Rx with prednisone and Besivance and acular (NSAID-antiinflam drops)

- Besivance is an antibacterial solution so treating bacterial conjunctivitis as well
- Acular will make things slightly better...not heal

12-19-12

She can't get Besivance due to insurance...eye slightly better ... sends her to cornea specialist and rheumatologist

- Does not give another covered antibiotic ABX

Return after Cornea MD Yee

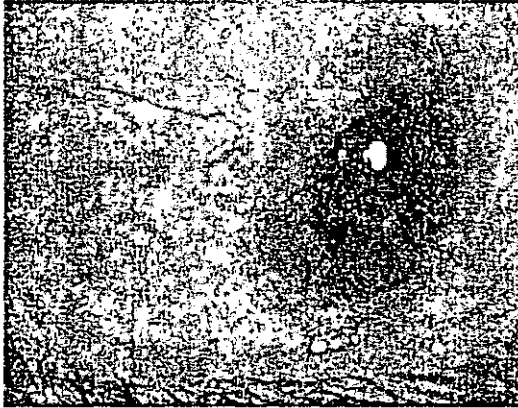
- He is setting up multiple visits to bill
- Yee sends her to Liebowitz who does surgery that is probably not necessary

12-28-12

Still has pain...he indicates she is taking the Besivance

- Probably not

Stop meds and he diagnosis iritis now and states conjunctival pinguecula



- This is common and like a pterygium
- He is totally scamming the system in NV

1-2-13

Eye matted ... put on Keflex 500 bid and back on drops

- That she may or may not have

Saw Yee 4 days ago and stopped meds

To see Rheum 1-11

1-14-13

Eyes flare up ... told by Rheum to stop meds ...going to have blood work

Wants something for pain and to stop flare-ups

Restart meds Prednisone and Acular

- Then she is not seen till after the DOI
- Never got the right meds
- This is a trumped up case of conjunctivitis milked for multiple visits and two false dx iritis and episcleritis... which pay and conjunctivitis doesn't pay

ED DOI 5-1-14

She is patient of Bruce and a pain MD

(Help her get pain pills Roxy)

Exhibit 1

c/o pain to R > L eye...dried blood at nose...lips...abrasions to upper and lower lips
tender L ribs
Tender L pinky no swelling abrasions L 4th and R 2nd digit
CT face ... R orbital fractures ... floor lamina papyracea (upper nose)...hematomas of R ethmoid
and max sinus
BL nasal fractures...superolateral wall of R max sinus too...R orbital emphysema
C-spine... brain ...chest ...abd ...pelvis...L hand...all WNL

FU AFTER DOI

5-6-14 PMD

Pain ...balance issues
More pain meds given

5-13-14 PMD

Still having pain ...Renew pain meds

5-13-14 EYE FU

...flashing ... floater ...light sensitivity ...vision worse...depth perception off
Gets pics ... cupping noted by MD

- Not seen by me ...seems normal and not noted in exam

Also calls lattice degeneration

*Says glaucoma suspect ...pressure 20 BL ...normal

- This is another bogus dx

5-15-14 FU AT SWAN LAKE MEDICAL

Anxiety and depressed...in Victim's abuse program...
Chip of R upper incisor...chip and has crack and wobbly
Open wound of mouth noted too

5-20-14 DENTAL RECORDS ALL SMILES

Starts with a context of being attacked
No feeling in 6-7-8 and fracture of 4-5 ...these not restorable

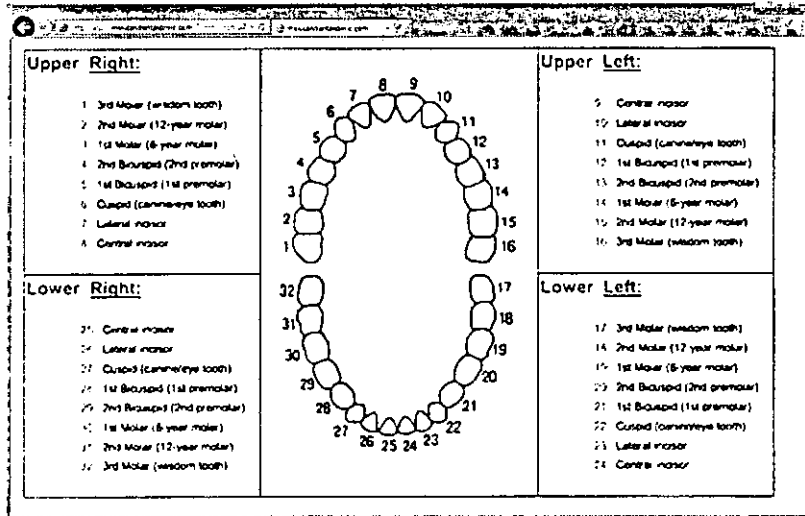
- Seems to be R sides

DX 6-8 necrotic nerve... rec root canal

4-5 extraction and implants

- These tee tar upper right in the areas that had fractures

Dental teeth numbers



5-27-14 LIEBOWITZ PRE SURG

Schedules surgery

Says diplopia and enophthalmus

- Double vision and sunken eye
- No documentation of that ...and not noted by others
- Any pre-op photos of eye for AV showing enophthalmus?

6-13-14 EYE FU

Schedules R orbit exploratory surgery and implants and conjunctivoplasty

BL pressure = 18 ...normal

Fundus nerve test

Visual field tests

7-18-14 EYE FU

No improvement with surgery ... still had double vision

- This was not reported before

Visual acuity worse

No evidence of glaucoma

7-24-14 DENTAL

Root canals and extractions done

Percocet 100/325...but pt says she didn't fill as of 7-26

7-31-14 DENTAL

Crowns in

- The double dose size

Total bill \$12.6K

NEEDS

- Need real pics of AV at scene on disc
- Any pics of those injuries the AP alleges?
- What about the bleach aspects? Any comments while none smelled or seen?
- Any proof of AV's insurance fraud?

Exhibit 1

- Any pre-op photos of eye for AV showing enophthalmus?
- Phone in toilet?

AA269

1 WHEREFORE, Genaro Remy, prays that the court grant a new trial
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at SDCC
4 on the 11 day of January, 20 17

5
6 Genaro L. Remy
7 Signature of Petitioner

8 VERIFICATION

9 Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is
10 the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is
11 true and correct of his own personal knowledge, except as to those matters based on information and
12 belief, and to those matters, he believes them to be true.

13
14 Genaro L. Remy
15 Signature of Petitioner

16
17
18 _____
Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAILING

I, Genaro Perry, hereby certify, pursuant to NRCP 5(b), that on this 11
day of January, 20 17, I mailed a true and correct copy of the foregoing, "

Writ of habeas corpus

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Clerk of the court
200 Lewis Ave 3rd floor
LV NV
89155

Attorney General
100 N. Carson Street
Carson City NV
89710-4717

Clark County DA
200 Lewis Ave 3rd floor
LV NV
89155

CC:FILE

DATED: this 11 day of January, 20 17

Genaro L. Perry
Genaro Perry #1153366
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Writ of habeas corpus

(Title of Document)

filed in District Court Case number _____

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Genaro L. Perry
Signature

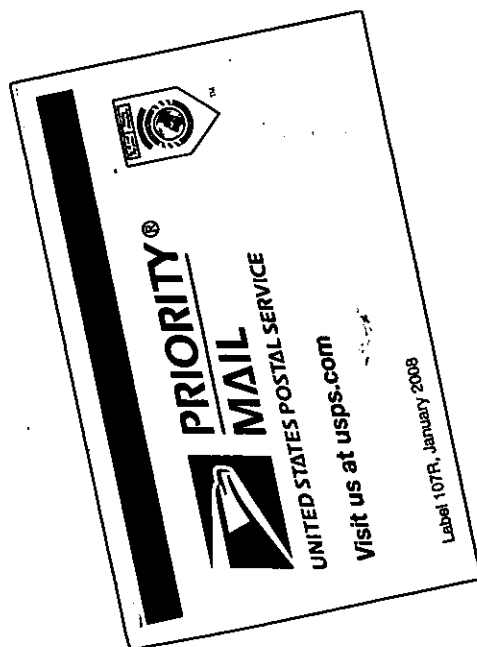
1-11-17
Date

Genaro Perry
Print Name

Title

AA272

Grenado Richard Perry 1153366
P.O. Box 208
Indian Springs NV 89070



Clerk of the Court
200 Lewis Ave 3rd Floor
Las Vegas NV
89155

3763

B/S # 2184112-
1 of 2

AA273

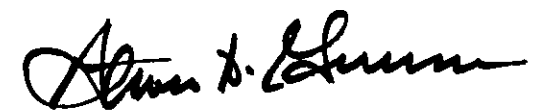
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146:7
Palm

AA274



CLERK OF THE COURT

1 **RSPN**
STEVEN B. WOLFSON
2 Clark County District Attorney
Nevada Bar #001565
3 RYAN J. MACDONALD
Deputy District Attorney
4 Nevada Bar #12615
200 Lewis Avenue
5 Las Vegas, Nevada 89155-2212
(702) 671-2500
6 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 GENARO RICHARD PERRY,
13 #1456173,

14 Defendant.

CASE NO: C-14-298879-1

DEPT NO: VI

15 STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS
16 CORPUS, REQUEST FOR AN EVIDENTIARY HEARING, AND MOTION TO
APPOINT COUNSEL

17 DATE OF HEARING: April 24, 2017
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through RYAN J. MACDONALD, Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Response to Defendant's Petition for Writ of
22 Habeas Corpus, Request for an Evidentiary Hearing, and Motion to Appoint Counsel.

23 This Response is made and based upon all the papers and pleadings on file herein, the
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if
25 deemed necessary by this Honorable Court.

26 ///

27 ///

28 ///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On June 15, 2014, the State filed an Information charging Defendant Genaro Perry
4 ("Defendant") with: Count 1 – Robbery with Use of a Deadly Weapon (Felony – NRS
5 200.380, 193.165); Count 2 – False Imprisonment with Use of a Deadly Weapon (Felony –
6 NRS 200.460(3)(b)); Count 3 – Grand Larceny Auto (Felony – NRS 105.228(3)); Count 4 –
7 Assault with a Deadly Weapon (Felony – NRS 200.471(2)(b)); Count 5 – Coercion (Felony –
8 NRS 207.190(2)(a)); Count 6 – Battery Resulting in Substantial Bodily Harm Constituting
9 Domestic Violence (Felony – NRS 200.481, 200.485, 33.018); and Count 7 – Preventing or
10 Dissuading Witness or Victim from Reporting Crime or Commencing Prosecution (Felony –
11 NRS 199.305).

12 Defendant waived his right to a jury and requested a bench trial. Defendant's bench
13 trial began on September 29, 2015. On October 1, 2015, he was found guilty on all counts. On
14 January 6, 2016, the Court sentenced Defendant to the Nevada Department of Corrections as
15 follows:

- 16 • Count 1 – maximum of 120 months and minimum of 36 months,
17 plus a consecutive sentence of maximum of 120 months and
18 minimum of 36 months for the use of a deadly weapon;
19 • Count 2 – maximum of 60 months and minimum of 18 months,
20 concurrent with Count 1;
21 • Count 3 – maximum of 96 months and minimum of 24 months,
22 consecutive to Counts 1 and 2;
23 • Count 4 – maximum of 60 months and minimum of 18 months,
24 concurrent with Count 3;
25 • Count 5 – maximum of 60 months and minimum of 18 months,
concurrent with Count 4;
26 • Count 6 – maximum of 48 months and minimum of 18 months,
concurrent with Count 5; and,
27 • Count 7 – maximum of 36 months and minimum of 12 months,
concurrent with Count 6.

28 The Judgment of Conviction was filed on January 22, 2016.

///

///

1 Defendant filed a Notice of Appeal on November 4, 2015. On December 14, 2016, the
2 Nevada Court of Appeals affirmed Defendant's Judgment of Conviction. Remittitur issued on
3 January 10, 2017.

4 On February 7, 2017, Defendant filed the instant Petition for Writ of Habeas Corpus,
5 Request for an Evidentiary Hearing, and Motion to Appoint Counsel. The State's Response
6 follows.

7 STATEMENT OF FACTS

8 Corla Carpenter met Defendant in the summer of 2013 and the two began dating in the
9 fall of 2013. Recorder's Transcript ("RT"), 09/30/15, at 39-40. The two dated on and off until
10 sometime in the middle or end of April 2014. Id. at 41. On the night of April 30, 2014,
11 Defendant showed up to Carpenter's house uninvited. Id. at 42. Defendant indicated that he
12 wanted to get his blood pressure medication and some other items that had been left at
13 Carpenter's house when they broke up. Id. at 42-43. Carpenter agreed to let Defendant into
14 the house, but told him there would be no physical contact between the two of them and that
15 he would have to gather his things and go immediately in the morning. Id. at 42-43. Carpenter
16 and Defendant went to sleep in her bed with little additional conversation. Id. at 43-44.

17 Carpenter woke up at about 7:00 am the next morning and found Defendant present in
18 the bedroom completely clothed. RT, 09/30/15, at 43-44. Carpenter told Defendant that it was
19 time for him to get his things together to leave. Id. at 44-45. Defendant became agitated and
20 started insulting Carpenter and her family. Id. at 45-46. Growing concerned, Carpenter sat up
21 in bed and started to reach for her phone so that she could call 911. Id. Defendant lunged for
22 Carpenter's phone and threw it against the wall, stating that she was not going to call the
23 police. Id. at 46-47.

24 After Defendant threw her phone, Carpenter got out of her bed and tried to close herself
25 in the attached bathroom. RT, 09/30/15, at 46. Before she reached the bathroom, Defendant
26 punched her in the face, causing her to fall into the bathroom and strike her head on the toilet.
27 Id. at 47. While Carpenter was still on the ground inside the bathroom, Defendant punched her
28 in the face several more times. Id. Carpenter began struggling to get away from Defendant and

1 was able to bite his hand. Id. at 47-48. After Carpenter bit Defendant, she was able to
2 momentarily get away from Defendant and started to run down the stairs. Id. at 48.

3 When Carpenter was about halfway down the stairs, Defendant caught up to her and
4 kicked her down the rest of the stairs. RT, 09/30/15, at 50-51. Carpenter landed in the middle
5 of the kitchen on her stomach. Id. at 51. Defendant followed Carpenter into the kitchen and
6 punched and kicked her repeatedly on the right side of her body as she was balled up in the
7 fetal position on the floor. Id. at 51-52. While Carpenter was still on the ground and begging
8 Defendant to stop beating her, he reached up and retrieved a steak knife from the kitchen
9 counter. Id. at 52-53. Carpenter sat up and Defendant began swinging the knife at Carpenter,
10 cutting her across the fingers. Id. at 53. Defendant then forced Carpenter up and walked her
11 into the living room with the knife to her back. Id.

12 Defendant forced Carpenter to sit down on a loveseat in the living room. RT, 09/30/15,
13 at 54. Defendant, still holding the knife, began to pace back and forth in front of Carpenter.
14 Id. at 54. Defendant continued to threaten Carpenter and stated, "look at your eye; look at what
15 you made me do." Id. at 54-55. For the next 50 minutes, Defendant kept Carpenter on the
16 loveseat while he threatened to kill her and stated that she was, "going to see Allah tonight."
17 Id. at 55.

18 Eventually, Carpenter stood up to go to the bathroom so that she could see her injuries,
19 with Defendant still holding the knife to her back. RT, 09/30/15, at 55. When Carpenter got
20 into the bathroom, she began to smear blood on the walls and the sink, hoping to leave signs
21 of a struggle. Id. at 55-56. After Carpenter was able to look at her injuries, Defendant walked
22 her back to the couch at knife point. Id. at 57-58. As she sat on the loveseat a second time,
23 Carpenter started trying to calm Defendant down and to reassure him that her injuries would
24 heal and things would be okay. Id. at 58.

25 While Carpenter was still sitting on the couch, Defendant found Carpenter's car keys
26 on the coffee table in the living room. RT, 09/30/15, at 58-59. Defendant picked up the keys
27 and told her that he was taking the car because he had gone with her to buy it. Id. at 59-60.
28 After he picked up the keys, Defendant turned the knife back to Carpenter and forced her back

1 upstairs into the guest bathroom. Id. at 60. As he was walking her up the stairs, Defendant told
2 Carpenter that he was going to leave in her car and that if she came out of the bathroom before
3 he was gone, he would kill her. Id. at 60-61. After Defendant placed Carpenter into the
4 bathroom, he went back into Carpenter's bedroom and retrieved her cell phone. Id. at 61.
5 Defendant then threw the cell phone into the toilet and left the bathroom after telling Carpenter
6 that she would not be able to call police. Id. at 61-62.

7 As Carpenter sat in the bathroom, she heard the motor to her car and the garage door
8 opening. RT, 09/30/15, at 62. Carpenter then ran downstairs and went to a neighbor's house
9 to try to call for help. Id. After she was unable to find anyone outside to help, she ran back
10 inside and retrieved her phone from the toilet. Id. at 62-63. Carpenter was able to get the phone
11 to turn on and called 911. Id. at 63.

12 When police responded to Carpenter's apartment, they located a steak knife on the floor
13 of the garage, stained with apparent blood. Id. at 64. On May 2, 2014, Carpenter returned to
14 her house with officers from the Las Vegas Metropolitan Police Department. Id. at 72-73.
15 While police were present, Carpenter called her insurance company and asked if they could
16 try to locate her car via its onboard navigation system. Id. at 72-73. The company reported that
17 the car was located roughly one mile from Carpenter's apartment and officers took her to
18 retrieve it. Id. at 72-73. Carpenter was unable to immediately recover her vehicle that day
19 because it only had one set of keys, which were not located with the vehicle. Id. at 73-74.

20 When Carpenter went to the hospital on May 1, 2014, she was diagnosed with a blowout
21 fracture to the right orbital and a fractured nose. RT, 09/30/15, at 65-66. At the time of the
22 trial, Carpenter was still following up with a retina specialist for ongoing vision issues and had
23 been diagnosed with trauma-induced glaucoma. Id. at 68-69. Carpenter suffered nerve damage
24 to the right side of her face and had undergone two surgeries, with a third pending, in an effort
25 to restore feeling to the right side of her face. Id. Carpenter also lost two teeth on the right side
26 of her mouth and was working to schedule a dental implant at the time of trial. Id. at 70.
27 Finally, Carpenter went to eight weeks of physical therapy due to a hip injury sustained when
28 she was kicked by Defendant. Id. at 67-68. On May 27, 2014, Carpenter was assessed by

ophthalmologist Steven Leibowitz for a blowout fracture of her right orbital, which caused her eye to partially sink into the socket. Id. at 14-15. Roughly six weeks after the attack, Carpenter received a surgical implant to rebuild her eye socket and allow her eye to sit in the socket at the appropriate level. Id. at 20-21.

ARGUMENT

I. DEFENDANT RECEIVED THE EFFECTIVE ASSISTANCE OF COUNSEL

Defendant alleges nineteen instances of ineffective assistance of counsel. Nevada has adopted the standard outlined in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), for determinations regarding the effectiveness of counsel. Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984); Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996). Under Strickland, in order to assert a claim of ineffective assistance of counsel, the defendant must prove that he was denied “reasonably effective assistance” of counsel by satisfying a two-pronged test. Strickland 466 U.S. at 686–687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel’s representation fell below an objective standard of reasonableness, and that, but for counsel’s errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, 466 U.S. at 687–688, 694, 104 S. Ct. at 2064, 2068.

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney’s representations amounted to incompetence under prevailing professional norms, “not whether it deviated from best practices or most common custom.” Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). Furthermore, “[e]ffective counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

///

1 A court begins with a presumption of effectiveness and then must determine whether
2 the defendant has demonstrated by a preponderance of the evidence that counsel was
3 ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a
4 court in considering allegations of ineffective assistance of counsel is “not to pass upon the
5 merits of the action not taken but to determine whether, under the particular facts and
6 circumstances of the case, trial counsel failed to render reasonably effective assistance.”
7 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing
8 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

9 In considering whether trial counsel was effective, the court must determine whether
10 counsel made a “sufficient inquiry into the information . . . pertinent to his client’s case.”
11 Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing Strickland, 466 U.S.
12 at 690–691, 104 S. Ct. at 2066. Once this decision is made, the court will consider whether
13 counsel made “a reasonable strategy decision on how to proceed with his client’s case.”
14 Doleman, 112 Nev. at 846, 921 P.2d at 280; citing Strickland, 466 U.S. at 690–691, 104 S. Ct.
15 at 2066. Counsel’s strategy decision is a “tactical” decision and will be “virtually
16 unchallengeable absent extraordinary circumstances.” Doleman, 112 Nev. at 846, 921 P.2d at
17 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466
18 U.S. at 691, 104 S. Ct. at 2066.

19 This analysis does not indicate that the court should “second guess reasoned choices
20 between trial tactics, nor does it mean that defense counsel, to protect himself against
21 allegations of inadequacy, must make every conceivable motion no matter how remote the
22 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711; citing Cooper, 551
23 F.2d at 1166 (9th Cir. 1977). In essence, the court must “judge the reasonableness of counsel’s
24 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
25 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot be deemed
26 ineffective for failing to make futile objections, file futile motions, or for failing to make futile
27 arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

28 ///

1 Even if a defendant can demonstrate that his counsel's representation fell below an
2 objective standard of reasonableness, he must still demonstrate prejudice and show a
3 reasonable probability that, but for counsel's errors, the result of the trial would have been
4 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
5 Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine
6 confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. A defendant who
7 contends his attorney was ineffective because he did not adequately investigate must show
8 how a better investigation would have rendered a more favorable outcome probable. Molina
9 v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

10 Finally, claims asserted in a petition for post-conviction relief must be supported with
11 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.
12 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not
13 sufficient, nor are those belied and repelled by the record. Id.

14 1. Ground 1

15 Defendant complains that counsel was ineffective for failing to list or call the TJ Maxx
16 security guard or Dr. Gabaeff. Motion at 7-9. However, Defendant cannot demonstrate
17 deficient performance because counsel retains the authority to determine what witnesses to
18 call at trial. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). Moreover, counsel did try
19 to call the security guard, but the Court declined his request. RT, 09/30/15, at 62-64. Counsel
20 cannot be ineffective for failing to challenge the Court's ruling, as it would have been futile.
21 Ennis, 122 Nev. at 706, 137 P.3d at 1103.

22 Moreover, Defendant fails to establish prejudice. Defendant asserts that counsel was
23 ineffective for failing to call Dr. Gabaeff because counsel told the Court that "having no doctor
24 [at trial] to talk about anything for the jury is a little too risky..." RT, 05/07/15, at 2; Motion
25 at 8. However, Defendant uses a cherry picked quote in an attempt to mislead the Court as to
26 counsel's reasonable strategy. Indeed, a review of the record belies Defendant's claim.
27 Hargrove, 100 Nev. at 502, 686 P.2d at 225. On the second day of trial, during jury selection,
28 the State and counsel discussed with the Court last-minute witness issues. Id. at 2-9. Counsel's

1 discussed strategy was not to call Dr. Gabaeff, but to introduce Gabaeff's reports through the
2 State's expert and to argue. Id. at 2-3. Moreover, counsel repeatedly discussed cross-
3 examining the State's expert, who was the victim's attending physician. Id. at 3, 9. In context,
4 counsel was more concerned about cross-examining the State's expert than calling his own.
5 Id. at 9. Moreover, the "Court indicated to [counsel] that he knew his doctor would not be
6 available and that he would be using the State's witness" Court Minutes, 05/07/15.

7 Further, Defendant fails to demonstrate what Dr. Gabaeff's testimony would have
8 rendered a more favorable outcome probable. See Molina, 120 Nev. at 192, 87 P.3d at 538.
9 Defendant argues that Dr. Gabaeff would have impeached the credibility of State's expert
10 because Dr. Gabaeff's notes alleged false billing. Motion at 7-8. First, Defendant fails to
11 establish how Dr. Gabaeff, having never treated the victim, would establish false billing for
12 her ailments. Moreover, even Dr. Gabaeff's notes confirm there was a severe fracture to the
13 orbital structure of the victim's right eye. See Exhibit 1. Indeed, there was substantial
14 testimony and photographic evidence presented at the bench trial, with respect to the victim's
15 injuries. RT, 09/29/15, at 14-25, 51-55, 65-72, 76-79. As such, Defendant cannot establish a
16 more favorable outcome had Dr. Gabaeff testified.

17 Similarly, Defendant cannot establish prejudice for the failure to call the TJ Maxx
18 security guard. At trial, the victim, Corla Carpenter, testified that she "lost it" in the store and
19 chased a woman through the store with a crowbar over money. Id. at 74-76, 80-82. As such,
20 Defendant fails to demonstrate what else the security guard would have testified to at trial. See
21 Molina, 120 Nev. at 192, 87 P.3d at 538. Accordingly, the Court should deny Defendant's
22 claim.

23 2. Ground 2

24 In Ground 2, Defendant complains that counsel was ineffective for failing to have the
25 knife tested for DNA and fingerprints. Motion at 10. However, Defendant fails to demonstrate
26 how further forensic investigation would have rendered a more favorable outcome probable.
27 Molina, 120 Nev. at 192, 87 P.3d at 538. Indeed, based on the testimony presented at trial, the
28 results would have confirmed the presence of both the victim's and Defendant's blood and

1 fingerprints on the knife. See RT, 09/29/15, at 53. Further, Defendant's assertion that "this
2 evidence would have had the charges lowered to a simple domestic violence on both people
3 involved" is nothing more than a naked assertion suitable only for summary dismissal.
4 Hargrove, 100 Nev. at 502, 686 P.2d at 225. As such, this Court should deny the claim.

5 **3. Ground 3**

6 Defendant next complains that the counsel was ineffective for not challenging the
7 Criminal Complaint, which failed to list the location of the incident. Motion at 11. However,
8 a specific address is not required. A criminal complaint is intended solely to put the defendant
9 on formal written notice of the charge he must defend; it need not show probable cause for
10 arrest on its face and may simply be drawn in the words of the statute so long as the essential
11 elements of the crime are stated. Sanders v. Sheriff, 85 Nev. 179, 451 P.2d 718 (1969). As the
12 victim's address is not an essential element of the crime, it would have been futile to challenge
13 the lack of address. Ennis, 122 Nev. at 706, 137 P.3d at 1103. Moreover, Defendant has
14 consistently claimed self-defense; surely he did not need notice of the place where he was
15 allegedly defending himself. Accordingly, the Court should deny Defendant's claim.

16 **4. Ground 4**

17 In Ground 4, Defendant argues that counsel was ineffective for failing to object to the
18 removal of self-defense instructions. Motion at 12. Defendant waived his right to a jury trial
19 so that he could put on a self-defense case and testify without a jury learning about his criminal
20 record. However, at the conclusion of the trial, the Court determined that there was no evidence
21 of self-defense, so a formal objection by counsel would have been futile. RT, 10/01/15, at 3;
22 Ennis, 122 Nev. at 706, 137 P.3d at 1103. Moreover, Defendant fails to establish prejudice
23 because the Nevada Court of Appeals addressed the issue on direct appeal, under the abuse of
24 discretion standard—as if an objection had been made. Perry v. State, Docket No. 69139
25 (Order of Affirmance, Dec. 14, 2016). While the Court of Appeals determined that it was error
26 to reject the self-defense instructions, such error was harmless. Id. at 2-3. Therefore, he cannot
27 demonstrate a reasonable probability that, but for counsel's errors, the result of the trial would
28

1 have been different. McNelton, 115 Nev. at 403, 990 P.2d at 1268. Thus, the Court should
2 deny Defendant's claim.

3 **5. Ground 5**

4 Defendant next asserts counsel's ineffectiveness for waiving the preliminary hearing.
5 Motion at 13. Defendant fails to recognize that it was he, not counsel, who waived the
6 preliminary hearing. Reporter's Transcript, 06/19/14, at 2-3. As such, counsel cannot be
7 deemed ineffective for a decision that belonged solely to Defendant. See Rhyne, 118 Nev. at
8 8, 38 P.3d at 167. As such, Defendant's claim is suitable only for denial.

9 **6. Ground 6**

10 In Ground 6, Defendant claims counsel was ineffective for failing to have the Court
11 order a psychiatric examination of the victim. Motion at 13-14. However, the record fails to
12 demonstrate a compelling need for an examination. A compelling need for an examination
13 exists if: (1) the State has called or obtained some benefit from a psychological or psychiatric
14 expert; (2) the evidence of the crime is supported by little or no corroboration beyond the
15 testimony of the victim; and (3) a reasonable basis exists to believe that mental or emotional
16 state of the victim may have affected her veracity. Abbott v. State, 122 Nev. 715, 727-32, 138
17 P.3d 462, 470-73 (2006). As the record is completely bare of an evidence supporting any of
18 the three Abbott factors, such a request would have been futile. Ennis, 122 Nev. at 706, 137
19 P.3d at 1103. As counsel cannot be ineffective for failing to make futile requests, this Court
20 should deny Defendant's claim.

21 **7. Ground 7**

22 Defendant complains that counsel was ineffective for calling him a "drug-addled
23 maniac," which "destroyed any possibility of showing [] self-defense." Motion at 14-15. First,
24 counsel was not ineffective for using the term. During the trial, the victim testified on cross-
25 examination that Defendant had "erratic behaviors" and used and sold drugs. RT, 09/29/15, at
26 84-86, 88. Moreover, in context, counsel's closing argument focused primarily on the victim's
27 credibility. Counsel highlighted what he believed to be the unreasonableness of her testimony
28 in an attempt to discredit her. Id. at 18-20. He focused on the victim's description of past

1 abuse, but the seemingly unreasonable act of allowing Defendant come over and sleep in her
2 bed with her. RT, 10/01/15, at 19. And although she denied that Defendant was a “drug-addled
3 maniac,” counsel’s point was that, even if Defendant was a “drug-addled maniac,” the victim’s
4 actions became even more inconsistent and unreasonable. Id.

5 Further, counsel’s comment did not “destroy” Defendant’s self-defense claim. The
6 Court previously denied the requested instructions, finding there was no evidence. RT,
7 10/01/15, at 3. Indeed, the Nevada Court of Appeals determined that it was “clear beyond a
8 reasonable doubt that a rational trier of fact would have found Perry guilty” even if the
9 instruction had been given. Perry v. State, Docket No. 69139 (Order of Affirmance, Dec. 14,
10 2016). Accordingly, the Court should deny Defendant’s claim.

11 **8. Ground 8**

12 In Ground 8, Defendant complains that counsel’s failure to investigate “Carpenter’s
13 life/past” was ineffective. Motion at 15. He asserts that she has mental health issues and is
14 engaged in fraudulent activity selling prescription pills. Id. These are bare assertions suitable
15 only for summary dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, the
16 claim should be denied.

17 **9. Ground 9**

18 Defendant next complains that counsel was ineffective for failing to interview the
19 State’s expert, Dr. Leibowitz. Motion at 16. However, Defendant fails to show how a better
20 investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at
21 192, 87 P.3d at 538. Indeed, Defendant’s claim is a naked assertion, belied by the record.
22 Hargrove, 100 Nev. at 502, 686 P.2d at 225.

23 At trial, counsel thoroughly cross-examined Dr. Leibowitz regarding the conclusion
24 that the victim’s injuries made it obvious this was an abuse situation. RT, 09/29/15, at 25-28.
25 During counsel’s cross-examination, he effectively attacked the doctor’s credibility by getting
26 the doctor to discuss potential bias; Dr. Leibowitz told the Court he came to testify because “I
27 have, you know, a sister and daughter and I wouldn’t want them punched out and that’s how
28 I look at it.” Id. at 25-26. Similarly, counsel’s cross-examination attacked Dr. Leibowitz’s

1 conclusion that this was definitively abuse. See id. at 27-28. As the record demonstrates,
2 counsel was more than prepared to cross-examine Dr. Leibowitz. As such, Defendant's claim
3 is belied by the record and must be dismissed. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

4 **10. Ground 10**

5 Defendant further asserts counsel failed to interview the TJ Maxx security guard.
6 Motion at 16. However, Defendant cannot demonstrate prejudice because the Court precluded
7 the security guard's testimony. RT, 09/30/15, at 62-64. As interviewing the guard was
8 ultimately unnecessary, counsel cannot be deemed ineffective. See Ennis, 122 Nev. at 706,
9 137 P.3d at 1103.

10 Moreover, Defendant fails to show how a better investigation would have rendered a
11 more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. At trial, Carpenter
12 testified that she "lost it" in the store and chased a woman through the store with a crowbar
13 over money. Id. at 74-76, 80-82. As such, it is unclear what the security guard would have
14 stated that would have been more favorable to Defendant. Thus, his claim should be denied.

15 **11. Ground 11**

16 In Ground 11, Defendant raises a rambling claim that counsel was ineffective for failing
17 to raise the court-appointed investigator's "conflict of interest," which resulted in an
18 incomplete investigation and his waiver of the preliminary hearing. Motion at 17-18. First,
19 Defendant's claims that the investigator had a conflict of interest and that the charges might
20 have been reduced are bare assertions. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Further,
21 as discussed, *supra*, Defendant chose to waive his preliminary hearing. Reporter's Transcript,
22 06/19/14, at 2-3. As such, counsel cannot be deemed ineffective for a decision that belonged
23 solely to Defendant. See Rhyne, 118 Nev. at 8, 38 P.3d at 167. Accordingly, Defendant's claim
24 must be denied.

25 **12. Ground 12**

26 Defendant claims that counsel was ineffective for failing to challenge "overlapping
27 charges" of assault and battery. Motion at 18-19. First, the Assault with a Deadly Weapon and
28 Battery Resulting in Substantial Bodily Harm charges were based on separate allegations—

1 Defendant was charged with Assault with a Deadly Weapon for threatening to kill Carpenter
2 with the knife and the Battery Resulting in Substantial Bodily Harm was because Defendant
3 kicked and punched Carpenter in every room of her home. Moreover, challenging the charges
4 would have been futile because the Nevada Supreme Court has held that dual convictions
5 under the assault and battery statutes can stand as each crime includes elements the other does
6 not. Jackson v. State, 128 Nev. 598, 606-07, 291 P.3d 1274, 1279-80 (2012) (citing
7 Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180 (1932)). Moreover, Accordingly,
8 Defendant's claim should be denied. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

9 **13. Ground 13**

10 Defendant further argues that counsel was ineffective for failing to investigate his claim
11 that Carpenter poured bleach on his clothes, which would have supported his claim of self-
12 defense. Motion at 19. However, the only evidence that Defendant cites to support his claim
13 is his own statement. See Exhibit 1. As such, this is a bare assertion and his claim should be
14 denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

15 **14. Ground 14**

16 In Ground 14, Defendant asserts counsel failed to investigate the "fabricated [] crime
17 scene." Motion at 20. Specifically, Defendant focuses on Carpenter's "placing blood in
18 specific places" and taking of pictures. Id. However, Carpenter testified at trial that she
19 purposefully left blood evidence throughout the house because she thought she was going to
20 die and wanted to leave a sign that "there was a struggle." RT, 09/29/15, at 56. Because
21 Carpenter fully admitted to purposefully leaving blood evidence, it is unclear what further
22 investigation would have shown. Molina, 120 Nev. at 192, 87 P.3d at 538.

23 Moreover, Defendant's claim that counsel was ineffective because Carpenter took all
24 of the pictures is belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Indeed,
25 Crime Scene Analyst Danielle Keller testified that she took photographs of the scene and of
26 Carpenter. RT, 09/30/15, at 48, 54-55. As such, Defendant cannot establish ineffectiveness.

27 ///

28 ///

1 Finally, Defendant's assertion that he was maliciously prosecuted is a bare assertion
2 suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly,
3 the Court should deny Ground 14.

4 **15. Ground 15**

5 Defendant also claims that counsel's failure to cross-examine the victim "about the
6 bleach she used" was ineffective. Motion at 21. However, Defendant cannot demonstrate
7 deficient performance because counsel retains the authority to determine what questions to ask
8 of witnesses. Rhyne, 118 Nev. at 8, 38 P.3d at 167. Moreover, Defendant fails to show what
9 questioning Carpenter about pouring bleach on his clothes in a bathtub would have revealed.
10 Thus, he cannot establish the result of the trial would have been different had counsel asked
11 about the alleged bleaching. McNelson, 115 Nev. at 403, 990 P.2d at 1268. Thus, the Court
12 should deny Defendant's claim.

13 **16. Ground 16**

14 Next, Defendant asserts that trial counsel failed to correct incorrect dates in his PSI.
15 Motion at 22. Yet Defendant fails to state what the alleged errors were or how they "added
16 many more years on [his] sentence." Id. Accordingly, Defendant's assertion is a bare and
17 naked claim that must be dismissed. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

18 **17. Ground 17**

19 Defendant also asserts that counsel should have filed a motion for a new trial because
20 the Court rejected his proposed self-defense instructions. Motion at 22-23. Filing such a
21 motion would have been futile because the Court already rejected Defendant's first request for
22 those instructions. Ennis, 122 Nev. at 706, 137 P.3d at 1103. Consequently, Defendant fails to
23 show deficient performance.

24 Moreover, Defendant fails to demonstrate prejudice because the Nevada Court of
25 Appeals determined that the presence of a self-defense instruction would not have made any
26 difference in light of the overwhelming evidence of Defendant's guilt. Perry v. State, Docket
27 No. 69139 (Order of Affirmance, Dec. 14, 2016) (harmless error to reject the self-defense
28 instructions in light of evidence of guilt). Accordingly, Defendant's claim should be denied.

1 **18. Ground 18**

2 Defendant again complains that counsel was ineffective for not investigating
3 Carpenter's alleged prescription pill fraud with "Dr. Bruce." Motion at 23. It is unclear who
4 "Dr. Bruce" is; moreover, Defendant's claim is a bare assertion suitable only for summary
5 dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, the claim should be
6 denied.

7 **19. Ground 19**

8 Defendant asserts he is entitled to relief because of the cumulative effect of counsel's
9 ineffectiveness. Motion at 24. While the Nevada Supreme Court has noted that some courts
10 do apply cumulative error in addressing ineffective assistance claims, it has not specifically
11 adopted this approach. See McConnell v. State, 125 Nev. 243, 250 n.17, 212 P.3d 307, 318
12 n.17 (2009). Nevada is not alone; with respect to claims of cumulative Strickland error, the
13 Eighth Circuit Court of Appeals has concluded that "a habeas petitioner cannot build a
14 showing of prejudice on a series of errors, none of which would by itself meet the prejudice
15 test." Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 127
16 S. Ct. 980 (2007).

17 However, the Nevada Supreme Court has noted that that other courts have held that
18 "multiple deficiencies in counsel's performance may be cumulated for purposes of the
19 prejudice prong of the Strickland test when the individual deficiencies otherwise would not
20 meet the prejudice prong." McConnell, 125 Nev. at 259 n.17, 212 P.3d at 318 n.17 (utilizing
21 this approach to note that the defendant is not entitled to relief). Even if the Court applies
22 cumulative error analysis to Defendant's claims of ineffective assistance, Defendant fails to
23 demonstrate cumulative error warranting reversal. A cumulative error finding in the context
24 of a Strickland claim is extraordinarily rare and requires an extensive aggregation of errors.
25 See, e.g., State v. Hester, 127 N.M. 218, 222, 979 P.2d 729, 733 (1999); Harris By and
26 Through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995); Derden v. McNeel, 978 F.2d
27 1453, 1461 (5th Cir. 1992).

28 ///

1 Under cumulative error analysis, a defendant must first make a threshold showing that
2 counsel's performance was deficient and counsel's representation fell below an objective
3 standard of reasonableness. State v. Sheahan, 139 Idaho 267, 287, 77 P.3d 956, 976 (2003);
4 State v. Savo, 108 P.3d 903, 916 (Alaska 2005); State v. Maestas, 299 P.3d 892, 990 (Utah
5 2012). In fact, logic dictates that cumulative error cannot exist where the defendant fails to
6 show that any violation or deficiency existed under Strickland. McConnell, 125 Nev. at 259,
7 212 P.3d at 318; United States v. Franklin, 321 F.3d 1231, 1241 (9th Cir. 2003); Turner v.
8 Quarterman, 481 F.3d 292, 301 (5th Cir. 2007); Pearson v. State, 12 P.3d 686, 692 (Wyo.
9 2000); Hester, 979 P.2d at 733. Further, in order to cumulate errors, the defendant must not
10 only show that an error occurred regarding counsel's representation, but that at least two errors
11 occurred. Rolle v. State, 236 P.3d 259, 276-77 (Wyo. 2010); Hooks v. Workman, 689 F.3d
12 1148, 1194-95 (10th Cir. 2012).

13 If the defendant can show that two or more errors existed in counsel's representation,
14 then he must next show that cumulatively, the errors prejudiced him. McConnell, 125 Nev. at
15 259 n.17, 212 P.3d at 318 n.17; Doyle v. State, 116 Nev. 148, 163, 995 P.2d 465, 474 (2000);
16 State v. Novak, 124 P.3d 182, 189 (Mont. 2005); Savo, 108 P.3d at 916. A defendant can only
17 demonstrate the existence of prejudice when he has shown that the cumulative effect of the
18 errors "were sufficiently significant to undermine [the court's] confidence in the outcome of
19 the ... trial." In re Jones, 13 Cal.4th 552, 584, 917 P.2d 1175, 1193 (1996); Collins v. Sec'y
20 of Pennsylvania Dep't of Corr., 742 F.3d 528, 542 (3d Cir. 2014). "[M]ere allegations of error
21 without proof of prejudice" are insufficient to demonstrate cumulative error. Novak, 124 P.3d
22 at 189. Further, "in most cases errors, even unreasonable errors, will not have a cumulative
23 impact sufficient to undermine confidence in the outcome of the trial, especially if the evidence
24 against the defendant remains compelling." Theil, 665 N.W.2d at 322-23; see also Maestas,
25 299 P.3d at 990 (holding that errors resulting in no harm are insufficient to demonstrate
26 cumulative error).

27 As discussed, *supra*, Defendant has failed to make a single showing that counsel's
28 representation was objectively unreasonable. Further, even if Defendant had made such a

1 showing, he has failed to demonstrate that the cumulative effect of these errors was so
2 prejudicial as to undermine the court's confidence in the outcome of Defendant's case. Collins,
3 742 F.3d at 542. Therefore, his claim of cumulative error is without merit and should be
4 denied.

5 II. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING

6 A defendant is entitled to an evidentiary hearing if his petition is supported by specific
7 factual allegations, which, if true, would entitle him to relief unless the factual allegations are
8 repelled by the record. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994).
9 "The judge or justice, upon review of the return, answer and all supporting documents which
10 are filed, shall determine whether an evidentiary hearing is required." NRS 34.770(1).
11 However, "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing
12 on factual allegations belied or repelled by the record." Hargrove, 100 Nev. at 503, 686 P.2d
13 at 225.

14 As demonstrated above, Defendant's allegations are "bare" and "naked" and are also
15 belied by the record. Thus, Defendant's claims do not necessitate an evidentiary hearing.
16 Therefore, the Court should deny Defendant's request for an evidentiary hearing.

17 III. DEFENDANT IS NOT ENTITLED TO APPOINTMENT OF COUNSEL

18 In Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991), the United
19 States Supreme Court ruled that the Sixth Amendment provides no right to counsel in post-
20 conviction proceedings. In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the
21 Nevada Supreme Court similarly observed that "[t]he Nevada Constitution . . . does not
22 guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
23 Constitution's right to counsel provision as being coextensive with the Sixth Amendment to
24 the United States Constitution."

25 NRS 34.750 provides, in pertinent part:

26 A petition may allege that the Defendant is unable to pay the costs
27 of the proceedings or employ counsel. If the court is satisfied that
28 the allegation of indigency is true and the petition *is not dismissed*
summarily, the court may appoint counsel at the time the court

1 orders the filing of an answer and a return. In making its
2 determination, the court may consider whether:

- 3 (a) The issues are difficult;
4 (b) The Defendant is unable to comprehend the
5 proceedings; or
6 (c) Counsel is necessary to proceed with discovery.

7 (emphasis added).

8 Under NRS 34.750, it is clear that the Court has discretion in determining whether to
9 appoint counsel. McKague specifically held that with the exception of cases in which
10 appointment of counsel is mandated by statute, one does not have "[a]ny constitutional or
11 statutory right to counsel at all" in post-conviction proceedings. Id. at 164. Defendant has not
12 met that burden in the instant case. Defendant was able to raise 19 claims of ineffective
13 assistance of counsel, which are all meritless. Therefore, Defendant is not entitled to the
14 appointment of counsel.

15 CONCLUSION


16 For the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus and Motion
17 to Appoint Counsel should be DENIED.

18 DATED this 7th day of April, 2017.

19 Respectfully submitted,

20 STEVEN B. WOLFSON
21 Clark County District Attorney
22 Nevada Bar #001565

23 BY

24  #13260
25 RYAN J. MACDONALD
26 Deputy District Attorney
27 Nevada Bar #12615
28

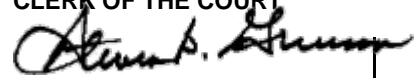
CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing State's Response to Defendant's Petition for Writ of Habeas Corpus, Request for an Evidentiary Hearing, and Motion to Appoint Counsel was made this 17th day of April, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

Genaro Richard Perry
Southern Desert Correctional Center
P.O. Box 208
Indian Springs, Nevada 89070-0208

BY: Theresa Dodson
Theresa Dodson
Secretary for the District Attorney's Office

ms/RJM/td/dvu



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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA FOR THE COUNTY OF CLARK**

GENARO RICHARD PERRY,

Petitioner,

vs.

RENEE BAKER, WARDEN

Lovelock Correctional Center,

Respondent.

) Case No.: C298879-1

) Dept No.: VI

) **HEARING REQUESTED**

**MOTION REQUESTING ORDER DIRECTING THE LAS VEGAS METROPOLITAN
POLICE DEPARTMENT TO CONDUCT GENETIC MARKER AND LATENT
FINGERPRINT ANALYSIS OF EVIDENCE IMPOUNDED AT CRIME SCENE**

COMES NOW, Petitioner, GENARO RICHARD PERRY, by and through his attorney, Jean J. Schwartzter, Esq., and respectfully moves this Honorable Court for an order directing the Las Vegas Metropolitan Police Department to conduct latent print analysis of the knife impounded from the crime scene and compare results against the prints of both Genaro Perry and Corla Carpenter and, pursuant to NRS 176.0918, and order directing same to conduct genetic marker analysis of the blood samples impounded from the crime scene and compare results against the genetic markers of both Genaro Perry and Corla Carpenter.

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1 This Motion is supported by the attached Memorandum of Points and Authorities and all
2 relevant papers and pleadings on file in this case.

3
4
5 DATED this 3rd day of February, 2021.

6
7 /s/ Jean Schwarzer

JEAN J. SCHWARTZER, ESQ.

Nevada Bar No. 011223

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Attorney for Petitioner

11
12 **POINTS AND AUTHORITIES**

13
14 **I. PROCEDURAL HISTORY**

15 On June 15, 2014, the State filed an Information charging Petitioner Genaro Perry ("Perry")
16 with: Count 1 - Robbery with Use of a Deadly Weapon (Felony - NRS 200.380, 193.165); Count 2 -
17 False Imprisonment with Use of a Deadly Weapon (Felony - NRS 200.460(3)(b)); Count 3 -Grand
18 Larceny Auto (Felony- NRS 105.228(3)); Count 4 -Assault with a Deadly Weapon (Felony-NRS
19 200.471(2)(b)); Count 5 -Coercion (Felony- NRS 207.190(2)(a)); Count 6 - Battery Resulting in
20 Substantial Bodily Harm Constituting Domestic Violence (Felony- NRS 200.481, 200.485, 33.018);
21 and Count 7 - Preventing or Dissuading Witness or Victim from Reporting Crime or Commencing
22 Prosecution (Felony - NRS 199.305).

24 Perry waived his right to a jury and requested a bench trial. Perry's bench trial began on
25 September 29, 2015. On October 1, 2015, he was found guilty on all counts. On January 6, 2016, the
26 Court sentenced Perry to the Nevada Department of Corrections as follows:
27
28

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Count 1 - maximum of 120 months and minimum of 36 months, plus a consecutive sentence of maximum of 120 months and minimum of 36 months for the use of a deadly weapon;

Count 2 - maximum of 60 months and minimum of 18 months, concurrent with Count 1;

Count 3 - maximum of 96 months and minimum of 24 months, consecutive to Counts 1 and 2;

Count 4 - maximum of 60 months and minimum of 18 months, concurrent with Count 3;

Count 5 - maximum of 60 months and minimum of 18 months, concurrent with Count 4;

Count 6 - maximum of 48 months and minimum of 18 months, concurrent with Count 5; and,

Count 7 - maximum of 36 months and minimum of 12 months, concurrent with Count 6.

The Judgment of Conviction was filed on January 22, 2016. Perry filed a Notice of Appeal on November 4, 2015. On December 14, 2016, the Nevada Court of Appeals affirmed Perry's Judgment of Conviction. Remittitur issued on January 10, 2017.

On February 7, 2017, Perry filed a timely Petition for Writ of Habeas Corpus, Request for an Evidentiary Hearing, and Motion to Appoint Counsel.

II. FACTS

Perry and Corla Carpenter ("Carpenter") were involved in a six-month relationship before breaking up. Trial Transcript Day 1 ("TT1") at 39-41. On the night of April 30, 2014, Perry came to Carpenter's house after she was already in bed, asking for his blood pressure medication he had left behind when they broke up. She let him in but told him that he would have to leave by the morning. TT1 at 41-46.

Carpenter claimed that in the morning, Perry started acting aggressively, scaring Carpenter. She claimed that she tried to call for help but that he grabbed her phone and threw it against the wall,

telling her that she would not call the police on him. TT1 at 41-46. Carpenter claimed she tried to escape to the bathroom and that he punched her in the face. TT1 at 49.

Carpenter claimed that she tried to run away from him but fell down the stairs and landed in the kitchen. TT1 at 46-52. She claimed that Perry beat and kicked her while she was curled in the fetal position on the kitchen floor. TT1 at 46-52. She claimed that Perry grabbed a knife that was laying on the stove. TT1 at 52-58. Carpenter claimed that when she saw the knife, she begged him not to kill her. Id. Carpenter alleged that Perry took her into the living room at knifepoint and made her sit there for 50 minutes, not moving, while he paced in front of her and made plans to kill her. Id.

Carpenter claimed that Perry grabbed her car keys from the living room and marched her to the bathroom. Finally, she claims that Perry threatened her, saying that he would kill her if she left the bathroom before she heard the garage door close. TT1 at 58-62.

During the investigation of this case, blood samples were impounded from the crime scene. (See Crime Scene Investigation Report, attached hereto as Exhibit 1; see also Evidence Impound Report, attached hereto as Exhibit 2.) The knife, which had blood on it, was impounded as well. (See Id.). Genetic marker analysis was not conducted on these items. Latent print analysis of the knife was not conducted. (See Id.).

Perry attempted to present a self-defense case with the assertion that it was Carpenter who attacked Perry with the knife and Perry acted in self-defense. TT1 at 10; TT2 at 63-64. This defense was thwarted by the Court's error in denying Perry the opportunity to present evidence of Carpenter's past violent history as well as his proposed self-defense instruction. TT2 at 63-64; TT3 at 3-6. The Nevada Supreme Court held that the District Court's failure to allow Perry a self-defense instruction was error. (See Order of Affirmance Case No.69139, attached hereto as Exhibit3). However, the Supreme Court held that this error was harmless due to the evidence presented against Perry at trial. Id.

1 **III. LAW**

2 NRS 176.0918 states:

3
4 1. A person convicted of a felony who otherwise meets the requirements of
5 this section may file a post-conviction petition requesting a genetic marker
6 analysis of evidence within the possession or custody of the State which may
7 contain genetic marker information relating to the investigation or
8 prosecution that resulted in the judgment of conviction. If the case involves a
 sentence of death, the petition must include, without limitation, the date
 scheduled for the execution, if it has been scheduled.

9 2. Such a petition must be filed with the clerk of the district court for the
10 county in which the petitioner was convicted on a form prescribed by the
11 Department of Corrections. A copy of the petition must be served by
 registered mail upon:

12
13 (a) The Attorney General; and

14 (b) The district attorney in the county in which the petitioner was convicted.

15 3. A petition filed pursuant to this section must be accompanied by a
16 declaration under penalty of perjury attesting that the information contained
17 in the petition does not contain any material misrepresentation of fact and
18 that the petitioner has a good faith basis relying on particular facts for the
 request. The petition must include, without limitation:

19 (a) Information identifying specific evidence either known or believed to be
20 in the possession or custody of the State that can be subject to genetic marker
 analysis;

21 (b) The rationale for why a reasonable possibility exists that the petitioner
22 would not have been prosecuted or convicted if exculpatory results had been
23 obtained through a genetic marker analysis of the evidence identified in
 paragraph (a);

24 (c) An identification of the type of genetic marker analysis the petitioner is
25 requesting to be conducted on the evidence identified in paragraph (a);

26 (d) If applicable, the results of all prior genetic marker analysis performed on
27 evidence in the trial which resulted in the petitioner's conviction; and

28 (e) A statement that the type of genetic marker analysis the petitioner is
 requesting was not available at the time of trial or, if it was available, that the

AA299

failure to request genetic marker analysis before the petitioner was convicted was not a result of a strategic or tactical decision as part of the representation of the petitioner at the trial.

4. If a petition is filed pursuant to this section, the court may:

(a) Enter an order dismissing the petition without a hearing if the court determines, based on the information contained in the petition, that the petitioner does not meet the requirements set forth in this section;

(b) After determining whether the petitioner is indigent pursuant to NRS 171.188 and whether counsel was appointed in the case which resulted in the conviction, appoint counsel for the limited purpose of reviewing, supplementing and presenting the petition to the court; or

(c) Schedule a hearing on the petition. If the court schedules a hearing on the petition, the court shall determine which person or agency has possession or custody of the evidence and shall immediately issue an order requiring, during the pendency of the proceeding, each person or agency in possession or custody of the evidence to:

(1) Preserve all evidence within the possession or custody of the person or agency that may be subjected to genetic marker analysis pursuant to this section;

(2) Within 90 days, prepare an inventory of all evidence relevant to the claims in the petition within the possession or custody of the person or agency that may be subjected to genetic marker analysis pursuant to this section; and

(3) Within 90 days, submit a copy of the inventory to the petitioner, the prosecuting attorney and the court.

5. Within 90 days after the inventory of all evidence is prepared pursuant to subsection 4, the prosecuting attorney may file a written response to the petition with the court.

6. If the court holds a hearing on a petition filed pursuant to this section, the hearing must be presided over by the judge who conducted the trial that resulted in the conviction of the petitioner, unless that judge is unavailable. Any evidence presented at the hearing by affidavit must be served on the opposing party at least 15 days before the hearing.

7. If a petitioner files a petition pursuant to this section, the court schedules a hearing on the petition and a victim of the crime for which the petitioner was convicted has requested notice pursuant to NRS 178.5698, the district attorney in the county in which the petitioner was convicted shall provide to the victim notice of:

AA300

1 (a) The fact that the petitioner filed a petition pursuant to this section;

2 (b) The time and place of the hearing scheduled by the court as a result of the
3 petition; and

4 (c) The outcome of any hearing on the petition.

5 Nev. Rev. State §176.0918 (2013).

6 Perry argues in Ground Two of his Petition that his counsel was ineffective for failing to
7 investigate Perry's self-defense claims. Specifically, Perry alleges that his counsel was ineffective for
8 failing to request genetic marker analysis of the blood samples taken from the crimes scene as well as
9 examination of the knife for latent fingerprints. Had counsel done so, Perry alleges that the results
10 would show that it was Carpenter who had the knife in her hand and that he was cut with said knife.
11 Additionally but not subject to the instant motion, Perry claims his counsel was ineffective for failing
12 to present medical evidence showing that Perry was cut with the knife during this altercation. This
13 evidence would have supported his self-defense claim. Given the fact that the Supreme Court of
14 Nevada found that it was error for the District Court to preclude Perry from giving a self-defense
15 instruction *without* this additional evidence of his injuries and genetic marker analysis, had the District
16 Court heard this evidence, it would have surely allowed Perry to give a self-defense instruction.
17 Without the self-defense instruction, Perry had no chance of being found not guilty due to self-
18 defense.
19
20

21 In order for Perry to properly allege that his attorney was ineffective for failing to investigate
22 his self-defense claims, he must demonstrate how such proposed investigation would have rendered a
23 more favorable outcome. Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004). Therefore, Perry moves
24 this Court for an order directing the Las Vegas Metropolitan Police Department to conduct latent print
25 analysis on the knife (Item #1/Package #1) impounded from the crime scene and compare the prints to
26 the prints of both Genaro Perry and Corla Carpenter; and also an order, pursuant to NRS 176.0918,
27 directing the Las Vegas Metropolitan Police Department to conduct genetic marker analysis of the
28

AA301

1 blood on the knife (Item #1/Package #1) and blood samples and knife impounded from the scene
2 (Items #2 and #3/Package #2) and compare results against the genetic markers of both Genaro Perry
3 and Corla Carpenter.
4

5
6 DATED this 3rd day of February, 2021.
7

8 /s/ Jean Schwartzer
9 JEAN J. SCHWARTZER, ESQ.
10 Nevada Bar No. 011223
11 LAW OFFICE OF JEAN J. SCHWARTZER
12 170 S. Green Valley Parkway #300
13 Henderson, NV 89012
14 Phone: 702-979-9941
15 jean.schwartzter@gmail.com
16 Attorney for Petitioner
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AA302

1
2 **CERTIFICATE OF SERVICE**

3 **IT IS HEREBY CERTIFIED** by the undersigned that on 3rd day of February, 2021, I served
4 a true and correct copy of the foregoing **MOTION REQUESTING ORDER**
5 **DIRECTING THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT TO CONDUCT GENETIC**
6 **MARKER AND LATENT PRINT ANALYSIS OF EVIDENCE IMPOUNDED AT CRIME SCENE** on the parties
7 listed on the attached service list via one or more of the methods of service described below as
8 indicated next to the name of the served individual or entity by a checked box:

9 **VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon
10 fully prepaid, in the United States mail at Las Vegas, Nevada.

11 **VIA FACSIMILE:** by transmitting to a facsimile machine maintained by the attorney or the party
12 who has filed a written consent for such manner of service.

13 **BY PERSONAL SERVICE:** by personally hand-delivering or causing to be hand delivered by such
14 designated individual whose particular duties include delivery of such on behalf of the firm, addressed
15 to the individual(s) listed, signed by such individual or his/her representative accepting on his/her
16 behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document
17 will be maintained with the document and is attached.

18 **BY E-MAIL:** by transmitting a copy of the document in the format to be used for attachments to the
19 electronic-mail address designated by the attorney or the party who has filed a written consent for such
20 manner of service.

21 **BY:** /s/ Jean J. Schwartz
22 **JEAN J. SCHWARTZER, ESQ.**
23 Nevada Bar No. 11223
24 Law Office of Jean J. Schwartz, Ltd.
25 170 S. Green Valley Parkway, #300
26 Henderson, Nevada 89012
27 Phone: (702) 979-9941
28 jean.schwartz@gmail.com
Attorney for Defendant

AA303

SERVICE LIST

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ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE 200 E. Lewis Ave Las Vegas, NV 89101 Alexander.chen@clarkcountynyda.com	State of Nevada	<input type="checkbox"/> Personal service <input checked="" type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service

AA304

EXHIBIT 1

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CRIME SCENE INVESTIGATION REPORT

Incident Battery with Substantial Bodily Harm		Sector/Beat H2	Event Number 140501-1127
Requesting Officer A. Bragg #4150	Division PD	Date 05/01/2014	Time 1028
Victim(s) Corla Caprenter (DOB- 08/29/1975)		Location(s) 2461 Old Forge Lane #106	

Connecting Reports and Related Event Numbers

☒ Evidence Impound Report
 ☐ Firearms Report
 ☐ Officer's Report
 ☐ _____
☐ Related Event Number(s): _____

DOCUMENTATION

☒ Crime Scene Photography ☐ Comparative Photography
☐ Aerial Photography ☐ Diagram(s)
☐ _____

FOOTWEAR AND TIRE EVIDENCE

☐ Footwear ☐ Tire
☐ Lift(s) / Cast(s) ☐ Original Surface(s)
☐ Photograph(s) ☐ Exemplar(s)

LATENT PRINT EVIDENCE

☐ Processing Conducted
☐ Lift(s) / Cast(s)
☐ Photograph(s)
☐ Eliminations
☐ Negative Results
☐ _____

BIOLOGICAL EVIDENCE

☒ Apparent Blood ☐ Apparent Semen
☐ Possible DNA ☐ Unknown Substance(s)
☒ Swab(s) ☒ Original Surface(s)
☐ Buccal Swabs ☐ _____

FIREARMS EVIDENCE

☐ Bullet(s) / Fragment(s)
☐ Cartridge Case(s)
☐ Cartridge(s)
☐ Weapon(s)
☐ _____

TOOL MARK EVIDENCE

☐ Cast(s) ☐ Original Surface(s)
☐ Photograph(s) ☐ Tool(s)

OTHER

MAY 6 PM 2:46

VEHICLE(S):

GENERAL INFORMATION:

The Scene-

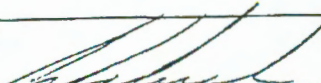
The scene was located in the above listed two story condominium. The front door faced south.

There was apparent blood on the floor of the north central kitchen, on tissue on the east kitchen counter, on the north wall of the northwest bathroom and on the west side of the door frame to the northwest bathroom (A sample of which is Item #2). There was also apparent blood on bedding on the bed along the south wall of the west master bedroom (A sample of which is Item #3).

There was a **steak knife** with a **black handle** and **4.5" blade** with **apparent blood** (Item #1) on the **ground** at the **northeast** corner of the west garage.

Photography-

Color digital images were recorded to show the address location and overall condition of the scene as described above.

Approved 	P# 5045	Crime Scene Analyst D. Keller	P# AA306 12712
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AS VEGAS METROPOLITAN POLICE DEPARTMENT
CRIME SCENE INVESTIGATION REPORT
CONTINUATION

Incident: Battery with Substantial
Bodily Harm

Event Number: 140501-1127

Evidence-

The above listed items were recovered and impounded as evidence. Samples from the stains in which Item #2 and Item #3 were recovered, were tested with Phenolphthalein, a presumptive test for blood, with positive results.

No further at this time.

2014 MAY 6 PM 2 46

Crime Scene Analyst
D. Keller

AA307

12712

EXHIBIT 2

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
EVIDENCE IMPOUND REPORT

☒ **EVIDENCE**

☐ **FOUND PROPERTY**

☐ **SAFEKEEPING**

Event Number: **140501-1127**

Incident: Battery with Substantial Bodily Harm	Date: 05/01/2014
Victim(s): Corla Carpenter (DOB- 08/29/1975)	
Location: 2461 Old Forge Ln.	
Vehicle(s):	
Additional Information:	

Description of Evidence

Location of Recovered Evidence

Package #1

Item #1- One (1) steak knife with a black handle and 4.5" blade with apparent blood.

On the ground at the northeast corner of the west garage.

Package #2

Item #2- One (1) swab with apparent blood.

On the west side of the door frame to the northwest bathroom.

Item #3- One (1) swab with apparent blood.

On bedding on the bed along the south wall of the west master bedroom.

Note- Samples of the stains from which Item #2 and Item #3 were recovered were tested with Phenolphthalein, a presumptive test for blood, with positive results.

2014 MAY 6 PM 2 46

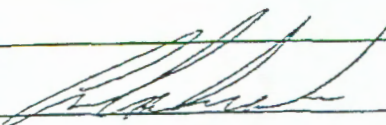
Approved: 	P#: 2015	Crime Scene Analyst: D. Keller	AA309	P#: 12712
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EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

GENARO RICHARD PERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 69139
District Court Case No. C298879

FILED

JAN 18 2017

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

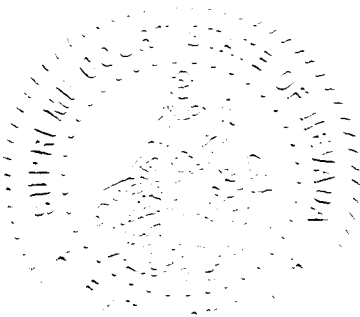
Judgment, as quoted above, entered this 14th day of December, 2016.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
January 10, 2017.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

C-14-298879-1
CCJA
NV Supreme Court Clerks Certificate/Judgn
4614711



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GENARO RICHARD PERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69139

FILED

DEC 14 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Genaro Richard Perry appeals from a judgment of conviction entered pursuant to a bench trial of robbery with the use of a deadly weapon, false imprisonment with the use of a deadly weapon, grand larceny of an automobile, assault with a deadly weapon, coercion, battery resulting in substantial harm and constituting domestic violence, and preventing or dissuading a witness or victim from reporting a crime or commencing prosecution. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Evidentiary ruling

Perry claims the district court erred by excluding testimony necessary to support his self-defense claim. "We review a district court's decision to admit or exclude evidence for an abuse of discretion." *McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Prior to trial, the district court conducted a hearing on Perry's motion to admit evidence pursuant to NRS 48.045(2). Perry sought to elicit testimony from the victim to show the victim previously chased a woman through TJ Maxx with a knife and crowbar, the victim told Perry about this prior incident, and Perry's knowledge of this prior incident affected how he responded to

the victim in the instant case. The district court found the evidence was relevant to Perry's claim of self-defense, it was clear and convincing evidence, and it was not more prejudicial than probative. However, the district court limited the admission of this evidence to "evidence about this incident of which [Perry] was aware to show . . . that it affected his state of mind" on the day of the charged offenses.

During the trial, Perry sought to present the testimony of a security guard who witnessed the TJ Maxx incident in order to bolster his self-defense claim. The district court reiterated it was only allowing evidence about the TJ Maxx incident to the extent that it affected Perry's state of mind. And the district court ruled, unless Perry had talked to the security guard, the security guard's testimony was not pertinent to the issue of self-defense. We conclude the district court did not abuse its discretion by excluding the security guard's testimony. *See Daniel v. State*, 119 Nev. 498, 515-17, 78 P.3d 890, 902-03 (2003) (discussing the admission of evidence when a defendant claims self-defense and knew of the victim's prior violent conduct).

Self-defense instructions

Perry claims the district court erred by rejecting the parties' proposed instructions on self-defense. We review a district court's exercise of discretion when settling jury instructions for abuse of discretion or judicial error. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). "[A] defendant is entitled to a jury instruction on his theory of the case so long as there is some evidence to support it, regardless of whether the evidence is weak, inconsistent, believable, or incredible." *Hoagland v. State*, 126 Nev. 381, 386, 240 P.3d 1043, 1047 (2010).

We conclude the district court abused its discretion by rejecting the instructions on self-defense because Perry presented some evidence in support of his self-defense claim through the victim's testimony. However, we further conclude the error was harmless because it is clear beyond a reasonable doubt that a rational trier of fact would have found Perry guilty absent the error. See *Gonzalez v. State*, 131 Nev. ___, ___, 366 P.3d 680, 684 (2015) (instructional errors involving a defendant's right to self-defense have constitutional dimension); *Nay v. State*, 123 Nev. 326, 333-34, 167 P.3d 430, 435 (2007) (stating the test for harmless-error analysis of an instructional error with constitutional dimension).

Sufficiency of the evidence

Perry claims insufficient evidence supports his convictions because the trier of fact did not take into consideration the evidence supporting his claim of self-defense. We review the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The trier of fact heard testimony that the victim allowed Perry to spend the night at her residence. Perry became agitated and aggressive when the victim asked him to leave the following morning. Perry grabbed the victim's cell phone, threw it against the wall, and told her she "was not going to call the police on him." Perry punched the victim in the face, and he continued to punch her after she fell backwards into the bathroom.

The victim bit Perry's hand, stood up, and ran for the staircase. Perry kicked the victim in the back as she started down the stairs, causing her to tumble down the stairs and into the kitchen. Perry

continued to kick and punch the victim while she lay in a fetal position on the kitchen floor. He grabbed a steak knife from the stove and swung the knife at the victim, striking her hands.

Perry dragged the victim into the living room and told her to sit on the love seat. He paced back and forth in front of the victim for about 50 minutes, all the while holding the knife and threatening to kill her. At some point, Perry spotted the keys to the victim's Mercedes on a coffee table and grabbed them. He then marched the victim back upstairs at knifepoint, placed her in a bathroom, told her not to leave or he would kill her, and threw her cell phone in the toilet.

After Perry drove off in the victim's Mercedes, the victim called the police and eventually went to the hospital. She suffered an orbital fracture, a broken nose, the loss of two teeth, a cut hand, and damage to the area of her right hip. She testified that she purchased her Mercedes for \$4,200 and it was valued at \$5,100.


We conclude a rational trier of fact could reasonably infer from this evidence that Perry assaulted, battered, robbed, imprisoned, and coerced his former girlfriend; he prevented her from reporting a crime and stole her car; he used a deadly weapon and caused her to suffer substantial bodily harm; and he was not acting in self-defense when he committed these criminal acts. See NRS 33.018(1); NRS 193.165(1); NRS 199.305(1); NRS 200.380(1); NRS 200.460(1); NRS 200.471(1); NRS 200.481(1); NRS 205.228(1); NRS 207.190(1); *Pineda v. State*, 120 Nev. 204, 212, 88 P.3d 827, 833 (2004) (the right to self-defense exists when there is a reasonably perceived apparent danger or actual danger); *People v. Hardin*, 102 Cal. Rptr. 2d 262, 268 n.7 (Ct. App. 2000) (the right to use force in self-defense ends when the danger ceases). It is for the trier of


fact to determine the weight and credibility to give conflicting testimony, and the trier of fact's verdict will not be disturbed on appeal where, as here, sufficient evidence supports its verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Cumulative error

Perry claims cumulative error deprived him of a fair trial. However, we reject this claim because there was one error and the error was harmless. *See United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000) ("One error is not cumulative error."); *Pascua v. State*, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006).

Having concluded Perry is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elissa F. Cadish, District Judge
Travis E. Shetler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: January 10, 2017
Supreme Court Clerk, State of Nevada

By A. Ingason Deputy

AA317

IN THE SUPREME COURT OF THE STATE OF NEVADA

GENARO RICHARD PERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 69139
District Court Case No. C298879

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: January 10, 2017

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Elissa F. Cadish, District Judge
Travis E. Shetler
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

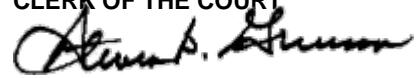
Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JAN 18 2017.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED

JAN 17 2017

CLERK OF THE COURT



RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

GENARO RICHARD PERRY,
#1456173

Defendant.

CASE NO: C-14-298879-1

DEPT NO: VI

**STATE'S RESPONSE TO DEFENDANT'S MOTION REQUESTING ORDER
DIRECTING THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT
TO CONDUCT GENETIC MARKER AND LATENT FINGERPRINT ANALYSIS
OF EVIDENCE IMPOUNDED AT CRIME SCENE**

DATE OF HEARING: FEBRUARY 17, 2021
TIME OF HEARING: 11:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion Requesting Order Directing the Las Vegas Metropolitan Police Department to Conduct Genetic Marker and Latent Fingerprint Analysis of Evidence Impounded at Crime Scene.

This Response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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AA319

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On June 15, 2014, Defendant Genaro Richard Perry (“Defendant”) was charged by way of Information with seven felonies. The victim listed for all seven felonies was Corla Carpenter, with whom he had previously been in a dating relationship. The Defendant waived his right to a jury and requested a bench trial. The bench trial commenced on September 29, 2015. On October 1, 2015, Defendant was found guilty of all seven counts. On January 6, 2016, he was sentenced to the Nevada Department of Corrections as follows:

1. Count 1 – Robbery with Use of a Deadly Weapon – a maximum of 120 months and minimum of 36 months, plus a consecutive sentence of maximum of 120 months and minimum of 36 months for the use of a deadly weapon.
2. Count 2 – False Imprisonment with Use of a Deadly Weapon – a maximum of 60 months and minimum of 18 months, concurrent with Count 1.
3. Count 3 – Grand Larceny Auto – a maximum of 96 months and minimum of 24 months, consecutive to Counts 1 and 2.
4. Count 4 – Assault with a Deadly Weapon – a maximum of 60 months and minimum of 18 months, concurrent with Count 3.
5. Count 5 – Coercion – a maximum of 60 months and minimum of 18 months, concurrent with Count 4.
6. Count 6 – Battery Resulting in Substantial Bodily Harm Constituting Domestic Violence – a maximum of 48 months and minimum of 18 months, concurrent with Count 5.
7. Count 7 – Preventing or Dissuading Witness or Victim from Reporting Crime or Commencing Prosecution – a maximum of 36 months and minimum of 12 months, concurrent with Count 6.

Defendant’s total aggregate sentence was a maximum of 330 months and a minimum of 96 months. The Judgment of Conviction was filed on January 22, 2016. Defendant filed a Notice of Appeal on November 4, 2015. On December 14, 2016, the Nevada Court of Appeals affirmed Defendant’s convictions. Perry v. State, Docket No. 69139-COA (Order of

Affirmance, Dec. 14, 2016). Remittitur issued on February 2, 2017. On February 7, 2017, Defendant filed a pro per Petition for Writ of Habeas Corpus (Post-Conviction). On April 7, 2017, the State filed its Response. On April 24, 2017, the Court granted Defendant's request for the appointment of counsel, and on May 1, 2017, Jean J. Schwartz, Esq. affirmed as Defendant's counsel. No supplemental post-conviction petition has ever been filed in this case. On September 9, 2019 - the most recent status check on the post-conviction proceedings - the matter was taken off calendar. Defendant's pro per Petition remains pending.

On February 3, 2021, Defendant filed the instant Motion Requesting Order Directing The Las Vegas Metropolitan Police Department To Conduct Genetic Marker And Latent Fingerprint Analysis Of Evidence Impounded At Crime Scene ("Motion"). The State responds as follows.

ARGUMENT

I. DEFENDANT HAS NOT DEMONSTRATED HE IS ENTITLED TO GENETIC MARKER TESTING

Five years after his convictions, Defendant requests this Court order the Las Vegas Metropolitan Police Department to perform a genetic marker and latent print analysis on certain items of evidence impounded from the crime scene. Defendant cites NRS 176.0918 in support of this request, yet blatantly ignores the requirements of this statute. Because Defendant fails entirely to meet the statutory requirements, and also requests testing not provided for in this statute, the State requests this Court deny the Motion.

Defendant has the burden of meeting the requirements of NRS 176.0918. NRS 176.0918(3) states, in pertinent part:

A petition filed pursuant to this section must be accompanied *by a declaration under penalty of perjury* attesting that the information contained in the petition does not contain any material misrepresentation of fact and that the defendant has a good faith basis relying on particular facts for the request. The petition must include, without limitation:

(a) Information identifying specific evidence either known or believed to be in the possession or custody of the State that can be subject to genetic marker analysis;

- (b) *The rationale for why a reasonable possibility exists that the defendant would not have been prosecuted or convicted if exculpatory results had been obtained through a genetic marker analysis of the evidence identified in paragraph (a);*
- (c) *An identification of the type of genetic marker analysis the defendant is requesting to be conducted on the evidence identified in paragraph (a);*
- (d) *If applicable, the results of all prior genetic marker analysis performed on evidence in the trial which resulted in the defendant's conviction; and*
- (e) *A statement that the type of genetic marker analysis the defendant is requesting was not available at the time of trial or, if it was available, that the failure to request genetic marker analysis before the defendant was convicted was not a result of a strategic or tactical decision as part of the representation of the defendant at the trial.*

(emphasis added). Further, NRS 176.0918(4) states in pertinent part:

If a petition is filed pursuant to this section, the court may:

- (a) Enter an order dismissing the petition without a hearing if the court determines, based on the information contained in the petition, that the defendant does not meet the requirements set forth in this section.

A. Defendant has failed to provide a declaration under penalty of perjury

As an initial matter, the Motion is not accompanied by a declaration under penalty of perjury, as required by NRS 176.0918(3). It is Defendant's responsibility to file a petition that complies with all of the requirements in NRS 176.0918. This failure alone should preclude consideration of the Petition and require its dismissal pursuant to NRS 176.0918(4).

B. Defendant has failed to demonstrate a reasonable possibility exists that he would not have been prosecuted or convicted if exculpatory results had been obtained through a genetic marker analysis

Defendant has failed entirely to even address this requirement of NRS 176.0918(3). This is perhaps unsurprising, because even if the results Defendant predicts were obtained through genetic marker testing, such results would not be exculpatory and would not have prevented him from being prosecuted.

Defendant requests genetic marker testing of the blood samples impounded from the crime scene: the apparent blood from the steak knife (Item #1 in Package #1), and two swabs of apparent blood (Package #2, Items #2 and #3). Motion, at 7-8, Exhibit 2. Defendant asks

that these samples be compared against his own genetic markers as well as those of Carpenter. Motion, at 8. Defendant contends that such testing would show that he was cut with the knife, and that Carpenter had the knife in her hand. Motion, at 7.

Even if the blood on the knife and the blood samples matched Defendant's genetic markers, at most it would show that Defendant left his blood at the scene, and would not be exculpatory. Finding Defendant's blood on the knife or elsewhere at the crime scene would not prove that Carpenter cut Defendant with the knife; Defendant could have cut himself with the knife in the course of committing the crime. Carpenter also testified during trial that she bit Defendant while he was attacking her; this could have resulted in Defendant bleeding. Trial Transcript, Day 1, p. 48. The only relevance of the knife to this case was as the deadly weapon enhancement for the Robbery, False Imprisonment, and Assault With Deadly Weapon charges. Information, filed June 25, 2014.

Although Carpenter did testify at trial that Defendant cut her with the knife, Defendant was not charged or convicted of any battery involving the knife. Trial Transcript, Day 1, p. 53. Count 6 alleged that Defendant committed Battery Resulting in Substantial Bodily Harm Constituting Domestic Violence by striking Carpenter's head against the floor and/or by kicking her repeatedly in the face. Information, filed June 25, 2014. There was substantial evidence presented at trial to support a finding of guilt as to this offense. Any testing of the knife or blood found at the scene would not call this evidence into serious question.

Carpenter testified that, the morning after she allowed Defendant to spend the night at her residence, Defendant punched her in the face, and then kicked her in the back as she fled from him. Trial Transcript, Day 1, pp. 43-51. Defendant kicked and punched her while she was in a fetal position on the floor. Id. at 51-52. Carpenter sustained a broken nose, an orbital fracture, hip damage, and the loss of two teeth. Id. at 15, 66-70. Evidence of Carpenter's injuries at trial was introduced through her own testimony, photographs taken of Carpenter, testimony from the responding police officer, and testimony from the surgeon who repaired Carpenter's orbital fracture. Id. at 15-37, 66-70, 76, 78; Trial Transcript, Day 2, p. 21.

Carpenter's surgeon testified that Carpenter required surgery because her eyeball had sunk back into her eye socket. Trial Transcript, Day 1, p. 18.

Thus, the presence of Defendant's blood at the scene, if found, would not call his guilt into serious question, given the documentation of the severe injuries Carpenter received.¹ A genetic marker match between Defendant and the blood at the scene would not exculpate him from any of the charges for which he was convicted.

Even assuming *in arguendo* that a match between Defendant's genetic markers and blood found at the scene would support his self-defense theory, this is not a sufficient basis for ordering testing under NRS 176.0918. A request for testing under this statute must demonstrate more than a mere possibility that such testing could theoretically support a defense to the charges; it requires a demonstration of a reasonable possibility that the defendant would not have been prosecuted or convicted if exculpatory results had been obtained through a genetic marker analysis.

Similarly, Defendant's contention that genetic marker testing would assist him in demonstrating ineffective assistance of counsel is not a valid basis for ordering testing under NRS 176.0918. The requirements of NRS 176.0918(3) make clear that the purpose of testing is to obtain exculpatory evidence, not to gather evidence to support allegations of ineffective assistance of counsel. Allegations of ineffective assistance of counsel must be raised in a Post-Conviction Petition for Writ of Habeas Corpus and are not appropriately addressed in the current motion. NRS 34.724(2)(b); Harris v. State, 130 Nev. 435, 445, 329 P.3d 619, 626 (2014); Gibbons v. State, 97 Nev. 520, 521, 634 P.2d 1214, 1216 (1981).

C. Defendant has failed to provide a statement regarding the availability of genetic marker analysis at the time of trial

NRS 176.0918(e) requires a petition requesting genetic marker analysis to include a "statement that the type of genetic marker analysis the defendant is requesting was not available at the time of trial or, if it was available, that the failure to request genetic marker

¹Defendant does not explain how his self-defense theory or the presence of his blood at the scene relates to his convictions for Robbery With Use of a Deadly Weapon, Grand Larceny Auto, Coercion, or Preventing or Dissuading Witness. As he focuses solely on the knife and the blood at the scene, the State presumes that Defendant does not intend to challenge his convictions for these offenses via any genetic or latent print testing.

analysis before the defendant was convicted was not a result of a strategic or tactical decision as part of the representation of the defendant at the trial.” Defendant has failed entirely to address this requirement. Perhaps this is unsurprising, as had trial counsel requested genetic testing, it easily could have produced evidence that corroborated Carpenter’s testimony at trial—namely, that Defendant cut her with the knife, resulting in her blood on the knife’s blade, and that it was her blood on the wall. Defendant’s complete failure to meet this requirement requires summary dismissal of the Motion.

II. DEFENDANT HAS NOT DEMONSTRATED THAT HE IS ENTITLED TO LATENT FINGERPRINT ANALYSIS

A. NRS 176.0918 does not provide for latent fingerprint testing

The only statute Defendant cites to support his motion is NRS 176.0918. This statute sets forth the procedure and criteria for a convicted person to request genetic marker analysis of evidence. It authorizes no other form of evidence testing. As Defendant has failed to provide any legal basis for his request for latent fingerprint analysis, this request must be denied.²

B. Even if latent fingerprint testing could be requested pursuant to NRS 176.0918, latent fingerprint testing of the knife cannot lead to exculpatory evidence in this case.

Defendant appears to believe that latent fingerprint analysis would reveal Carpenter’s fingerprints on the steak knife that was found at the scene. Motion, at 7. Such a finding would hardly be surprising, as the knife belonged to Carpenter. In fact, Carpenter testified at trial that she had used the knife the evening before the crime to eat her steak dinner, and after eating she had left the knife on the kitchen stove. Trial Transcript, Day 1, p. 53. Thus, Carpenter’s fingerprints on the knife would clearly not constitute exculpatory evidence in this case. Similarly, the absence of Defendant’s fingerprints on the knife would be in no way

²Should Defendant claim that he is requesting latent fingerprint analysis as discovery related to his pending post-conviction proceeding, he has also not demonstrated he is entitled to discovery. There is no constitutional right to discovery in post-conviction proceedings. DA’s Office v. Osborne, 557 U.S. 52, 69-70, 129 S. Ct. 2308, 2320-21 (2009). Even in the federal system, “[a] habeas defendant, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course.” Bracy v. Gramley, 520 U.S. 899, 904, 117 S. Ct. 1793, 1796-97 (1997). In Nevada, discovery is only available in post-conviction proceedings upon a judicial determination of good cause justifying it and after an evidentiary hearing has been set. NRS 34.780(2).

exculpatory, as it would not prove Defendant did not handle the knife nor would it support his self-defense claim. It is also unclear whether the knife was impounded in a manner preserving it for latent fingerprint analysis. There is no mention of visible prints or the preservation of potential fingerprints in either the Crime Scene Investigation Report or the Evidence Impound Report. Motion, Exhibits 1 and 2. There is simply no basis for granting Defendant's request for fingerprint analysis.

III. SHOULD THE COURT DECIDE TO HEAR DEFENDANT'S MOTION ON THE MERITS, THE STATE RESERVES THE RIGHT TO FILE AN OPPOSITION UNDER NRS 176.0918(5).

NRS 176.0918(4)(c) states, in relevant part:

4. If a petition is filed pursuant to this section, the court may:

(c) Schedule a hearing on the petition. If the court schedules a hearing on the petition, the court shall determine which person or agency has possession or custody of the evidence and shall immediately issue an order requiring, during the pendency of the proceeding, each person or agency in possession or custody of the evidence to:

(1) Preserve all evidence within the possession or custody of the person or agency that may be subjected to genetic marker analysis pursuant to this section;

(2) Within 90 days, prepare an inventory of all evidence relevant to the claims in the petition within the possession or custody of the person or agency that may be subjected to genetic marker analysis pursuant to this section; and

(3) Within 90 days, submit a copy of the inventory to the defendant, the prosecuting attorney and the court.

Further, NRS 176.0918(5) states:

Within 90 days after the inventory of all evidence is prepared pursuant to subsection 4, the prosecuting attorney may file a written response to the petition with the court.

Even if the court wished to consider Defendant's claims, it would be premature to issue the requested orders because no inventory has been completed. The items Defendant wishes to have tested were impounded nearly seven years ago, and it is unknown if these items are still in the custody of the Las Vegas Metropolitan Police Department.

///

Furthermore, the State notes that Defendant has requested comparisons of the blood samples and fingerprints with Carpenter's fingerprints and genetic markers. None of the documentation attached to the instant Motion suggests that the Las Vegas Metropolitan Police Department is in possession a genetic sample or fingerprint exemplar from Carpenter that could be used for such comparisons. The State has no reason to believe such a sample is in the possession of the Las Vegas Metropolitan Police Department. NRS 176.0918 authorizes testing of evidence that already exists; it is not intended as a mechanism for gathering new evidence. NRS 176.0918 does not empower this Court to compel an order for an individual to provide a genetic sample or fingerprint exemplar. Even if it did, this would likely run afoul of the Fourth Amendment.

Should the Court decide to hear Defendant's petition on the merits, under NRS 176.0918(4) the Court must allow for 90 days to prepare an inventory of all evidence relevant to the claims. Within 90 days after such an inventory is prepared, the State has the ability to file an opposition. Although it is the State's position that Defendant's petition must be dismissed for its failure to comply with statutory requirements, the State reserves the right to file an opposition pursuant to NRS 176.0918(5) should this Court decide to hear Defendant's petition on the merits.

CONCLUSION

For the foregoing reasons, the State respectfully requests Defendant's Motion Requesting Order Directing the Las Vegas Metropolitan Police Department to Conduct Genetic Marker and Latent Fingerprint Analysis of Evidence Impounded at Crime Scene be DENIED.

DATED this 11th day of February, 2021.

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ Karen Mishler
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730

AA327

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 11th day of February, 2021, by electronic transmission, through Odyssey eFileNV EfileAndServe, to:

JEAN SCHWARTZER, ESQ.
Email Address: jean.schwartzter@gmail.com

BY: /s/ Jennifer Georges
Secretary for the District Attorney's Office

ORDER

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GENARO RICHARD PERRY,
#1456173

Defendant.

CASE NO: C-14-298879-1

DEPT NO: VI

**ORDER DENYING DEFENDANT'S MOTION REQUESTING ORDER
DIRECTING THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT
TO CONDUCT GENETIC MARKER AND LATENT FINGERPRINT ANALYSIS
OF EVIDENCE IMPOUNDED AT CRIME SCENE**

DATE OF HEARING: February 17, 2021
TIME OF HEARING: 11:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 17th day of February, 2021, the Defendant not being present, represented by JEAN SCHWARTZER, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and the Court having heard the arguments of counsel, based on the pleadings, and good cause appearing therefore, the Court hereby RULES as follows:

The instant Motion was made pursuant to NRS 176.0918. The Court has waived the requirement contained in NRS 176.0918(3) that a petition filed pursuant to this statute must contain a declaration under penalty of perjury.

AA329

As to the Defendant's request for fingerprint analysis, NRS 176.0918 does not authorize a court to order testing or analysis of latent fingerprints. No other statute or legal basis was offered to support the request for latent fingerprint analysis.

Furthermore, even if the victim's fingerprints were found on the knife, this would not be exculpatory, because the victim testified at trial that she owned the knife and had used it the evening before.

Accordingly, the request for an order directing the Las Vegas Metropolitan Police Department to conduct latent fingerprint analysis of the evidence impounded in this case is denied.

As to the request for genetic marker analysis, the Court finds that if such testing were conducted, and the results anticipated by Defendant were obtained, such results would not rise to a reasonable possibility that the Defendant would not have been prosecuted or convicted. See NRS 176.0918(3)(b).

Even if the blood on the knife and the blood samples matched Defendant's genetic markers, at most it would show that Defendant left his blood at the scene. Such results would not exculpate him of guilt as to the crimes for which he was convicted.

Accordingly, the request for an order directing the Las Vegas Metropolitan Police Department to conduct genetic marker analysis of the evidence impounded in this case is denied.

Dated this 16th day of April, 2021



STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

DEB D87 89BA ACD2
Jacqueline M. Bluth
District Court Judge

MT

BY /s/ Karen Mishler
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730

jg/DVU

AA330

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 State of Nevada

CASE NO: C-14-298879-1

7 vs

DEPT. NO. Department 6

8 Genaro Perry
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/16/2021

15 Clark County District Attorney's Office .

PDMotions@clarkcountyda.com

16 Patricia Pinotti .

plpinotti@gmail.com

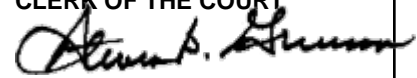
17 Travis Shetler .

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AA331



NOASC
JEAN J. SCHWARTZER, ESQ.
Nevada Bar No. 11223
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Phone: 702-979-9941
jean.schwartzter@gmail.com
Attorney for Petitioner

Electronically Filed
May 19 2021 08:54 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA FOR THE COUNTY OF CLARK

GENARO RICHARD PERRY,)	Case No.: C298879-1
)	
Petitioner,)	Dept No.: VI
)	
vs.)	
)	
RENEE BAKER, WARDEN)	
)	
Lovelock Correctional Center,)	
)	
Respondent.)	

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that GENARO RICHARD PERRY, defendant above named, hereby appeals to the Supreme Court of Nevada from the denial of his **MOTION REQUESTING ORDER DIRECTING THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT TO CONDUCT GENETIC MARKER AND LATENT PRINT ANALYSIS OF EVIDENCE IMPOUNDED AT CRIME SCENE** entered in this action on the 16th day of April, 2021.

DATED this 14th day of May, 2021.

/s/ Jean J. Schwartzter
JEAN J. SCHWARTZER, ESQ.
Nevada Bar No. 11223
LAW OFFICE OF JEAN J. SCHWARTZER
Counsel for Appellant

AA332

1 **CERTIFICATE OF SERVICE**

2
3 **IT IS HEREBY CERTIFIED** by the undersigned that on 14th day of
4 May, 2021, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** on the parties
5 listed on the attached service list via one or more of the methods of service described below as
6 indicated next to the name of the served individual or entity by a checked box:

7 **VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon
8 fully prepaid, in the United States mail at Las Vegas, Nevada.

9 **VIA FACSIMILE:** by transmitting to a facsimile machine maintained by the attorney or the party
10 who has filed a written consent for such manner of service.

11 **BY PERSONAL SERVICE:** by personally hand-delivering or causing to be hand delivered by such
12 designated individual whose particular duties include delivery of such on behalf of the firm,
13 addressed to the individual(s) listed, signed by such individual or his/her representative accepting on
14 his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the
15 document will be maintained with the document and is attached.

16 **BY E-MAIL:** by transmitting a copy of the document in the format to be used for attachments to the
17 electronic-mail address designated by the attorney or the party who has filed a written consent for
18 such manner of service.

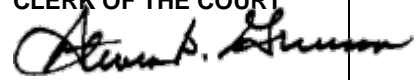
19 By:

20 /s/ Jean J. Schwartzer
21 JEAN J. SCHWARTZER, ESQ.
22 Nevada Bar No. 11223
23 LAW OFFICE OF JEAN J. SCHWARTZER
24 10620 Southern Highlands Parkway, Suite 110-473
25 Las Vegas, Nevada 89141
26 (702) 979-9941
27 Counsel for Appellant
28

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SERVICE LIST

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
CLARK COUNTY DISTRICT ATTORNEY’S OFFICE 200 E. Lewis Ave Las Vegas, NV 89101 pdmotions@clarkcountyda.com	State of Nevada	<input type="checkbox"/> Personal service <input checked="" type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service



1 RTRAN
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3
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA

CASE NO. C-14-298879-1

9 Plaintiff,

DEPT. VI

10 vs.

11 GENARO RICHARD PERRY,

12 Defendant.

13 BEFORE THE HONORABLE JACQUELINE M. BLUTH, DISTRICT COURT JUDGE
14 WEDNESDAY, FEBRUARY 17, 2021

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS: PETITIONER'S MOTION**
16 **REQUESTING ORDER DIRECTING THE LAS VEGAS METROPOLITAN POLICE**
17 **DEPARTMENT TO CONDUCT GENETIC MARKER AND LATENT PRINT**
18 **ANALYSIS OF EVIDENCE IMPOUNDED AT CRIME SCENE**
(Via audio ~ Via BlueJeans)

19 APPEARANCES:

20 For the State:

KAREN LYNN MISHLER, ESQ.
Chief Deputy District Attorney

21
22 For the Defendant:

JEAN J. SCHWARTZER, ESQ.

23
24
25 RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

AA335

1 Wednesday, February 17, 2021, Las Vegas, Nevada

2
3 [Proceedings began at 1:54 a.m.]

4 THE COURT: -- he is not present, in custody in Nevada Department
5 of Correction. C298879 Ms. Schwartz is present on his behalf via BlueJeans.
6 And do I have Ms. Mishler -- on behalf of the State on this matter?

7 I'm sorry Ms. Mishler you're muted.

8 Ms. Mishler can you unmute yourself for me?

9 MS. MISHLER: Sorry about that.

10 THE COURT: That's okay.

11 MS. MISHLER: Karen Mishler, bar number 13730.

12 THE COURT: All right. Thank you.

13 Okay. All right so I've had the opportunity to read through everything.
14 Ms. Schwartz, I mean, I think the one easiest argument, right, the State makes
15 is that the -- proper affidavit or documentation wasn't filed therefore the Court
16 shouldn't be able to consider it. So while I recognize that that's definitely the law, I
17 also feel like you could just go easily file that and refile this. So I'm hesitant to just
18 say, well I'm just denying it because -- knowing all the work you've put into this I
19 know you're just gonna go file an affidavit and refile this. So I don't --

20 MS. SCHWARTZER: Well, and Your Honor, --

21 THE COURT: -- have any. Go ahead.

22 MS. SCHWARTZER: Sorry.

23 THE COURT: No that's okay.

24 MS. SCHWARTZER: Also, Your Honor, you know, my client attached
25 a declaration to his petition for writ habeas corpus wherein he makes, essentially,

1 the same arguments. They might not, you know, they're drafted by an attorney,
2 but it's the same argument. And so I would just ask that Your Honor take judicial
3 notice of that declaration and apply it to this motion. But, you're right, I could just
4 go get a declaration from him if that is what you want me to do.

5 THE COURT: Okay.

6 So I do wanna hear it on -- I wanna hear the petition on its merits
7 today. And if you could -- Ms. Schwartz if you could address the State's
8 opposition -- in regards to, you know, the even if you got what you wanted, I
9 mean, the latent prints are one issue, right? The blood is a different. But even if
10 you got this testing -- done, it wouldn't necessarily show -- that the petitioner
11 would've been -- would not have been prosecuted or wouldn't have been
12 convicted, because it wouldn't have that exculpatory nature that is needed under
13 the statute. Could you address that?

14 MS. SCHWARTZER: Yes, Your Honor. So the argument that my
15 client is making -- is that, you know, his trial attorney didn't properly investigate his
16 self-defense claims. His self-defense claim is that the -- Ms. Carpenter, is the one
17 who had the knife, she came at him and he acted in self-defense. Now, co-
18 counsel attempted to present a self-defense case at trial and he wasn't really
19 allowed to. It was a bench trial. The Court would not allow a self-defense
20 instruction and the Nevada Supreme Court ruled that there was some evidence of
21 self-defense and that he should've received an instruction.

22 I believe that if the forensic evidence shows that it's her finger prints
23 on the knife, not his, and that it's his blood on the knife, not hers, combined with
24 evidence of his injuries that he sustained, which CCDC would have, that would
25 support his self-defense claim. And if-in-fact this was all done at the pre-trial

1 stage, he may have, in fact, gotten that self-defense instruction and it would've
2 changed the outcome of trial.

3 You know interestingly in response to Mr. Perry's petition on ground 2,
4 the State argues that defendant fails to demonstrate how further forensic
5 investigation would've rendered a more favorable outcome probably and that the
6 results would've confirmed the presence of both the victims and defendants blood
7 and finger prints on the knife. Well that's pure speculation on the State's part. We
8 don't know that because we don't have the forensic evidence in. So in order for
9 me to make that argument in ground 2, and to get past the State's opposition, I
10 have to make the request to get that forensic evidence that I'm saying trial counsel
11 should've done prior to trial. You know I'm sort of being cut off at the knees here if
12 I'm not permitted to get this evidence.

13 THE COURT: Ms. Mishler your response.

14 MS. MISHLER: Yes, Your Honor, the -- I mean, there are a number of
15 issues here, but the -- what the defendant is asking this Court to do is not
16 authorized by the statute. For one thing, finger prints. There's been no legal
17 basis provided for this Court to order any finger print analysis. The only legal
18 basis -- offered for the request is NRS 176.0918, which does not authorize this
19 Court order a finger print analysis.

20 But I do wanna address the potential of the victims finger prints bring
21 found on the knife that would be no surprise if that happened, because it was her
22 steak knife. This was domestic violence case. The victim and the defendant
23 knew each other, and this occurred in the victim's home, and she testified at trial
24 [indiscernible] herself for being a poor housekeeper and stated that the evening
25 before the offense occurred she had -- she used that steak knife to eat her dinner

1 and she left the knife on the stove in the kitchen. And then the following morning
2 the defendant grabbed it and then -- threatened her with it, and committed a
3 number of crimes with it. So that wouldn't be exculpatory for the victim's finger
4 prints to be found on the knife. You would expect those to be there, as well as the
5 absence of defendant's finger prints on the knife would not be surprising either,
6 but regardless there's been no legal basis for ordering finger evidence.

7 And there -- and I understand, Your Honor, I agree with you that there
8 are number of technical statutory requirements that were not present in this
9 motion and some of them are less important than others, but the key defect in the
10 motion is that the defendant has not presented a reasonable possibility he would
11 not have been prosecuted or convicted if exculpatory results had been obtained
12 for genetic marker analysis. I mean, there's a reason DNA evidence is typically a
13 limited -- of limited probative value in a domestic violence case because identity
14 isn't at issue. And the argument that such evidence, if the -- anticipated results
15 were obtained that that would -- assist in creating a self-defense case. That's not
16 -- a lawful basis for requesting DNA testing under the statute. The evidence has
17 to be more than just helpful in establishing a theoretical defense.

18 And regarding the self-defense, the Nevada Supreme Court ruled that
19 the self-defense jury instruction should have been given but not because -- a lot of
20 self-defense evidence was introduce, but simply because some -- self-defense
21 evidence was introduced during cross examination of the victim in the form of -- an
22 incident in the victim's past where she -- threatens someone with a knife. That
23 was the extent of the self-defense evidence that was introduced here. And the --
24 Court ruled that it was harmless error, because irrational trier of fact could
25 reasonability -- infer that the defendant committed these crimes and was not

1 acting in self-defense when he committed this criminal act. I'm reading: the error
2 was harmless because it is clear beyond a reasonable doubt that a rational trier of
3 fact would've found Perry guilty absent the error. That's direct from the order of
4 affirmance, and that was literally the only self-defense evidence. The defendant --
5 did not testify at all so no evidence was introduced that this was -- other than the
6 incident in the victim's past, no other evidence of self-defense was introduced.

7 But the statute requires that the anticipated results be so exculpatory
8 that had the State been in possession of such results the State would not have
9 prosecuted the defendant. That's not the case here. Even if before trial the State
10 had evidence that the defendant's blood was on the knife, as well as elsewhere in
11 the residence, the State would have gone forward with the prosecution. And even
12 -- self-defense argument could be enough for ordering testing, the victim, Ms.
13 Carpenter, testimony was that the defendant repeatedly punched and kicked her
14 in the face and on her body. This was corroborated by the surgeon who operated
15 on her and repaired her orbital fracture. Testimony was that the eyeball has sunk
16 back into her head as a result of trauma, and that her orbital fracture was
17 consistent with being kicked and punched. There was testimony introduced from
18 the responding officer and the crime scene analyst about Ms. Carpenter's
19 condition regarding her bloody face and an eye that was swollen shut. Photos
20 that were taken on the date of the offense showing these injuries were introduced
21 at trial.

22 The defendant's DNA at the scene would not call this into question,
23 even if the -- defendant's DNA was found -- on the knife, that would not -- mean
24 that Ms. Carpenter injured -- did testify that she bite the defendant's hand during
25 the course of them struggling. It's possible that he bleed as a result of that.

1 That's still not enough to create self-defense. And if there was blood elsewhere in
2 the house where this occurred, that still doesn't establish that -- Ms. Carpenter
3 caused the defendant to be injured. It's really just the defendant's DNA at the
4 scene. And the relevance of the knife is that the defendant used it to threaten the
5 victim and it allowed him to keep her confined and to steal her vehicle. She
6 testified that he was jabbing at her with a knife and holding it up to her throat.
7 There was a struggle -- it wouldn't be surprising if the defendant's blood were
8 found on the knife. It's not unusual for a preparatory in these types of crimes to
9 cut himself when using a knife like this.

10 Excuse me.

11 Just the purpose of NRS 176.0[indiscernible]8 is to allow a convicted
12 person to obtain DNA testing when such results could theoretically exonerate that
13 person. And that just can't happen here. And then -- lastly it hasn't really been
14 addressed the fact that if the defense wants to find the victim's DNA on these
15 items, I -- no evidence has been introduced that -- the police department is in
16 possession of a genetic sample from Ms. Carpenter, and I don't believe the Court
17 has the authority to order her to provide a sample. So I think that would have to
18 already be in the police department's possessions. So with that, I'll submit.

19 THE COURT: Ms. Schwartzer --

20 MS. SCHWARTZER: [Indiscernible]

21 THE COURT: -- your response.

22 MS. SCHWARTZER: Just a few things. I whole heartedly disagree
23 that it would not be exculpatory if her DNA is not on the knife, and his DNA is, and
24 her finger prints are on the knife, and his finger prints are not. I understand that
25 it's her knife, so we would expect her finger prints to be on it, but if his are not, and

1 his DNA is from his blood, I think that is exculpatory. I mean, evidence of a self-
2 defense claim is exculpatory. And I think it's a little absurd for the State to argue
3 that it's not.

4 As far as the Supreme Court ruling, yes the Court ruled that ultimately
5 the error was harmless based upon the evidence presented at trial. My argument
6 is that additional evidence in the form of forensic evidence should have been
7 presented at trial and if it had been there would've been a self-defense instruction.
8 I think that the judge would have given one at that point. There was no way for
9 him to be found not guilty, be acquitted, without that instruction.

10 As far as, you know, whether or not the State wants to argue the
11 meaning of his blood being on the knife, or her finger prints being on the knife, and
12 his finger prints not being on the knife, that goes to the weight of the evidence and
13 that would be for the jury or, in this case, the judge at a bench trial to decide. But I
14 don't think it's dispositive of this motion. So with that, I'll submit it,

15 THE COURT: Let me ask you one question though, Ms. Schwartzer,
16 about a specific portion that the State had said. So they say, thus the presence of
17 defendant's blood at the scene if found, would not call his guilty into serious
18 question given the documentation of the severe injuries Carpenter received. So I
19 guess my question --

20 MS. SCHWARTZER: Do you have a page?

21 THE COURT: Sorry, go ahead.

22 MS. SCHWARTZER: Do you have a page number? I'm sorry.

23 THE COURT: I don't, I apologize. It's just in my notes. But basically
24 it's just from -- it's there main -- it's one of their main arguments that, listen
25 because of the severity of Carpenter's injuries and the way that it was

1 documented, the way that she appeared once officers got there, the surgery that
2 she had, this and that; right? So they're saying look -- because of the -- so even if
3 defendant's blood was at the scene, or was on this, or was on that, it really doesn't
4 have that much of an effect because, hypothetically, let's say she's the one that
5 goes after him with the knife, right? But at some point he obviously gets the upper
6 hand and, you know, beats her, for lack of a better word, like into a pulp, right? So
7 --

8 MS. SCHWARTZER: Uh-huh.

9 THE COURT: -- I, you know, self-defense -- to be self-defense has to
10 be reasonable. So how would that make it exculpatory in a jury trial sense?

11 MS. SCHWATZER: Well, I mean, I guess the argument would be if
12 she came at him with a knife and he was truly scared for his life, and he wanted to
13 neutralize the threat, it could be pretty severe. [Indiscernible] I understand she
14 testified that a lot of other things happened, but if the forensic evidence tells a bit
15 of a different story that calls her credibility into question. Again that is a jury
16 determination or, in this case, the judge presiding over the bench trial. So, again, I
17 think it goes to the weight. But, you know -- and I go back to the State's response
18 to this ground in the PCR pleadings. You know, for them to say that the results
19 would've confirmed the presence of both the victims and defendants blood, and
20 finger prints, on the knife, its speculation. I think its best if we just get the actually
21 forensic evidence and then proper arguments can be made, but until now, it's all
22 speculative.

23 THE COURT: Okay, thank you. All right, so I've looked a lot into the
24 facts of this case as well as to the applicable statute. As I noted, preliminarily, the
25 defendant's motion was not accompanied by the declaration, you know the

1 affidavit, that we spoke about, under penalty of perjury, which is required by
2 176.09183. However, I do see as Ms. Schwartz pointed out that there was a
3 declaration originally filed by the defendant himself, so I am going to consider that.
4 And as well as I do think it's most expedient to handle the matter now, because
5 otherwise this would just be refiled with the proper affidavit and we would be back
6 here in a couple weeks just arguing the same thing.

7 However, I do not find underneath the statute that the defendant has
8 demonstrated that there is a reasonable possibility that exist that the petition
9 would not have been prosecuted or convicted if exculpatory results had been
10 obtained through a genetic marker analysis of the evidence, which is the
11 requirement under NRS 176.09183(b). I definitely understand the argument being
12 made by the defendant, but I -- in looking at everything I think even if the blood on
13 the knife, and the blood samples were a match, at most it shows that defendant
14 did leave his blood at the scene; however, I don't know how exculpatory or -- I
15 don't think it meets the exculpatory requirement as provided by the statute. I think
16 finding the defendant's blood on the knife or elsewhere at the crime scene would
17 not prove that he was, you know, cut by Carpenter with the knife. He could've cut
18 himself. He could have, you know, she state that she bit him during the
19 altercation, so I don't think that this evidence rises to the level that is needed
20 pursuant to the statute.

21 As regard to the latent prints, I don't believe that the latent prints are
22 something that was considered by the statute. It's more in regards to genetic
23 marker testing so it's denied on that basis in regard to the latent prints.

24 Does anybody have any questions or need clarity in regards to my
25 ruling this morning -- or this afternoon, which started this morning?

1 MS. SCHWARTZER: Yes, Your Honor. You mentioned that
2 according to the statute there has to be a responsible possibility that exist that the
3 petitioner would not have been prosecuted. The statute actually says, prosecuted
4 or convicted --

5 THE COURT: Or convicted.

6 MS. SCHWARTZER: -- so. Okay. So --

7 THE COURT: Sorry if I shortened --

8 MS. SCHWARTZER: -- you're ruling is that --

9 THE COURT: If I shortened that that was my fault. But I do recognize
10 that it is --

11 MS. SCHWARTZER: Okay.

12 THE COURT: -- prosecuted or convicted for the crime, yes.

13 MS. SCHWARTZER: Okay. And then with respect to the request for
14 finger print analysis, I understand I put it all in one motion, I could've filed it in two
15 separation motions, I thought it would be a better use of time if I put it together.
16 I'm not basing the print request on the statute. It is just a standalone request, as
17 part of post-conviction investigation. I mean, normally when I investigate cases I
18 don't need to get permission from the Court to go do anything.

19 THE COURT: Right.

20 MS. SCHWARTZER: But in this case I can't tell Metro to do this --

21 THE COURT: Right.

22 MS. SCHWARTZER: -- I have to get a court order. So it's just a
23 standalone [indiscernible].

24 THE COURT: Okay. I understand. I'm sorry I thought you were
25 arguing it pursuant to that statute. But -- so let me address that. I don't think that

1 there's good enough cause shown to order Metro to do that because as was
2 pointed out, you know by the State, this is a battery -- obviously battery domestic
3 violence issue that occurs within the home. But not only is it a knife within the
4 home, but it's also a knife that the victim discusses that she used to eat dinner
5 with that evening. So because of that, that motion is denied in regards to the
6 latent prints.

7 MS. SCHWARTZER: Okay. Thank you.

8 THE COURT: Thank you.

9 [Proceedings concluded at 2:12 p.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

23 
24 De'Awna Takas
25 Court Recorder/Transcriber

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