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

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9 **GENARO RICHARD PERRY,**

10 Petitioner,

11 vs.

12 **RENEE BAKER, WARDEN**

13 Lovelock Correctional Center,

14 Respondent.

S.Ct. No. 82060

D.C. No. C298879-1

15 **APPELLANT'S OPENING BRIEF**

16 **JEAN J. SCHWARTZER, ESQ**
17 Nevada Bar No. 11223
18 Law Office of Jean J. Schwartzer
19 170 S. Green Valley Pkwy
20 Suite 300
21 Henderson, Nevada 89012
22 (702) 979-9941
23 Attorney for Appellant

24 **STEVEN B. WOLFSON, ESQ.**
25 Nevada Bar No. 1565
26 Clark County District Attorney
27 Clark County District Attorney's Office
28 200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2500
Attorney for Respondent

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4 GENARO RICHARD PERRY,

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7 RENEE BAKER, WARDEN

8 Lovelock Correctional Center,

9 Respondent.
10

11 **STATEMENT OF JURISDICTION**
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13 This Court has appellate jurisdiction over the instant matter pursuant to Nev.
14 Rev. Stat. § 177.015(3). The Appellant appeals from the denial of his post-
15 conviction Motion Requesting Order Directing the Las Vegas Metropolitan Police
16 Department to Conduct Genetic Marker and Latent Print Analysis of Evidence
17 Impounded at Crime Scene, formally announced on April 16, 2021, which is a
18 final post-conviction judgment.
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1 **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**
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- 3 **I. THE DISTRICT COURT ERRED WHEN IT DENIED**
4 **APPELLANT’S POST-CONVICTION MOTION REQUESTING**
5 **ORDER DIRECTING THE LAS VEGAS METROPOLITAN**
6 **POLICE DEPARTMENT TO CONDUCT GENETIC MARKER**
7 **AND LATENT PRINT ANALYSIS OF EVIDENCE IMPOUNDED**
8 **AT CRIME SCENE**

9 **ROUTING STATEMENT**

10 Appellant is appealing the denial of a post-conviction Motion Requesting
11 Order Directing the Las Vegas Metropolitan Police Department to Conduct
12 Genetic Marker and Latent Print Analysis of Evidence Impounded at Crime Scene,
13 which stems from a Category A felony. Therefore, pursuant to N.R.A.P. 17, this
14 appeal is not presumptively routed to the Court of Appeals.
15

16 **STATEMENT OF THE CASE**
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18 On June 25, 2014, the State filed an Information charging Petitioner Genaro
19 Perry ("Perry") with: Count 1 - Robbery with Use of a Deadly Weapon (Felony -
20 NRS 200.380, 193.165); Count 2 - False Imprisonment with Use of a Deadly
21 Weapon (Felony - NRS 200.460(3)(b)); Count 3 -Grand Larceny Auto (Felony-
22 NRS 105.228(3)); Count 4 -Assault with a Deadly Weapon (Felony-NRS
23 200.471(2)(b)); Count 5 -Coercion (Felony- NRS 207.190(2)(a)); Count 6 - Battery
24 Resulting in Substantial Bodily Harm Constituting Domestic Violence (Felony-
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1 NRS 200.481, 200.485, 33.018); and Count 7 - Preventing or Dissuading Witness
2 or Victim from Reporting Crime or Commencing Prosecution (Felony - NRS
3 199.305). 1 Appellant's Appendix ("AA") 1-4.

5 Perry's bench trial began on September 29, 2015.1 AA 11. On October 1, 2015,
6 he was found guilty on all counts. 1 AA 8-10. On January 6, 2016, the Court
7 sentenced Perry to the Nevada Department of Corrections as follows:

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

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

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

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

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

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

17 **Count 7** - maximum of 36 months and minimum of 12 months,
concurrent with Count 6.
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21 1 AA 8-10.

22 The Judgment of Conviction was filed on January 22, 2016. 1 AA 8-10.
23 Perry filed a Notice of Appeal on November 4, 2015. 1 AA 5-7. On December 14,
24 2016, the Nevada Court of Appeals affirmed Perry's Judgment of Conviction. 2
25 AA 229-36. Remittitur issued on January 10, 2017. 2 AA 236.
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1 On February 7, 2017, Perry filed a timely pro per Petition for Writ of Habeas
2 Corpus, Request for an Evidentiary Hearing, and Motion to Appoint Counsel. 2
3 AA 237-274. On April 7, 2017 the state filed a Response. 2 AA 275-94.

5 On February 3, 2021 Perry filed a Motion Requesting Order Directing the
6 Las Vegas Metropolitan Police Department to Conduct Genetic Marker and Latent
7 Print Analysis of Evidence Impounded at Crime Scene. 2 AA 295-318.

9 On February 1, 2021 the State filed a Response. 2 AA 319-328.

11 On February 17, 2021, a hearing was held wherein the district court denied
12 Perry's Motion. 2 AA 335-346.

13 On April 16, 2021 the district court filed the formal order denying Perry's
14 Motion. 2 AA 329-331.

16 On May 14, 2021 Perry filed a timely Notice of Appeal. 2 AA 332.

18 Perry's Petition for Writ of habeas Corpus is still pending.

19 The instant Opening Brief follows.

21 **STATEMENT OF FACTS**

23 Perry and Corla Carpenter ("Carpenter") were involved in a six-month
24 relationship before breaking up. 1 AA 49-51. On the night of April 30, 2014, Perry
25 came to Carpenter's house after she was already in bed, asking for his blood
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1 pressure medication he had left behind when they broke up. She let him in but told
2 him that he would have to leave by the morning. 1 AA 51-56.

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4 Carpenter claimed that in the morning, Perry started acting aggressively,
5 scaring Carpenter. She claimed that she tried to call for help but that he grabbed
6 her phone and threw it against the wall, telling her that she would not call the
7 police on him. 1 AA 51-56. Carpenter claimed she tried to escape to the bathroom
8 and that he punched her in the face. 1 AA 59.

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11 Carpenter claimed that she tried to run away from him but fell down the
12 stairs and landed in the kitchen. 1 AA 56-62. She claimed that Perry beat and
13 kicked her while she was curled in the fetal position on the kitchen floor. 1 AA 56-
14 62. She claimed that Perry grabbed a knife that was laying on the stove. 1 AA 62-
15 68. Carpenter claimed that when she saw the knife, she begged him not to kill her.
16
17 Id. Carpenter alleged that Perry took her into the living room at knifepoint and
18 made her sit there for 50 minutes, not moving, while he paced in front of her and
19 made plans to kill her. Id.

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21
22 Carpenter claimed that Perry grabbed her car keys from the living room and
23 marched her to the bathroom. Finally, she claims that Perry threatened her, saying
24 that he would kill her if she left the bathroom before she heard the garage door
25 close. 1 AA 68-72.

1 During the investigation of this case, blood samples were impounded from
2 the crime scene. 2 AA 305-309. The knife, which had blood on it, was impounded
3 as well. Id. Genetic marker analysis was not conducted on these items. Latent print
4 analysis of the knife was not conducted. Id.

5
6 Perry attempted to present a self-defense case with the assertion that it was
7 Carpenter who attacked Perry with the knife and Perry acted in self-defense. 1 AA
8 20; 1 AA 197-98. This defense was thwarted by the Court's error in denying Perry
9 the opportunity to present evidence of Carpenter's past violent history as well as
10 his proposed self-defense instruction. 1 AA 197-87; 2 AA 202-205. The Nevada
11 Supreme Court held that the District Court's failure to allow Perry a self-defense
12 instruction was error. 2 AA 229-236. However, the Supreme Court held that this
13 error was harmless due to the evidence presented against Perry at trial. 2 AA 231-
14 32.

15 SUMMARY OF THE ARGUMENT

16 Perry and Carpenter got into an altercation wherein both were injured.
17 Carpenter claims Perry attacked, battered and imprisoned her among other crimes.
18 At trial Perry attempted to present a self-defense theory but was refused a self-
19 defense instruction. He filed a Petition for Writ of Habeas Corpus (Post-
20 Conviction) alleging that his trial attorney was ineffective for, *inter alia*, failing to
21 request latent print and genetic marker analysis of the evidence collected at the
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1 scene. Perry also filed a Motion requesting that the district court order METRO to
2 conduct said analysis.
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4 The district court denied said Motion and erred in doing so. Specifically,
5 with respect to the genetic marker analysis, the district court erred given the fact
6 that the anticipated results would be exculpatory and had they been obtained prior
7 to trial there is a reasonable possibility that Perry would not have been convicted.
8

9 **ARGUMENT**

10 **I. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING** 11 **APPELLANT'S MOTION REQUESTING ORDER DIRECTING THE LAS** 12 **VEGAS METROPOLITAN POLICE DEPARTMENT TO CONDUCT GENETIC** 13 **MARKER AND LATENT PRINT ANALYSIS OF EVIDENCE IMPOUNDED AT** 14 **THE CRIME SCENE**

15 **a. Standard of Review**

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17 "[A] district court's factual findings will be given deference by this court on
18 appeal, so long as they are supported by substantial evidence and are not clearly
19 wrong." Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).
20 Questions of law are reviewed de novo. Bailey v. State, 120 Nev. 406, 407, 91
21 P.3d 596, 597 (2004).
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2 **b. Motion Requesting Latent Print Analysis and Genetic Marker**
3 **Analysis**

4 Perry argued in Ground Two of his Petition that his counsel was ineffective
5 for failing to investigate Perry’s self-defense claims. 2 AA 246-47. Specifically,
6 Perry alleged that his counsel was ineffective for failing to request genetic marker
7 analysis of the blood samples taken from the crimes scene as well as examination
8 of the knife for latent fingerprints. *Id.* Had counsel done so, Perry alleged that the
9 results would show that it was Carpenter who had the knife in her hand and that he
10 was cut with said knife. 2 AA 246. ¹ This evidence would have supported his self-
11 defense claim. Given the fact that the Supreme Court of Nevada found that it was
12 error for the District Court to preclude Perry from giving a self-defense instruction
13 *without* this additional evidence of his injuries and genetic marker analysis, had the
14 District Court heard this evidence, it would have surely allowed Perry to give a
15 self-defense instruction. Without the self-defense instruction, Perry had no chance
16 of being found not guilty due to self-defense.
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22 In response to this argument, the State argued that Perry “fails to
23 demonstrate how further forensic investigation would have rendered a more
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26 ¹ Additionally but not subject to the instant Appeal nor to his Motion, which is the
27 subject of the instant appeal, Perry claims his counsel was ineffective for failing to
28 present medical evidence showing that Perry was cut with the knife during this
altercation. 2 AA 246-47.

1 favorable outcome probable...[i]ndeed, based upon the testimony presented at trial,
2 the results would have confirmed the presence of both the victim's and
3 Defendant's blood and fingerprints on the knife." 2 AA 283-84. In order for Perry
4 to properly allege that his attorney was ineffective for failing to investigate his self-
5 defense claims, he must demonstrate how such proposed investigation would have
6 rendered a more favorable outcome. Molina v. State, 120 Nev. 185, 87 P.3d 533
7 (2004). Therefore, Perry moved the district court for an order directing the Las
8 Vegas Metropolitan Police Department to conduct latent print analysis on the knife
9 (Item #1/Package #1) impounded from the crime scene and compare the prints to
10 the prints of both Perry and Carpenter; and also an order, pursuant to NRS
11 176.0918, directing the Las Vegas Metropolitan Police Department to conduct
12 genetic marker analysis of the blood on the knife (Item #1/Package #1) and blood
13 samples and knife impounded from the scene (Items #2 and #3/Package #2) and
14 compare results against the genetic markers of both Perry and Carpenter.
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20 This district court denied Perry's Motion.

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22 **c. Latent Prints**

23 With respect to Perry's request for analysis of **latent prints**, the district
24 court ruled as follows:

- 25
26 1. No statute of legal basis was offered to support the request for
27 latent print analysis; and
28

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

4 2 AA 330.

5 First, the legal basis for requesting latent print analysis of the knife is to
6 support Perry's post-conviction claim that his attorney was ineffective for failing to
7 conduct such analysis prior to trial. 2 AA 301.

8 Second, the issue is not whether Carpenter's fingerprints are on the knife—
9 we would expect them to be because it was her knife located in her kitchen. As
10 argued at the hearing on the Motion, the issue is whether or not *Perry's*
11 fingerprints are on the knife. 2 AA 341-42. "'Exculpatory evidence' is defined as
12 [e]vidence tending to establish a criminal defendant's innocence.'" State v.
13 Huebler, 128 Nev. 192, 200 n.5, 275 P.3d 91, 96 n.5 (2012) (alteration in original)
14 (quoting Exculpatory Evidence, Black's Law Dictionary 637 (9th ed. 2009)). If her
15 prints are on the knife and Perry's prints are *not*, this is exculpatory forensic
16 evidence because it tends to support the defense theory that Carpenter attacked him
17 with the knife and that Perry harmed Carpenter in self-defense. 2 AA 341-42.
18 Therefore, the district court erred when it denied Perry's request to conduct latent
19 print analysis of the knife. This was prejudicial in the court has prevented Perry
20 from litigating the admissibility of potentially critical evidence.
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1 **d. Genetic Marker Analysis**

2 The standard for granting a motion requesting genetic marker analysis is as
3 follows:
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6 NRS 176.0918(1) provides that "[a] person convicted of a felony . .
7 . may file a postconviction petition requesting a genetic marker
8 analysis of evidence within the possession or custody of the State
9 which may contain genetic marker information relating to the
10 investigation or prosecution that resulted in the judgment of
conviction." NRS 176.09183(1) provides that the district court
shall order genetic marker analysis if the court finds the following:

11 (a) The evidence to be analyzed exists;

12 (b) . . . the evidence was not previously subjected to a genetic
13 marker analysis, including, without limitation, because such an
14 analysis was not available at the time of trial; and

15 (c) One or more of the following situations applies:

16 (1) A reasonable possibility exists that the petitioner would not
17 have been prosecuted or convicted if exculpatory results had been
18 obtained through a genetic marker analysis of the evidence
19 identified in the petition;

20 (2) The petitioner alleges and supports with facts that he or she
21 asked his or her attorney to request to have a genetic marker
22 analysis conducted, but the attorney refused or neglected to do
so;  or

23 (3) The court previously ordered a genetic marker analysis to be
24 conducted, but an analysis was never conducted.

25 NRS 176.0918; NRS 176.09183.

26 With respect to **genetic marker** analysis, the district court ruled as follows:
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- 1 1. If such testing were conducted, and the results anticipated by
- 2 the Defendant were obtained, such results would not rise to a
- 3 reasonable possibility that the Defendant would not have been
- 4 prosecuted or convicted;
- 5 2. Even if the blood on the knife and the blood samples matched
- 6 Defendant's genetic markers, at most it would show that
- 7 Defendant left his blood at the scene; and
- 8 3. Such results would not exculpate him of guilt as to the crimes
- 9 for which he was convicted.

10 2 AA 330.

11 The district court appears to have viewed the "anticipated" results in the
12 light most favorable to the State when determining that Perry did not meet the
13 "reasonable possibility" standard. This Court recently took the time to more
14 specifically define this standard in James v. State:

17 "A petitioner need only show "[a] reasonable possibility . . . that
18 the petitioner would not have been prosecuted or convicted if
19 exculpatory results had been obtained through a genetic marker
20 analysis of the evidence identified in the petition." NRS
21 176.09183(1)(c)(1). **The "reasonable possibility" standard is**
22 **"more favorable to the accused than the" "reasonable**
23 **probability" standard.** Wade v. State, 115 Nev. 290, 296 n.4,
24 986 P.2d 438, 441 n.4 (1999) (internal quotation marks omitted).
25 While not binding precedent, this court has interpreted the
26 meaning of "reasonable possibility" in prior unpublished orders,
27 and typically, when the results of the analysis would be irrelevant
28 to the State's theory of the crime or the defendant's defense, a
"reasonable possibility" does not exist."

James v. State, 492 P.3d 1, 5, 137 Nev. Adv. Rep. 38 (July 2021)(emphasis

1 added).

2 Here, the district court ruled that even if Perry's markers are found in the
3 blood, "at most" this would show that he left his blood at the scene and that such
4 evidence would not exculpate Perry. 2 AA 330. While the *State* would be free to
5 argue this in closing, this is not the only relevance of the anticipated evidence. If
6 the blood is, in fact, Perry's, this evidence would be relevant to his self-defense
7 theory, which was that Carpenter cut Perry with the knife and he was protecting
8 himself. Such results would exculpate Perry given that "exculpatory evidence" is
9 defined as evidence that *tends* to establish (not prove) a criminal defendant's
10 innocence and there is a reasonable possibility that Perry would not have been
11 convicted had such evidence been presented at trial. Huebler, 128 Nev. at 200 n.5,
12 275 P.3d at 96 n.5; James, 492 P.3d at 5, 137 Nev. Adv. Rep. 38. NRS 176.0918;
13 NRS 176.09183.

14 In refusing to even entertain the relevance of the anticipated evidence to the
15 defense theory or to even permit the requested genetic marker analysis, the district
16 court has denied Perry the opportunity to litigate the issue of admissibility and
17 importance of potentially critical evidence. Therefore, the district court erred when
18 it denied Perry's request to conduct genetic marker analysis of the blood samples
19 and this prejudiced him.

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Dated this 1st day of October, 2021.

/s/ Jean Schwartzer
JEAN J. SCHWARTZER, ESQ
Nevada State Bar No. 11223
Law Office of Jean J. Schwartzer
170 S. Green Valley Parkway #300
Henderson, Nevada 89012
(702) 979-9941
Jean.schwartzter@gmail.com
Counsel for Appellant

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1 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires
2 every assertion in the brief regarding matters in the record to be supported by a
3 reference to the page and volume number, if any, of the transcript or appendix
4 where the matter relied on is to be found. I understand that I may be subject to
5 sanctions in the event that the accompanying brief is not in conformity with the
6 requirements of the Nevada Rules of Appellate Procedure.
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9 DATED this 1st day of October, 2021.
10
11
12

13 /s/ Jean Schwartzer
14 JEAN J. SCHWARTZER, ESQ
15 Nevada State Bar No. 11223
16 Law Office of Jean J. Schwartzer
17 170 S. Green Valley Parkway #300
18 Henderson, Nevada 89012
19 (702) 979-9941
20 Jean.schwartzter@gmail.com
21 Counsel for Appellant
22
23
24
25
26
27
28

1
2
3 **CERTIFICATE OF SERVICE**

4 I HEREBY CERTIFY AND AFFIRM that this document was filed
5 electronically with the Nevada Supreme Court on the 1st of October, 2021.
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7 Electronic Service of the foregoing document shall be made in accordance with the
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11 ALEXANDER G. CHEN, ESQ.
12 Chief Deputy District Attorney

13 I further certify that I served a copy of this document by mailing a true and
14 correct copy thereof, postage pre-paid, addressed to:

15 Genaro Perry
16 Inmate No: 1153366
17 Southern Desert Correctional Facility
18 P.O. Box 208
19 Indian Springs, Nevada 89070-0208

20
21 /s/ Jean J. Schwartzer
22 JEAN J. SCHWARTZER, ESQ
23 Nevada State Bar No. 11223
24 Law Office of Jean J. Schwartzer
25 170 S. Green Valley Parkway #300
26 Henderson, Nevada 89012
27 (702) 979-9941
28 Jean.schwartzter@gmail.com
 Counsel for Appellant