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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 REPLY BRIEF**

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1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**  
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4           GENARO RICHARD PERRY,

5                           Petitioner,

6                           vs.

7           RENEE BAKER, WARDEN

8           Lovelock Correctional Center,

9                           Respondent.

S.Ct. No. 82060

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10  
11                                   **ARGUMENT**

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13           **I.     PERRY MET THE DECLARATION REQUIREMENT PURSUANT TO NRS**  
14                   **176.0918**

15                   The State argues that Perry did not meet the requirements of NRS 176.0918  
16                   because he failed to attach a declaration or statement showing he was entitled to  
17                   genetic marker testing. **State’s Answering Brief “AB” 6.** First, Perry attached said  
18                   declaration to his underlying Petition for Writ of Habeas Corpus. **2 AA 270.**  
19                   Second and partially in light of this fact, the district court found that Perry met the  
20                   statutory requirements and ruled on the merits of the motion. **2 AA 343-344**  
21                   Therefore, the State’s argument that the district court’s decision on the merits  
22                   should be affirmed due to Perry allegedly not meeting a form requirement, which  
23                   he, in fact, did meet, is misplaced and should fail.  
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1 Although unclear, it appears that the State is also arguing that Perry failed, *in*  
2 *general*, to assert in his pleading that the failure to request genetic marker analysis  
3 before he was convicted was not a result of a strategic or tactical decision by  
4 counsel or provide a rationale for why a reasonable possibility existed that he  
5 would not have been prosecuted or convicted if analysis had been conducted. **AB**

6  
7 **6.** This is patently untrue.

8  
9 Perry claimed that his counsel was ineffective for failing to request genetic  
10 marker analysis prior to trial in his underlying Petition for Writ of Habeas Corpus,  
11 his Motion requesting the district court to order genetic marker analysis, and his  
12 Opening Brief in the instant appeal. **2 AA 246-47; 2 AA 301; OB 11-13.**  
13  
14 Perry also explained why there was a reasonable possibility that he would not have  
15 been convicted had the genetic marker analysis been conducted—if Perry’s blood  
16 is found in the sample, this supports his self-defense argument and creates a  
17 reasonable possibility that he would not have been convicted. **2 AA 298-301; OB**  
18 **8-9, 13.**

19  
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21 **II. Perry Meets the Reasonable Possibility Standard**

22  
23 The State argues that Perry cannot establish that there is a reasonable  
24 possibility that the anticipated results of genetic marker testing would result in an  
25 acquittal because said results are irrelevant due to the fact that overwhelming  
26 evidence was presented against Perry and no jury could have concluded he was  
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1 defending himself. **AB 10.** The State conflates the *relevance* of a piece of evidence  
2 with the *meaning* of a piece of evidence.  
3

4 “‘[R]elevant evidence’ means evidence having any tendency to make the  
5 existence of any fact that is of consequence to the determination of the action more  
6 or less probable than it would be without the evidence.” Nev. Rev. Stat. § 48.015.  
7 A piece of relevant evidence can be argued as having one meaning by the State and  
8 another by the defense. This has no bearing on the *relevance* of the piece of  
9 evidence.  
10  
11

12 The State argues that if the blood samples match Perry’s markers, this shows  
13 nothing more than the fact that he left his blood at the scene after battering  
14 Carpenter. **AB 8.** Perry argues that if the blood samples match Perry’s markers,  
15 this shows he was cut by Carpenter when she attacked him with the knife and he  
16 defended himself. Therefore, this proffered evidence is exculpatory in that it *tends*  
17 to establish Perry’s self-defense claim/innocence and there is a reasonable  
18 possibility that Perry would not have been convicted had such evidence been  
19 presented at trial. State v. Huebler, 128 Nev. 192, 200 n.5, 275 P.3d 91, 96 n.5  
20 (2012); James v. State, 492 P.3d 1, 5, 137 Nev. Adv. Rep. 38 (July 2021); Wade v.  
21 State, 115 Nev. 290, 296 n.4, 986 P.2d 438, 441 n.4 (1999)(The "reasonable  
22 possibility" standard is "more favorable to the accused than the" "reasonable  
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1 **probability" standard.)** NRS 176.0918; NRS 176.09183. <sup>1</sup>

2       The State further argues that Perry did not present a self-defense claim at  
3 trial. **AB 10 fn. 3.** Perry attempted to present a self-defense case with the assertion  
4 that it was Carpenter who attacked Perry with the knife and Perry acted in self-  
5 defense. 1 AA 20; 1 AA 197-98. This defense was thwarted by the Court's error in  
6 denying Perry the opportunity to present evidence of Carpenter's past violent  
7 history as well as his proposed self-defense instruction. 1 AA 197-87; 2 AA 202-  
8 205. This Court held that the district court's failure to allow Perry a self-defense  
9 instruction was error because it found that **"Perry did present some evidence in**  
10 **support of his elf defense claim "**. 2 AA 229-236 (emphasis added). However,  
11 this Court held that this error was harmless due to the evidence presented against  
12 Perry at trial. 2 AA 231-32. It is important to note that at the time, this Court did  
13 not have the additional evidence of the genetic marker analysis testing presumably  
14 showing that Perry was injured during the scuffle, which would have been further  
15 evidence in support of his self defense claim.

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24 <sup>1</sup> The State takes issue with Perry mentioning his ineffective assistance of counsel  
25 claim in that NRS 176.0918 cannot be used to collect evidence to support such a  
26 claim. **AB 11.** Perry references his argument that his counsel was ineffective for  
27 failing to request genetic marker analysis prior to trial as raised in his Petition for  
28 Writ of Habeas Corpus for the purpose of assert, in part, that this failure to do so  
was not strategic in nature as is required by NRS 176.0918(3)(e).

1 **CONCLUSION**

2 Based upon the arguments in Perry's Opening Brief and herein, *supra*, the  
3 denial of GERNARO PERRY'S Motion Requesting Order Directing the Las  
4 Vegas Metropolitan Police Department to Conduct Genetic Marker and Latent  
5 Print Analysis of Evidence Impounded at Crime Scene should be REVERSED.  
6  
7

8  
9 Dated this 28<sup>th</sup> day of December, 2021.  
10

11 Respectfully submitted,

12 /s/ Jean Schwartzer  
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1 **CERTIFICATE OF COMPLIANCE**

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

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24 3. Finally, I hereby certify that I have read this appellate brief, and to the best  
25 of my knowledge, information, and belief, it is not frivolous or interposed for any  
26 improper purpose. I further certify that this brief complies with all applicable  
27  
28

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.  
7  
8

9 DATED this 28<sup>th</sup> day of December, 2021.  
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11  
12

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3                   **CERTIFICATE OF SERVICE**

4           I HEREBY CERTIFY AND AFFIRM that this document was filed  
5 electronically with the Nevada Supreme Court on the 27<sup>th</sup> of December, 2021.  
6  
7 Electronic Service of the foregoing document shall be made in accordance with the  
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9                                   AARON FORD, ESQ.  
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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

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