

1
2 IN THE SUPREME COURT OF THE STATE OF NEVADA

3 Electronically Filed
4 Dec 30 2021 09:31 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

5 HECTOR HUGO RAMIREZ-DE

6 LA TORRE,

7 Appellant, CASE NO.82891

8 vs.

9 THE STATE OF NEVADA,

10 Respondent.

11 Appeal From The Fourth Judicial District Court
12 Of The State of Nevada
In And For The County Of Elko

13 **RESPONDENT'S ANSWERING BRIEF**

14 THE HONORABLE AARON D. FORD
15 ATTORNEY GENERAL OF NEVADA
100 N. CARSON STREET
CARSON CITY, NV 89701

16 TYLER J. INGRAM
17 Elko County District
Attorney's Office
18 Justin M. Barainca
State Bar Number 14163
19 540 Court Street, 2nd Floor
Elko, NV 89801
20 (775) 738-3101

ATTORNEYS FOR RESPONDENT

GARY D. WOODBURY
State Bar Number: 1915
1053 Idaho Street
Elko, NV 89801
Attorney for Appellant
(775) 738-8006
ATTORNEY FOR APPELLANT

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

TABLE OF CONTENTS

TABLE OF CONTENTS	I
TABLE OF AUTHORITIES	II
STATEMENT OF ISSUES	1
I. WHETHER THE DISTRICT COURT ERRED BY DENYING RAMIREZ’S MOTION TO DISMISS.....	1
STATEMENT OF THE FACTS.....	2
SUMMARY OF ARGUMENT	5
ARGUMENT	6
I. STANDARD OF REVIEW	6
II. THE DISTRICT DID NOT ERR BY DENYING RAMIREZ’S MOTION TO DISMISS.	6
CONCLUSION	9
CERTIFICATE OF COMPLIANCE	10

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

TABLE OF AUTHORITIES

PAGE NO.

Cases

Cabrera v. State, 454 P.3d 722, 724 (Nev. 2019) 7

Estes v. Texas, 381 U.S. 532 (1965) 7

Frank v. Mangum, 237 U.S. 309 (1915) 7

Garcia v. United States, 666 F.2d 960, 963 (5th Cir. 1982) 6, 8

Hill v. State, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008) 6

Lay v. State, 110 Nev. 1189, 886 P.2d 448 (1994) 8

Rideau v. Louisiana, 373 U.S. 723 (1963) 7

Sheppard v. Maxwell, 384 U.S. 333 (1966) 7

Statutes

NRS 194.010(8) 3, 4, 5, 7

STATEMENT OF ISSUES

- I. WHETHER THE DISTRICT COURT ERRED BY DENYING
RAMIREZ'S MOTION TO DISMISS.

1 STATEMENT OF THE FACTS

2 As noted in the opening brief, the charges against Ramirez stemmed
3 from an investigation of the distribution of controlled substances. The
4 investigation was led by then Detective John Gaylor of the Elko Combined
5 Narcotics Unit. On February 27, 2019, March 4, 2019, and March 7, 2019,
6 Gaylor and other detectives engaged in controlled purchases of
7 methamphetamine with help of a cooperating source, Clinton Sandstrom.
8 (Supplemental Appendix ("SA"), Pg. 22-28). The purchases were for two
9 ounces of methamphetamine, which were purchased for \$1000.00. (SA, 26-
10 27). The three purchases supported counts 1 through 3 of the Criminal
11 Information. (JA, Vol. 1, 26-27). Detectives learned that Ramirez was
12 coming from 5647 Kale Drive in the community known as Osino. (JA, Vol.
13 2, 386-388).

14 After the controlled purchases, detectives sought a search warrant to
15 search 5647 Kale Drive in the neighborhood known as Osino. (JA, Vol. 2,
16 435). The property was described as a 2.7-acre plot owned by Jorge
17 Landeros Ruiz. (JA, Vol. 2, 435). Maria Ulloa was also named on the
18 property. (JA, Vol. 2, 435).

19 The search warrant was executed on March 19, 2019. (JA, Vol. 2.,
20 435). Detectives searched a brown travel trailer on the property, believing

1 Ramirez to reside in the trailer. (JA, Vol. 2, 467). Inside the brown travel
2 trailer, detectives located documentation belonging to Ramirez, the firearm
3 subject to Count 5 of the Amended Criminal Information, indicia of drug
4 sales, indicia of methamphetamine consumption, U.S. currency, 6.29 grams
5 of methamphetamine on a nightstand, and 268.47 grams of
6 methamphetamine in a cabinet above the bed. (JA, Vol. 2, 467-470).

7 Ramirez was interviewed by Gaylor during the execution of the search
8 warrant. During this discussion, Ramirez admitted that there'd be a small
9 amount of methamphetamine on the property, that he had a habit to use
10 methamphetamine, that he was a caretaker for the chickens, and that he
11 owned one of the roosters. (JA, Vol. 2, 439). Ramirez further stated that he
12 lived in the brown travel trailer located on the property. (JA, Vol. 2, 439).
13 Gaylor also testified that he had no firsthand knowledge of cartel
14 involvement in the current matter. (JA, Vol. 1, 455)

15 On April 28, 2020, Ramirez filed a motion to dismiss. (JA, Vol. 1,
16 62). In his motion, Ramirez argued that he wished to present a duress
17 defense pursuant to NRS 194.010(8). (JA, Vol. 1, 62). However, there were
18 existed threats or menaces from an alleged cartel, thus he could not testify
19 regarding the duress defense. (JA, Vol. 1, 65-66). Ramirez contended that
20 because there was some extraneous influence, he could not testify in his own

1 defense without putting his life in danger and was somehow not provided
2 due process of law as a result. (JA, Vol. 1, 66). As noted in his brief,
3 Ramirez did not provide any evidence as to what the threats were or who
4 they came from. The State filed its opposition to the motion to dismiss on
5 May 7, 2020.

6 In its order denying the motion to dismiss, the district court found that
7 Ramirez was given all the process that was due, which did not include
8 ensuring his safety to put on a particular defense. (JA, Vol. 1, 87). The
9 district court explained that the court “has no doubt that [Ramirez’s] attorney
10 will honor Hector’s exclusive decision on whether to testify or remain
11 silent.” (JA, Vol. 1, 87). The district court further found that Ramirez “has
12 provided no cogent argument or authority for the proposition that he is
13 entitled to the dismissal of the charges against him because he fears
14 suffering death or bodily harm if he presses the defense permitted by NRS
15 194.010(8).” (JA, Vol. 1, 87).

16 During trial, Ramirez, through the assistance of his attorney, was
17 allowed to ask questions regarding any alleged cartel involvement and was
18 allowed to raise any inferences in the manner provided in his brief. The jury
19 was also instructed on the duress defense. (JA, Vol. 1, 142). However, as
20 noted by the State during its rebuttal argument there was no direct evidence

1 of any threats presented during the trial. (SA, 128). Further, Ramirez was
2 canvassed regarding his right to testify or remain silent. (SA, 79-80). During
3 this canvas, the district court commented that the decision on whether to
4 testify rested solely with Ramirez and that no one could force him to testify
5 or remain silent. (SA, 80).

6 SUMMARY OF ARGUMENT

7 In his opening brief, Ramirez contends that his due process rights
8 were violated because of some outside influence that affected his ability to
9 testify and provide a duress defense. The duress defense is an ancient
10 common law affirmative defense which provides the defendant a legal
11 excuse for the commission of the criminal act. Nevada codified the duress
12 defense at NRS 194.010(8).

13 As noted in the district court's order denying the motion to dismiss,
14 and during the trial, Ramirez was provided every opportunity to present a
15 duress defense. Ramirez does not make any argument or cite to any
16 controlling authority that he was denied due process at any point in the
17 proceedings, and the authority cited by Ramirez has no relation to this
18 instant matter.

19 Nothing cited by Ramirez supports the proposition that because of
20 some unknown extraneous influence that has no direct connection to

1 proceedings, the charges against him should be dismissed. Even if the
2 district court entertained the argument, the result would have been absurd.
3 Further, Ramirez does not have any right under the Witness Protection
4 Program. See *Garcia v. United States*, 666 F.2d 960, 963 (5th Cir. 1982),
5 *cert. denied*.

6 ARGUMENT

7 I. STANDARD OF REVIEW

8 This Court reviews “a district court’s decision to grant or deny a
9 motion to dismiss an [information] for abuse of discretion.” *Hill v. State*, 124
10 Nev. 546, 550, 188 P.3d 51, 54 (2008).

11 II. THE DISTRICT DID NOT ERR BY DENYING 12 RAMIREZ’S MOTION TO DISMISS.

13 In his opening brief, Ramirez contends that his due process rights
14 were violated because of some outside influence that affected his ability to
15 testify and provide a duress defense. The duress defense is an ancient
16 common law affirmative defense “which provides the defendant a legal
17 excuse for the commission of the criminal act.” *Cabrera v. State*, 454 P.3d
18 722, 724 (Nev. 2019) (citation omitted). Nevada codified the duress defense
19 at NRS 194.010(8). *Id.*

1 As noted in the district court's order denying the motion to dismiss,
2 and during the trial, Ramirez was provided every opportunity to present a
3 duress defense. Ramirez's attorney was allowed to ask questions regarding
4 cartels and the detectives knowledge as to how cartel distribute controlled
5 substances, Ramirez's attorney was able to draw inferences as a result of the
6 testimony, a duress instruction was provided to the jury, and Ramirez was
7 given the sole decision on whether to testify. To the extent that a duress
8 defense was provided, the jury obviously rejected Ramirez's contentions
9 because the jury found Ramirez guilty of all counts against him.

10 Ramirez does not make any argument or cite to any controlling
11 authority that he was denied due process at any point in the proceedings, and
12 the authority cited by Ramirez has no relation to this instant matter. *Rideau*
13 *v. Louisiana*, 373 U.S. 723 (1963), involved a televised interview with the
14 defendant's confession. *Estes v. Texas*, 381 U.S. 532 (1965), involved the
15 heavy publicity in and around the courtroom during trial. The same was true
16 regarding trial publicity in *Sheppard v. Maxwell*, 384 U.S. 333 (1966).
17 *Frank v. Mangum*, 237 U.S. 309 (1915), involved mob domination of the
18 courtroom. This Court's acknowledgement of gangs in *Lay v. State*, 110
19 Nev. 1189, 886 P.2d 448 (1994), involved evidence of the defendant's gang
20 affiliation during the penalty phase.

1 Nothing cited by Ramirez supports the proposition that because of
2 some unknown extraneous influence that has no direct connection to
3 proceedings, the charges against him should be dismissed. Even if the
4 district court entertained the argument, the result would have been absurd.
5 Further, Ramirez does not have any right under the Witness Protection
6 Program. See *Garcia v. United States*, 666 F.2d 960, 963 (5th Cir. 1982),
7 *cert. denied*.

8 Thus, this court should find that the district did not abuse its discretion
9 by denying Ramirez's motion to dismiss and should affirm Ramirez's
10 conviction.


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

CONCLUSION

For the reasons discussed above, this Court should affirm Ramirez's conviction because the district court properly denied Ramirez's motion to dismiss.

RESPECTFULLY SUBMITTED this 29th day of December, 2021.

TYLER J. INGRAM
Elko County District Attorney

By: 
Justin M. Barainca
Deputy District Attorney
State Bar Number: 14163

1 CERTIFICATE OF COMPLIANCE

2 I hereby certify that this Respondent's Answering Brief complies with
3 the formatting requirements of NRAP 32(a)(4), the typeface requirements of
4 NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6). This
5 Respondent's Answering Brief has been prepared in a proportionally spaced
6 typeface using Microsoft Office Word 2007, in size 14 point Times New
7 Roman font.

8 I further certify that this brief complies with the page or type-volume
9 limitations of NRAP 32(a)(7) because, excluding the parts of the
10 Respondent's Answering Brief exempted by NRAP32(a)(7)(C), because it
11 contains 1,415 words.

12 I hereby certify that I have read the Respondent's Answering Brief,
13 and to the best of my knowledge, information, and belief, it is not frivolous
14 or interposed for any improper purpose. I further certify that this brief
15 complies with all applicable Nevada Rules of Appellate Procedure, in
16 particular NRAP 28(e), which requires every assertion in the brief regarding
17 matters in the record to be supported by appropriate references to the record

18 ///

19 ///

20 ///

1 on appeal. I understand that I may be subject to sanctions in the event that
2 the accompanying brief is not in conformity with the requirements of the
3 Nevada Rules of Appellate Procedure.

4 DATED this 29th day of December, 2021.

5 TYLER J. INGRAM
6 Elko County District Attorney
7 540 Court Street, 2nd Floor
8 Elko, NV 89801

9 By: 

Justin M. Barainca
Deputy District Attorney
State Bar Number: 14163

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