

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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Elizabeth A. Brown
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RODERICK STEPHEN SKINNER,

Petitioner,

vs.

Sup. Ct. Case No. 88296

Case No. CR14-0644

Dept. 8

WARDEN OLSEN, NNCC, NEVADA
ATTORNEY GENERAL, ET AL,

Respondents.

RECORD ON APPEAL

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DOCUMENTS

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Litigation
SERVICES

ORIGINAL

FILED

SEP 26 2019

In the Matter Of:

JACQUELINE BRYANT, CLERK
By: *[Signature]*
DEPUTY CLERK

Skinner vs State

DENNIS CARRY*November 05, 2018**Job Number: 501219*

CR14-0644
STATE VS. RODERICK STEPHEN 49 Pages
District Court 09/26/2019 10:30 AM
Washoe County 1595

1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF
2 NEVADA IN AND FOR THE COUNTY OF WASHOE

3
4
5 RODERICK STEPHEN SKINNER,)
6 Petitioner,)
7 vs.)
8 ISIDRO BACA, WARDEN, NORTHERN)
9 NEVADA CORRECTIONAL CENTER.)
10 Respondent.)

11
12 DEPOSITION OF DENNIS CARRY

13 Taken on Monday, November 5, 2018

14
15 At 1:30 p.m.

16 At Sunshine Litigation Services

17
18 151 Country Estates Circle

19 Reno, Nevada

20

21

22

23

24 REPORTED BY: NICOLE J. HANSEN, CCR NO. 446

25 JOB NO.: 501219

1 APPEARANCES:

2

For the Petitioner:

3

EDWARD T. REED, ESQ.

4

Edward T. Reed, PLLC

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P.O. Box 34763

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Reno, Nevada 89533-4763

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8

For the Respondent:

9

JOSEPH PLATER, ESQ.

10

Washoe County District Attorney's Office

11

1 South Sierra Street #7

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Reno, Nevada 89501

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DENNIS CARRY - 11/05/2018

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WITNESS:

Dennis Carry

EXAMINATION

PAGE

By Mr. Reed

4

DENNIS CARRY,
having been first duly sworn, was
examined and testified as follows:

EXAMINATION

BY MR. REED:

Q Now, would you please state your full name
and spell it for the court reporter?

A Dennis Carry: D-E-N-N-I-S. C-A-R-R-Y.

Q What is your business, profession, or
occupation?

A I'm a sergeant with the Washoe County
Sheriff's Office.

Q How long have you been in that position?

A I've been with the sheriff's office for
nearly 23 years, and as a sergeant since December 2011.

Q What are your duties there?

A I supervise the Cyber Crime Unit, which is a
regional investigator unit that includes Internet Crimes
Against Children Task Force. And I also have other
responsibilities, as far as a being a supervisor of the
detective division also.

Q What specific training have you had to do the
type of work you do, which is in the cyber crimes unit?

A Over a thousand hours of training concerning

1 instant response, computer forensics, and over a thousand
2 hours of training, as far as child exploitation
3 investigations.

4 Q Are you ENCASE certified?

5 A ENCASE? No.

6 Q Do you have the CCFE certification?

7 A The certifications I have, I have a GCFE,
8 GCFA, GASF, and also CHFI.

9 Q Do you have the ACE?

10 A Those are the only certifications right
11 there.

12 Q Okay. Thank you. Now, when you received the
13 case involving Roderick Skinner, as far as the
14 examination of evidence, do you recall what evidence you
15 received?

16 A I do recall because we received whatever the
17 evidence was at the time -- I don't remember the
18 specifics -- but we received it from the Sparks Police
19 Department.

20 Q Do you recall examining a laptop computer?

21 A I do. It was a laptop, and I believe an
22 external hard drive, and probably a few other devices.

23 Q Now, do you recall if you examined more than
24 one device? Because there were several devices that were
25 obtained through the search warrant of Mr. Skinner's

1 apartment.

2 A For all of the devices we received, they all
3 would have been examined. When I say "examined," it's
4 more specifically what I would call previewed, because
5 there was never a full analysis ever completed. He pled
6 guilty before that happened. But there were multiple
7 devices. Every device that we were provided, we would
8 have previewed.

9 Q So, as far as you recall, all you did on any
10 of these devices was preview them?

11 A Preview them to an extent that we have a good
12 understanding of the facts of the case, what we were
13 investigating specifically, to determine whether or not
14 there is enough evidence for probable cause arrest, which
15 is what we did do. And then it was, I guess, shelved, is
16 the best way to explain it, until we would see what the
17 outcome of the case would be.

18 Q Now, this case, I'll represent you probably
19 remember that you did examine the Toshiba laptop
20 computer?

21 A Okay.

22 Q And when you searched the contents of this
23 laptop, what procedure did you follow?

24 A So when we conduct a forensic exam, one of
25 the first things is to document the condition of the

1 device itself. And then, if the device has a hard drive,
2 we remove the hard drive, perform what's called a
3 forensic image of the hard drive. And then our
4 examination, what we work with is off of that image, not
5 the actual original device at that point.

6 And then we would look -- or I did, at least,
7 look at the contents, look at ownership information,
8 determine if we have a device that we believe to be from
9 the person we're investigating and any relevant evidence.

10 Q So you remove the hard drive, and then you
11 make, basically, a copy of it?

12 A Essentially. It's called a forensic image,
13 but it's a copy.

14 Q And so when you perform your examination or
15 preview, or whatever you call it, you look at the copy,
16 essentially?

17 A Yes.

18 Q And how many copies do you make?

19 A Two copies, typically. Sometimes only one.

20 Q Do you recall, in this case, if you made one
21 or two?

22 A I don't remember. In this case, more than
23 likely, it would have, at the time, it would have more
24 than likely been one copy, and then we would have copied
25 that copy and stored it on a server.

1 Q In any event, you make at least one copy of
2 everything?

3 A Yes.

4 Q What is the procedure as to how long you
5 maintain this computer forensic evidence?

6 A We disposed of the evidence after receiving
7 an evidence disposition from the District Attorney's
8 Office.

9 Q Oh, you did?

10 A Yes.

11 Q When did you receive that?

12 A I don't remember, but I believe it was
13 sometime in 2016. I'm fairly positive it was sometime in
14 2016.

15 Q Do you ever make that determination yourself,
16 or do you have to get someone from the District
17 Attorney's Office?

18 A It depends on the case. We're a regional
19 unit. We work cases that are federal, we work cases that
20 are state, and also cases that end up in multiple other
21 state jurisdictions. They all have their own different
22 procedures and policies.

23 When we receive evidence, we hold onto it,
24 typically, for a minimum of two years. That's typically
25 what we would keep it. But it kind of depends. If we're

1 told we can destroy data or destroy evidence, and if the
2 case is either adjudicated or the person is not appealing
3 or anything, it will be usually within or just after ten
4 days of giving up their appellate rights. And that's
5 usually in a federal proceeding. If it is state, we wait
6 until we receive an evidence disposition.

7 Q Do you recall who, in the District Attorney's
8 Office, would have signed that evidence disposition?

9 A I do not. And this case was a little more
10 unique because it was a case that started with the Sparks
11 Police Department where their original seizure of
12 evidence and then transfer it to us and then actually
13 transfer it into our task force. But at some point,
14 regardless, I know we received an evidence disposition,
15 and I'm positive it was in 2016.

16 Q When did you review the evidence disposition?

17 A Huh?

18 Q When did you last review that evidence
19 disposition?

20 A Shortly after you contacted me.

21 Q Me or my investigator, Mr. Grate?

22 A No. You.

23 Q When I contacted you?

24 A Uh-huh.

25 Q As far as serving you the notice of

1 disposition or --

2 A Just to look into what the case was about and
3 saw the evidence disposition.

4 Q Okay. Can I ask you if you would provide a
5 copy of it to me?

6 A That one would have to come from the DA's
7 Office. It's their record.

8 MR. REED: Okay. Can I get a copy?

9 MR. PLATER: Sure.

10 Q (BY MR. REED:) Okay. So that was in 2016.
11 Do you ever make your own determination of just disposing
12 of forensic evidence?

13 A We do, depending upon the circumstances of
14 the case. For example, if it's a case that we had no
15 federal -- no desire to prosecute federally, then we may
16 dispose of the evidence, possibly after the statute of
17 limitations on the case, if it succeeded the statute of
18 limitations.

19 Our evidence is more unique than other
20 evidence, evidence that would typically be in like, say,
21 the sheriff's office or the police department in most
22 circumstances. Our evidence usually contains contraband
23 that we can't give it back anyway. It's illegal for it
24 to go back, so it will be destroyed. It's just the
25 timing all depends on the case circumstances.

1 There's no statute of limitations to
2 prosecute a case federally, so we do have some items that
3 we have a desire to prosecute the person still that we've
4 maintained.

5 Q Do you ever recall telling my investigator,
6 Mr. Grate, who is here today, that you, when asked about
7 the destruction of the evidence, he just got rid of it
8 sort of in the course of periodically disposing of
9 evidence and that, along those lines?

10 A Yes. We would have -- we hold onto evidence,
11 and every now and then, we do a, I guess, a cleaning of
12 our evidence room, and we look for evidence that we don't
13 need anymore. It's past the time we can get rid of it,
14 and then we do, more or less, quarterly or semi-annually
15 disposal.

16 Q But if you told him that, then that seems to
17 contradict what you just told me about getting a
18 disposition from the District Attorney's Office.

19 A No. We got a disposition. But just because
20 we get a disposition, we don't stop what we're doing and
21 go destroy the evidence.

22 We do it every now and then quarterly when we
23 need room in the evidence room, but we don't just get a
24 form, go in the room and go destroy it. It doesn't work
25 that way because we recycle -- we pull the hard drives,

1 but we recycle a lot of the electronics. And all of that
2 requires us to like schedule a truck to come or something
3 like that.

4 Q Well, in this case, several pieces of
5 equipment that was recovered from Mr. Skinner, the laptop
6 and several hard drives, was all of that disposed of not
7 only, say, the laptop, but also the forensic images? It
8 was all disposed of?

9 A The forensic images would have been disposed
10 of at different times. The original evidence is held
11 until we're told to dispose of it. The forensic images,
12 depending upon the storage location, they may be stored
13 longer.

14 As far as Mr. Skinner's case goes, his what
15 we would call the backup of the backup was stored on a
16 server array that we don't even have anymore. We've
17 replaced it twice since then. That would have been the
18 backup of the backup, but all of the other stuff would
19 have been gone sometime ago.

20 Q Okay. So do you know if all of it would have
21 been destroyed at the same time?

22 A No, it probably would not have been.

23 Q But you've checked, and it's all been
24 destroyed?

25 A Yes.

1 Q And how is this destroyed? Is it just thrown
2 away in the garbage?

3 A No. We rip hard drives out of -- if it's a
4 laptop, we take the hard drive out. We either obliterate
5 it or we wipe it. And if it's other items, say, like
6 something that's usable for an external USB drive that
7 might be usable for us, we'll destroy the data by wiping
8 it numerous times and then placing it into service.

9 Q Were you ever made aware that there was
10 pending litigation in the case, that a habeas corpus
11 petition had been filed?

12 A I knew at one point that there was something
13 happening, but that was prior to us receiving a notice to
14 get rid of the evidence. So after that, I have no idea
15 what the status was. We don't follow every case.

16 Q But you saw no reason not to obey the notice
17 from the District Attorney's Office that you could
18 dispose of the evidence?

19 A Correct. And it's more common than not in a
20 case where somebody pleads guilty that we will destroy
21 the evidence sooner after receiving a disposition than a
22 case that we know to be litigated. In a case -- if we
23 know a case to be under litigation, we'll usually hold
24 onto it longer. But there's no rhyme or reason, as far
25 as how long.

1 Q So when you got this notice or this
2 memorandum, whatever it was from the District Attorney's
3 Office, you saw no reason to question that you could go
4 ahead and dispose of the evidence?

5 A No, not in specifically a guilty-plea case,
6 but receiving a notice of evidence, sometimes it's a
7 process that just comes in where we just receive it. And
8 often, when we're just trying to clean out our evidence
9 section, we look at cases and contact the District
10 Attorney's Office to obtain evidence dispositions if it's
11 been a long time, for example.

12 Q But in this case, when you went to dispose of
13 the evidence, you'd already received this disposition
14 notice?

15 A The evidence would have been disposed just at
16 some point after receiving that. It just gets moved to a
17 -- when we know we can destroy something, it just gets
18 moved to an area that we know we can destroy it, and then
19 it just sits there until we do that.

20 Q So essentially, you would not have conferred
21 with anybody: Is it okay to throw this away? You
22 already had the notice?

23 A We already had the notice.

24 Q Under the certifications that you have, I
25 think you said you did have a CCFE certification?

1 A No. It's different. The certifications are
2 all -- some companies have some certifications. Some
3 companies have different certifications. They're all
4 generically the same thing.

5 Q In your training or education when you
6 received any of these certifications, were you told you
7 were supposed to hang onto this while there was any
8 pending litigation?

9 A That is up to -- any one of those times, that
10 is up to whatever the circumstance of the case were. We
11 got rid of it when we were told to get rid of it or that
12 we may.

13 Q But at this point in time, you know it was
14 sometime in 2016 that it was disposed of?

15 A 2016, when we received the disposition. I
16 don't know offhand when we got rid of it. We take in a
17 tremendous amount of evidence and dispose of a tremendous
18 amount of evidence, so I don't really remember the exact
19 time.

20 I just know we move it to a disposable area.
21 But there's no consistency, as far as when we call a
22 truck, when we take a day of not working cases to start
23 pulling hard drives and wiping devices.

24 Q Now, do you keep a record of when this type
25 of evidence is disposed of?

1 A At that time, we may or may not have had --
2 I would have to look. We may or may not have had a
3 system. I think we're on our third different evidence
4 tracking system, so I'm not sure what we would have.

5 Q Would you mind checking?

6 A I can check. Yes.

7 Q But you know that you received a notice in
8 2016?

9 A Yes, I'm fairly certain.

10 Q Do you know approximately how long after that
11 that it would have been that you would have destroyed the
12 evidence?

13 A No. No.

14 Q Could have been a year or two years?

15 A As far as the actual destruction, yes. It
16 could have been.

17 Q Now, were you aware that the evidence on the
18 computer had been previously -- or that this particular
19 computer had been owned previously by another individual
20 named Mike?

21 A I believe I did know that. Yes, sir.

22 Q Do you have any personal knowledge that
23 Mr. Skinner knew about the downloaded files on the
24 computer?

25 A Based on what I previewed, I had absolutely

1 no doubt whatsoever that Mr. Skinner was responsible for
2 the files, based on everything that I previewed, or I
3 would not have arrested him on the charges, whether he --
4 if he had chosen to not plead guilty, we would have not
5 analyzed the devices further.

6 But I still have no doubt in any mind, based
7 on my experience, the amount of cases I've worked, that
8 he was absolutely responsible for the files and the
9 activity.

10 Q But this was just a -- did you call it an
11 initial preview?

12 A Yes.

13 Q And what further -- if you had to go and do a
14 further examination, what would you have done?

15 A We would have looked at more of the dates
16 than we looked at. I would have looked at more of the
17 dates and what we call user attribution data, essentially
18 doing more work to put him behind the keyboard, as
19 needed. But certainly, my preview, I had no problem
20 being confident that he was responsible, based on the
21 dates and times.

22 Q Now, when you say that, you mean that the
23 dates and times corresponded to when he was in the United
24 States or in Sparks?

25 A There were dates and times from files -- if I

1 remember correctly for Mr. Skinner, he had files backed
2 up from other times also. He had a lot of personal
3 files, as you'd say, and the personal files were often
4 mixed with the child pornography files. But the dates
5 all varied.

6 If this was a case that had proceeded to
7 trial, that would have been laid out in far more detail.
8 Some of the more common things we would look at would be
9 the user attribution data, the dates and times for the
10 account information, and I guess you could say indicia
11 information, so information that would corroborate child
12 exploitation activity with personal activity. That could
13 be checking e-mail or other things like that.

14 Q So, in other words, you would be able to
15 determine what dates and times he was, say, checking
16 e-mails?

17 A Yes, potentially, depending upon what
18 activity is on there.

19 Q And that would correspond to the times that
20 you saw these files being downloaded?

21 A Well, files being downloaded, but that's also
22 only one component of it. We would look for times the
23 file is accessed and viewed.

24 There are many artifacts that are created on
25 a computer when you like view it in a media player, for

1 example, or when you double-click on something, or when
2 you delete something, many artifacts are created, and we
3 would look at those artifacts in more depth.

4 Q Would the fact that somebody else had
5 previously owned the computer, is it possible that he
6 didn't know about some of these downloaded files?

7 A In my experience and training, absolutely
8 not.

9 Q Do you have any personal knowledge of whether
10 these files were ever opened or viewed?

11 A What do you mean by "personal knowledge"?

12 Q Well, I mean -- well, okay. Let me rephrase
13 that. Is there any possibility he didn't know about that
14 some of these files had been downloaded?

15 A That's pretty subjective, so I don't really
16 know how I would answer that.

17 MR. PLATER: That's a really tough question
18 for him to ask him to speculate.

19 THE WITNESS: Yeah.

20 Q (BY MR. REED:) Do you have any knowledge or
21 what knowledge do you have that Mr. Skinner knew that
22 there was a file-sharing program running on his computer?

23 A If he knew?

24 Q Yes.

25 A Any user who -- any person who owns that

1 computer and uses it to engage in child pornography
2 activity would have known. It requires specific search
3 terms to be entered. It requires the execution of the
4 program to actually run on the computer.

5 And when it runs, it's in front of you and
6 requires a person to enter the search terms. It requires
7 a person to take an overt action and click download. It
8 doesn't come by accident. Nothing comes automatically or
9 accident. It takes a user action every time to click
10 something and make it happen.

11 So, in my investigation of child
12 pornographers, child exploitation individuals, every
13 single one of them that have engaged in peer activity
14 would have absolutely known what they were doing on the
15 computer.

16 Whether they know they're sharing or things
17 like that, or how the program works, that's all dependent
18 upon a knowledge that usually we look at through an
19 interview and then corroborate with the evidence. So in
20 this case, I didn't interview him.

21 Q So you would have been able to see, for
22 example, when he might have clicked on a search term.
23 Would you be able to determine that?

24 A When a specific search term was run in the
25 program?

1 Q Yes.

2 A No. No, not a specific search term. When he
3 double-clicked on a file to download, that's very easy to
4 determine those times.

5 Q And with regard to the files that you found
6 or that you allegedly found on his computer, are you able
7 to definitely determine the date that those were
8 downloaded?

9 A We would have been able or we were able to
10 determine the date and time that those were downloaded to
11 the computer through the creation times, the modified
12 times, but also the program settings. But that's only
13 one component of it.

14 Computer time can be manipulated, and it's
15 all based on what time you tell the computer it is. So
16 we look for artifacts that corroborate that the clock
17 hasn't been changed or is also set to the accurate time.
18 So dates and times are only one small component of a
19 computer investigation.

20 Q Could these files that you found on
21 Mr. Skinner's laptop have been recovered without forensic
22 tools?

23 A What do you --

24 Q I mean, let's say Mr. Skinner wanted to go in
25 and look at a file that allegedly had been on his laptop

1 prior to that time. What would it take for him to get
2 into that? Would he need some sort of a --

3 A Well, for anything that resides on a
4 computer, it's usually viewable in a user's account. You
5 can't necessarily view files in another person's account
6 on the computer unless there are permissions that are
7 granted.

8 In this one in particular, there were
9 multiple user accounts, including, I believe, the Mike
10 name that you mentioned. But there was a Rod one also,
11 and Sophie accounts. So you could look at what's on the
12 computer within your storage area.

13 As far as forensic tools to recover something
14 that has been deleted, there is software out there that
15 people can buy that's not technically forensic. And
16 there are file undeleters or file recoverers that they
17 can be bought online or at some stores.

18 MR. REED: I'm going to read you something
19 from -- it's contained in the declaration of our expert,
20 Tami Loehrs, and --

21 MR. PLATER: Hold on a minute. Is that
22 attached to your supplement?

23 MR. REED: Yes. It's --

24 MR. PLATER: Do you mind if I get there?

25 MR. REED: Sure.

1 MR. PLATER: Are you going to show the
2 witness this?

3 MR. REED: I was going to read it. I can
4 show it to him, certainly. It's paragraph 15 on page
5 five. I'm going to read you, starting with the fifth
6 line down starting with "Knowing." Let's see. I'll just
7 read it, I guess.

8 "Knowing receipt, possession, or distribution
9 can only be determined through an in-depth analysis of
10 the entire piece of media to determine 1: The original
11 source of the data; 2: The context in which it was
12 copied, saved, or downloaded; 3: The path the data took
13 through the system to arrive at its present location; 4:
14 Dates and times the data was created, modified, and
15 accessed. 4: Whether the data was ever opened or
16 viewed. Five: And who may have been at the keyboard
17 during the activity.

18 In order to make the determinations, the
19 defense examination and analysis includes, but is not
20 limited to 1: Recovery of deleted data, 2: Advanced
21 searching processes and a review of thousands of search
22 results; 3: Locating, reviewing, testing, and
23 understanding various installed software applications.
24 4: Locating, reviewing, testing, and understanding
25 various viruses, Trojans, and malware present.

1 Five: Locating, reviewing, testing, and
2 understanding Internet files and how they relate to
3 various users and Internet activities. 6: Extracting
4 and reviewing registry files, log files, HTM files,
5 etcetera."

6 Would you agree with most of that?

7 MR. PLATER: Hold on. I don't know if this
8 witness can answer that question, but let me lodge an
9 objection.

10 This statement is asking for a legal
11 conclusion about what constitutes knowing receipt,
12 possession, or distribution. That's not for this witness
13 to answer. And frankly, we think you ought to follow the
14 statutory definition and not the one that she wants to
15 make up as her expert wants to do.

16 But if you understand that, you can try to
17 answer it.

18 THE WITNESS: Well, I was going to say I
19 agree with that. And I disagree with what she wrote
20 here, which is very, very consistent with what I've seen
21 in her writings before anyway.

22 But no, that is not the only way this can be
23 determined. It's determined by many factors, including
24 interviews, including other corroborating evidence.

25 For a final analysis to prove something in

1 court, it also has a different burden than a
2 probable-cause standard. But no. Many of these items
3 that she's listing, some of them may be absolutely
4 relevant. Every one of them may be absolutely relevant.
5 But to go as far as going to knowing receipt, possession,
6 distribution, that's based on a multitude of factors to
7 include other items also.

8 Q With regard to what you found in your
9 preview -- and I don't know if you looked at your report,
10 which is many pages long. I've got it here if you want
11 to see the first few pages of it.

12 A It should actually -- it shouldn't be too
13 long because it wasn't a full analysis.

14 Q Actually, there's, you know, you have a
15 column for date and time.

16 A Uh-huh.

17 Q And then file name or number or whatever, and
18 then -- but with regard to that, is that basically what
19 you recovered, or did you actually see images on a
20 computer?

21 MR. PLATER: I don't understand your
22 question: Is that what you recovered? Are you referring
23 to what he listed in his report?

24 MR. REED: Well, the report that's got
25 several columns. Have you seen that one?

1 MR. PLATER: No. Maybe we have it, but I
2 don't have it in front of me now, I suppose.

3 MR. REED: Okay.

4 THE WITNESS: There was absolutely child
5 pornography on the computer because I described it in the
6 reports for the probable cause. And I described -- I
7 would have described what was depicted in the images or
8 videos.

9 Q (BY MR. REED:) Well, let me ask you this.
10 When you go into the computer and you find a
11 file number and maybe some, you know, or the date and
12 time of the download -- and then I guess there's also a
13 description of some kind. When you go in there, do you
14 find that file name and number only, or can you actually
15 see an image, or how does that work?

16 A Through the forensic process, it's found
17 multiple ways. One, often or sometimes by file name. If
18 it appears to be a video file, for example, the majority
19 of child pornography files that we find on individual's
20 computers engaging in peer-to-peer, they're very graphic,
21 very explicit file names, so we would see those. And
22 then we would play the video or open up the image to see
23 what it depicts.

24 But there are also processes where we would
25 search only for videos and images and display those and

1 then work backwards to determine where that picture or
2 video is residing on the computer and when it got there
3 and whose account it may be in and other information.

4 Q Okay. So you can go in there and actually
5 see the image or play a video?

6 A Yes.

7 Q I may have asked this before, and this is
8 actually my final question. How do you confirm that on
9 specific dates, file sharing was running with a child
10 porn file available for distribution?

11 A Multiple ways. One way is we actually
12 download it for Mr. Skinner. We downloaded files from
13 him so we know that the computer was up and running when
14 those files were downloaded.

15 But two, peer-to-peer programs are very good
16 at creating file dates. And the final dates -- and I
17 should say creating file dates and times and then the
18 final date and time, it shows us when the file was first
19 initiated to be downloaded and when the file was actually
20 finished being downloaded. And ultimately, it was now
21 fully residing on the computer.

22 So those dates and times of those files, as
23 long as they're a shareable file -- because just because
24 if somebody has child pornography, for example, on an
25 external USB drive doesn't make it a shareable file. We

1 look within the peer-to-peer program to see if it's a
2 shareable file, if it's in the shared directory, or if
3 it's marked as shareable or if we downloaded it.

4 Q And that would be in the file-sharing
5 program, the dates and times that --

6 A Those would be with the -- well, it depends
7 on the program, because it could reside in the program.
8 But they would typically be with the -- it would be the
9 metadata associated with that specific file. So the file
10 creation, modified, last written time, all dependent upon
11 what version of Windows they have and whether or not
12 their clock is accurately set.

13 Q And that's what you used in this case to
14 determine the date and time that it was downloaded?

15 A Yes. I always look for date and time of the
16 computer, whether it's correctly set, any evidence of
17 clock manipulation because that gives me a starting point
18 of the other files that reside on the computer if they're
19 accurate on their dates and times.

20 MR. REED: Can I have a five-minute break?

21 (Recess.)

22 Q (BY MR. REED:) I just have one follow-up
23 question. Was there any way for you to determine, in
24 looking at the laptop, if this was the original hard
25 drive in that computer?

1 A If it was the original hard drive in that
2 computer?

3 Q Yes.

4 A No, I would have no idea to say that right
5 now if it was or not. I don't recall the brand or model
6 or anything from it. And then even in that case, the
7 computer that ships, the manufacturer may keep track of
8 the hard drive, but you can swap out the same brand hard
9 drive and not know.

10 MR. REED: All right. Thank you. That's all
11 I have.

12 MR. PLATER: I don't have any questions.
13 Thank you.

14 (The deposition concluded at 2:18 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Nicole J. Hansen, Certified Court Reporter,
4 State of Nevada, do hereby certify:

5 That I reported the deposition of Dennis Carry,
6 commencing on Monday, November 5, 2018, at 1:30 p.m.

7 That prior to being deposed, the witness was
8 duly sworn by me to testify to the truth. That I
9 thereafter transcribed my said shorthand notes into
10 typewriting and that the typewritten transcript is a
11 complete, true and accurate transcription of my said
12 shorthand notes. That prior to the conclusion of the
13 proceedings, the reading and signing was requested by the
14 witness or a party.

15 I further certify that I am not a relative or
16 employee of counsel of any of the parties, nor a relative
17 or employee of the parties involved in said action, nor a
18 person financially interested in the action.

19 In witness whereof, I hereunto subscribe my
20 name at Reno, Nevada, this 12th day of November, 2018.

21

Nicole J. Hansen

22

23

NICOLE J. HANSEN, CCR NO. 446

24

25

1 ERRATA SHEET

2

3

4

5 I declare under penalty of perjury that I have read the

6 foregoing _____ pages of my testimony, taken

7 on _____ (date) at

8 _____ (city), _____ (state),

9

10 and that the same is a true record of the testimony given

11 by me at the time and place herein

12 above set forth, with the following exceptions:

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

RODERICK STEPHEN SKINNER,

Petitioner,

Case No. CR14-0644

vs.

Dept. No. 8

ISIDRO BACA, WARDEN, NORTHERN
NEVADA CORRECTIONAL CENTER.

Respondent.

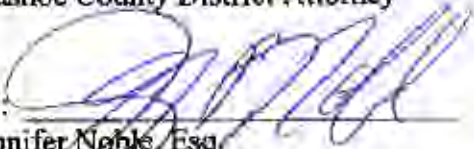
STIPULATION FOR ADMISSION OF EVIDENCE

Petitioner RODERICK STEPHEN SKINNER, by and through his court-appointed counsel Edward T. Reed, Esq., and the Respondent, by and through his counsel Jennifer Noble, Esq., Chief Appellate Deputy, Washoe County District Attorney's Office, hereby stipulate that the attached document labeled "Evidence Release" was signed by a Washoe County Deputy District Attorney directing the agency whom it was directed to release evidence in the above-entitled case involving Roderick Skinner pursuant to the agency's policies, and should be admitted into evidence as such at the evidentiary hearing in this matter.

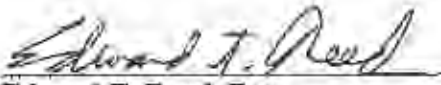
Pursuant to NRS 239B.030, the undersigned do hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 23rd day of September, 2019.

Christopher Hicks
Washoe County District Attorney

By: 
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Chief Appellate Deputy
Washoe County District Attorney's Office
P.O. Box 11130
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ATTORNEY FOR PETITIONER

**WASHOE COUNTY DISTRICT ATTORNEY
EVIDENCE RELEASE**

May 24, 2016

TO WASHOE COUNTY SHERIFFS OFFICE and SPARKS POLICE DEPARTMENT EVIDENCE CUSTODIAN

AGENCY CASE NUMBER: WC14-000485 and

DA #: 14-7319 / 13-175580

DEFENDANT: RODERICK STEPHEN SKINNER

COURT CASE NUMBER: CR14-0644; CR13-1601

YOU ARE HEREBY NOTIFIED THAT THIS OFFICE NO LONGER REQUIRES THE RETENTION OF THE FOLLOWING EVIDENCE WHICH MAY BE RELEASED PURSUANT TO YOUR AGENCY'S POLICY:

Complete Release

Photograph prior to release (NRS 52.385)

Pursuant to NRS 52.385, the evidence may be released to the person listed below unless your agency has been advised of a competing claim of ownership.*

(please print name and address)

Please refer to attached list identifying owners and specific properties.

Partial Release

Photograph prior to release (NRS 52.385)

Pursuant to NRS 52.385, the following items of evidence may be released to the person listed below unless your agency has been advised of a competing claim of ownership.*

(please print name and address)

Refer to Control # where possible. If money, state exact amount

Please refer to attached list identifying owners and specific properties. The remainder of the evidence is to be held until further disposition.

Owners(s) Unknown: Based upon insufficient information available to identify or locate an owner, you may dispose of the property in conformance with your agency's policy.

Narcotics Destruction: All narcotics and paraphernalia may be destroyed.

Weapons Disposition: Disposition may be made pursuant to NRS 202.340 and in conformance with your agency's policy.

Pawnbroker Notice:


Name and Address:

Notice is hereby given that the property listed herein will be released to the claimed owner identified above at the conclusion of 7 days from the date of this release unless you submit to us and we receive a claim to such property in writing prior to that date.

☒ Dispose of all remaining evidence pursuant to your department policy.

Other _____

*In the event of competing claims, you should hold the property until you receive a court order or a release of claim. Please consult with counsel for your agency.


MICHAEL BOLENBAKER
DEPUTY DISTRICT ATTORNEY

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-09-26 13:37:47.667.

JOHN PETTY, ESQ. - Notification received on 2019-09-26 13:37:45.467.

DIV. OF PAROLE & PROBATION - Notification received on 2019-09-26 13:37:44.453.

CHRISTOPHER FREY, ESQ. - Notification received on 2019-09-26 13:37:43.798.

EDWARD REED, ESQ. - Notification received on 2019-09-26 13:37:47.183.

CHRISTINE BRADY, ESQ. - Notification received on 2019-09-26 13:37:46.84.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

09-26-2019:13:35:25

Clerk Accepted:

09-26-2019:13:36:44

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Stipulation

Filed By:

Court Clerk ADeGayne

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

DIV. OF PAROLE & PROBATION

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

EDWARD TORRANCE REED, ESQ. for
RODERICK STEPHEN SKINNER

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

RODERICK STEPHAN SKINNER,

Petitioner,

v.

Case No. CR14-0644

Dept. No. 8

ISIDRO BACA, WARDEN OF NNCC,
AND NEVADA ATTORNEY GENERAL,

Respondents.

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

Before the Court is a *Petition for Writ of Habeas Corpus (Post-Conviction)*, timely filed October 7, 2016, by RODERICK STEPHAN SKINNER ("Skinner" or "Petitioner"), Defendant in this matter. Respondents, THE STATE OF NEVADA, opposed the request for habeas relief in its *Answer to Amended Petition for Writ of Habeas Corpus (Post-Conviction)*, filed November 22, 2016. A *Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)* was subsequently filed on January 12, 2018 by Petitioner's counsel Edward T. Reed, Esq. The State filed an *Answer to Supplemental Petition for Writ of Habeas Corpus* on February 26, 2018. Both parties subsequently submitted pre-hearing briefs in September 2019. The matter proceeded to an evidentiary hearing on September 26, 2019.

Having reviewed the Petition, the accompanying briefs, the arguments of counsel, and being fully apprised of the issues therein, the Court **DENIES** the *Petition*. The Court sets forth the following reasons for this denial.

BACKGROUND

Based on the testimony presented at the evidentiary hearing, the parties' pre-hearing briefings, and other documentary evidence submitted, the Court is aware of the following facts:

According to the record, Skinner was charged with several offenses in two different cases, stemming from the same event. In CR13-1601, Skinner was charged with Open and Gross Lewdness arising out of an incident that took place in Skinner's apartment. It was alleged that with other children present, Skinner was viewing pornography on his computer while simultaneously masturbating with his two-year-old daughter on his lap. A search warrant for Skinner's computer was subsequently authorized by Sparks Justice Court. An execution of the warrant produced Skinner's computer, multiple hard drives, and disclosed child pornography. See Exhibit 25, Police Report of Sgt. Carry, p. 2. Reno Justice Court subsequently authorized a second search warrant in which Washoe County Sheriff's Office forensic analyst Dennis Carry examined the computer. Sgt. Carry found, among other things, that there was file sharing and encryption software on the computer as well as dates indicating that Skinner was the user of the computer at the time the pornography was being viewed.

The findings of the forensic analysis resulted in Skinner being charged with twenty felony counts of Promotion of a Sexual Performance of a Minor Age 13 or Younger and Possession of Visual Pornography of a Person Under the Age of 16 Years.¹ Each Promotion charge alone carried a sentence of life in prison with the possibility of parole in ten years and each Possession charge carried a possible punishment of one to six years in prison.

Christopher Frey ("Frey") was appointed Skinner's counsel.² Pursuant to plea negotiations with the State, Skinner agreed to plead guilty to one count of Promotion of a Sexual

¹ More specifically, per the State's Brief, there were ten counts of *Promotion of a Sexual Performance of a Minor*, and ten counts of *Possession of Visual Pornography*.

² The Court notes that Mr. Frey, formerly a Washoe County Public Defender, is now a Federal Public Defender.

1 Performance of a Minor over 14 in exchange for all other charges being dropped and the Open
2 and Gross Lewdness charge in CR13-1601 being dismissed. Skinner subsequently signed a
3 *Guilty Plea Memorandum* ("Memorandum"), fully acknowledging his plea. At that time, Skinner
4 was canvassed by presiding Judge David Hardy and placed under oath, acknowledging his guilty
5 plea, and was fully informed that he may or may not receive probation as Judge Hardy had the
6 discretion to choose whether to follow the plea agreement. Skinner also acknowledged the
7 accuracy of the *Memorandum* and Judge Hardy accepted Skinner's guilty plea as being knowing
8 and voluntary.

9 Weeks later, during a three-phase sentencing, Frey presented a lengthy Sentencing
10 Memorandum in mitigation, which was "400 pages." *See Sentencing Proceeding Transcript* p.
11 4. During the hearings, Mr. Frey presented three witnesses on behalf of Skinner, and in which the
12 Court was also apprised of additional evidence.³ This evidence included testimony from the
13 Division of Parole and Probation that Skinner's young daughter Sophie was diagnosed with
14 genital warts, allegedly obtained through sexual abuse. Furthermore, Queensland Police
15 Department had also investigated Skinner for his travel plans to Thailand for engaging in child-
16 sex tourism. In addition, Skinner purportedly had plans to have built a more secure computer for
17 the purpose of storing child pornography. *See State's Brief*, p.5. Moreover, Skinner was found to
18 meet the criteria for pedophilic sexual orientation and with unmonitored access to the internet, all
19 child pornography victims remained at risk. Upon conclusion of the sentencing hearings, Judge
20 Hardy sentenced Skinner to life with the possibility of parole after five years.

21 On direct appeal, Skinner was represented by Chief Deputy Public Defender for the
22 Appellate Division John Petty ("Petty"). Petty argued that Skinner's sentencing was an abuse of
23 discretion and he should have received probation. The direct appeal was denied and the Nevada
24 Court of Appeals affirmed the Judgment of Conviction on July 14, 2015.

25 Skinner now submits his *Petition for Writ of Habeas Corpus* and *Supplemental Petition*
26 alleging seventeen separate grounds for relief. In summary, Skinner's *Petition* asserts multiple

27 ³ The Court notes that Mr. Frey's representation also included procuring a witness to travel all
28 the way from Australia, as well as setting up a live feed with Skinner's oldest daughter in
Australia.

1 ineffective assistance of counsel claims on the part of Washoe County Public Defenders Frye and
2 Petty as well as destruction of evidence claims. The Court now addresses each of these claims in
3 turn and finds the following:

4 STANDARD OF REVIEW

5 I. Post-Conviction Petition for Writ of Habeas Corpus.

6 "Any person convicted of a crime and under sentence of death or imprisonment who
7 claims that the conviction was obtained, or that the sentence was imposed, in violation of the
8 Constitution of the United States or the Constitution or laws of this State . . ." may file a post-
9 conviction petition for writ of habeas corpus. NRS 34.724(1). A defendant seeking post-
10 conviction relief must support claims with specific factual allegations that if true would entitle
11 him to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (per curiam). In
12 cases where the conviction was obtained through a plea of guilty, a petition for writ of habeas
13 corpus is limited to claims that the plea was "involuntarily or unknowingly entered or that the
14 plea was entered without effective assistance of counsel." NRS 34.810(1)(a).

15 II. Ineffective Assistance of Trial and Appellate Counsel.

16 The Sixth Amendment guarantees individuals in criminal cases the right to counsel to
17 protect their fundamental right to a fair trial. This right includes the right to effective assistance
18 of counsel.

19 The district court reviews whether a person has received the effective assistance of
20 counsel under *Strickland v. Washington*. See *Strickland v. Washington*, 466 U.S. 668, 686-87
21 (1984); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). *Strickland* sets out a
22 two prong test for assessing whether there was effective assistance of counsel. First, the Court
23 must determine whether counsel's performance was deficient such that it fell below an objective
24 standard of reasonableness. *Kirksey*, 112 Nev. at 988, 923 P.2d at 1107 (citing *Dawson v. State*,
25 108 Nev. 112, 115, 825 P.2d 593, 595 (1992)). This prong takes into account the proper measure
26 of an attorney's performance under prevailing professional norms and the totality of the
27 circumstances. *Strickland*, 466 U.S. at 688; *Homick v. State* 112 Nev. 304, 310, 913 P.2d 1280,
28 1285 (1996). Second, the deficient performance must have prejudiced the defense. *Id.* Prejudice

1 is demonstrated when there is a reasonable probability that, but for counsel's errors, the result of
 2 the proceeding would have been different. *Kirksey*, 112 Nev. at 988, 923 P.2d at 1107. A
 3 reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.*

4 Petitioner is required to prove disputed factual allegations underlying his ineffective
 5 assistance of counsel claim by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001
 6 1013, 103 P.3d 25, 33 (2004) ("choosing consistency with federal authority, we now hold that a
 7 habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-
 8 assistance claim by a preponderance of evidence."). Whether this burden of proof has been
 9 shown is found by assessing whether both elements of *Strickland* have been met. *See Kirksey*,
 10 112 Nev. at 988, 923 P.2d at 1107 ("a court may consider the two elements in any order and need
 11 not consider both prongs if the defendant makes an insufficient showing on either one"). Where
 12 an insufficient showing on either element has been made, the claim must be denied. *Id.*

13 FINDINGS OF FACT AND CONCLUSIONS OF LAW

14 1. *Ground One: Failure of Counsel to Challenge Lack of Corpus Delicti.*

15 In *Ground One* for relief, Skinner alleges that the prosecutor knowingly lacked corpus
 16 delicti in indicting him.⁴ Petitioner claims, this "lack of corpus delicti" is exhibited by there
 17 being no evidence of "download by means of file sharing software" upon which Skinner could
 18 have been indicted. He contends that his counsel, Mr. Frey, was ineffective for failing to
 19 challenge the sufficiency of evidence upon this ground. Thus, Skinner maintains he was
 20 deprived of both his due process rights and his right to effective assistance of counsel as
 21 guaranteed by the Constitution.

22 The showing of a corpus delicti is a threshold question; one that the State has the burden
 23 of proving and that the State has met in this case. The standard for proving corpus delicti is the
 24 same standard required to bind a defendant for trial. *See Sheriff, Washoe County v. Middleton*,
 25 112 Nev. 956, 961, 921 P.2d 282, 286 (1996); *See also Frutiger v. State*, 111 Nev. 1385, 1389,
 26 907 P.2d 158, 160 (1995) (finding that "before a person can be held for trial, the grand jury must

27
 28 ⁴ The Court also now clarifies that contrary to Skinner's *Petition*, Petitioner was not indicted. Rather, an *Information* was filed by the State.

1 determine that there is probable cause to believe that an offense (otherwise known as corpus
2 delicti) has been committed, and the defendant has committed it"); *Middleton, supra*, 112 Nev. at
3 961, 921 P.2d at 286 ("we now clarify that at the preliminary hearing stage, the State's burden
4 with respect to the corpus delict is the same as its burden to show probable cause, [they] must
5 present evidence supporting a "reasonable inference"). Corpus delicti may be established by the
6 State solely with circumstantial evidence. *See generally West v. State*, 119 Nev. 410, 418, 75
7 P.3d 808, 813 (2003) (finding that for murder convictions, the State may establish corpus delicti
8 solely with circumstantial evidence, notwithstanding the lack of a body or actual cause of death).
9 Indeed, when it comes to the preliminary hearing stage, "probable cause to bind a defendant over
10 for trial may be based on slight, [or] even marginal evidence because it does not involve a
11 determination of guilt or innocence of the accused." *Middleton, supra*, 112 Nev. at 961, 921 P.2d
12 at 286 (quoting *Sheriff, Washoe County v. Hodex*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980)).

13 First, the Court notes that Skinner's argument is filled with vague assertions, but no
14 specific contentions as to how the State failed to show corpus delicti or what exactly the failure
15 of proof was for the file sharing software. Second, to the extent the Court is able to comprehend
16 Skinner's argument, it is readily belied by the record. Petitioner originally faced multiple charges
17 in CR13-1601 and CR14-0644. CR13-1601 contained one charge. CR14-0644 had twenty
18 counts, and the Court refers to the Background above for the specific allegations.

19 Second, testimony presented at the Evidentiary Hearing produced considerable evidence
20 of guilt. Specifically, not only did the State's forensic expert, Sergeant Carry, find pornography
21 and evidence of file sharing software and encryption on Skinner's computer, but Petitioner's own
22 defense expert, Leon Mare, was able to corroborate the State's findings.⁵ The evidentiary
23 hearing also revealed that there were eyewitnesses to some of Skinner's charges.⁶ These facts
24 certainly weigh heavily in there being more than enough evidence for a probable cause finding.

25
26 ⁵ For example, Exhibit 25 of the *Petition* states that "child pornography has already been
27 recovered on the computer and evidence at this time indicates Skinner's use of the computer
during those time periods..."

28 ⁶ Notably, eyewitnesses are alleged to have seen pornography-related images on Skinner's own
laptop and per the search warrant transcripts, Skinner told the eyewitnesses what he was viewing.

1 Aside from that fact, pursuant to a plea deal reached by both parties, CR13-1601 was
2 dismissed and the State agreed it would pursue the single charge alleged in the *Information*. It
3 was further stipulated that the State would not file any additional charges resulting from the
4 arrest. Arraignment Proceedings Transcripts (APT) 4:9-14. During arraignment, Judge David
5 Hardy read the single account alleged in the indictment that included a statement that there were
6 "over 50 images or videos of underage children..." See APT 7:8-15; See also *Criminal*
7 *Information*. Both parties stipulated to a factual basis for the allegation alleged in the
8 *Information*, and after a plea canvas, Skinner pled guilty. There was never a point during
9 proceedings or otherwise that would have lent itself to Petitioner's theory that the State had a
10 lack of corpus delicti. If anything, the State had more than sufficient evidence to charge Skinner
11 with all twenty-one counts initially alleged. Thus, Petitioner's contention is unfounded.

12 The Court also determines that there is no basis to Skinner's contention that Mr. Frey was
13 ineffective in failing to challenge the sufficiency of the evidence on the charge. Rather, as
14 discussed above, Skinner had multiple charges pending against him at the time. Mr. Frey used
15 his experience as a Public Defender to negotiate Skinner's multiple life sentences down to a
16 single count, as noted above. Mr. Frey's conduct is the essence of effective assistance of counsel.
17 On this ground, there is very clearly no indication that Mr. Frey's representation came close to
18 falling below the "prevailing professional norms" or objective standards of reasonableness.
19 Moreover, this Court is not persuaded that on Ground One, but for counsel's errors the result of
20 the proceeding would have been different, as the Court is unable to glean any error in Mr. Frey's
21 representation.

22 Ultimately, with regard to *Ground One*, Skinner's *Petition* is both unsupported and belied
23 by the record and is accordingly **DENIED**.

24 **2. *Ground Two: Failure of Counsel to Challenge NRS 200.720.***

25 In the *Second Ground* for relief, Skinner avers that his counsel was ineffective for failing
26 to challenge a perceived misapplication of NRS 200.720, and this application was in direct
27 contravention of legislative intent. Skinner argues the statute is overbroad and the terms defined
28 therein are not applicable to him. More specifically, Petitioner contends the term promote means

1 procure under NRS 200.700 and he has "not procured anything." See *Petition*. It appears as
2 though the Petitioner is not challenging that he was charged, but rather, *which statute* he was
3 charged under. If anything, Skinner seemingly contends he should have been prosecuted under a
4 different statute.

5 First, the Court finds no merit to Skinner's contention that essentially, NRS 200.720 is
6 inapplicable to him. While Skinner is correct in his assessment that legislative intent is a factor in
7 statutory interpretation, the plain meaning rule prevails. See *State v. Lucero*, 127 Nev. 92, 95,
8 249 P.3d 1226, 1228 (2011) (citing *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957,
9 959 (1983)). That is, it is well established that when "the language of a statute is plain and
10 unambiguous, and its meaning clear and unmistakable, there is no room for construction and the
11 courts are not permitted to search for its meaning beyond the statute itself." *Nelson v. Heer*, 123
12 Nev. 217, 224, 163 P.3d 420, 425 (2007) (quoting *State v. Jepsen*, 123 Nev. 217, 196, 209 P.501,
13 502 (1922)). It is only when the statute is capable of being understood in two or more senses by
14 reasonably informed persons or that the statute is ambiguous that the Court may then look
15 beyond the statute in determining legislative intent. *Lucero, supra*, 127 Nev. at 95-96, 249 P.3d
16 at 1228. Moreover, considering and giving effect to the statute's plain meaning is "the best
17 indicator" of the Legislature's intent. *Dezzani v. Kern & Assocs.*, 412 P.3d 56, 59 (Nev. 2018).

18 The Court finds that the statute is neither vague nor ambiguous and the plain meaning of
19 the statute must be applied. As a result, the State properly prosecuted Skinner under this statute.
20 Additionally, this Court is inclined to agree with the State, that Petitioner has provided no
21 argument as to *how* the statute is vague nor how it is *not* subject to the plain meaning rule.

22 Secondly, this Court notes that a district attorney is vested with considerable discretion in
23 deciding whether to prosecute a particular defendant and necessarily involves a degree of
24 selectivity. *Salaiscooper v. Eighth Judicial Dist. Court ex rel. County of Clark*, 117 Nev. 892,
25 903 34 P.3d 509 (2001); See also *State v. Barman*, 183 Wis.2d 180, 515 N.W.2d 493, 497
26 (Cl.App.1994) (reasoning that the prosecuting attorney has great latitude in determining *which of*
27 several related crimes to file against a defendant, thus this discretion involves a degree of
28

selectivity).⁷ The Supreme Court has likewise recognized that the prosecution is the one vested with the authority to choose *which charge* to bring against a defendant. See *U.S. v. Armstrong*, 517 U.S. 456, 464 116 S. Ct. 1480, 1486, 134 L. Ed. 2d 687 (1996) (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364, 98 S.Ct. 663, 668, 54 L.Ed.2d 604 (1978)) (finding that “so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute and what charge to file or bring before a grand jury generally rests *entirely in his discretion*”). (*Emphasis added*). Thus, it is the prosecution alone which has the ultimate decision which statute to prosecute a defendant under, not the defendant.

Furthermore, there has been no evidence presented that, with respect to the ineffective counsel argument, Mr. Frey acted ineffectively or in a way that prejudiced Skinner. Rather, Mr. Frey’s choice not to challenge the charge was a strategic decision. See *Means*, *supra*, 120 Nev. at 1011, 103 P.3d at 33 (“the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy”).

Thus, based on the aforementioned findings, this Court finds that *Ground Two* of the Petition is **DENIED**.

3. *Ground Three: Disparate Treatment.*

In his third ground, Skinner contends that he was subject to disparate treatment. Specifically, Skinner seemingly argues that other similarly situated defendants, i. e., other child pornography offenders, have been prosecuted differently. That is, they were not prosecuted under NRS 200.720 as Skinner was in the present case.

The Court finds no merit in Skinner’s contention. In particular, Petitioner fails to provide concrete examples of other “similarly situated” pornography offenders who have been not been subject to such prosecution. Rather, Skinner’s claims consists of merely “bare or “naked” claims, unsupported by any *specific* factual allegations that if true would “entitle him to relief.” *Hargrove*, *supra*, 100 Nev. at 502, 686 P.2d at 225 (1984). With an argument devoid of facts to support such a contention, Petitioner’s argument cannot stand.

⁷ This case is not cited for any binding effect, simply for explanation of its analysis.

1 Therefore, because Petitioner advances allegations lacking facts and arguments from
2 which the Court can glean a purpose, nor valid grounds for making such a claim, Petitioner's
3 claims have no basis. Thus, the Court **DENIES** Skinner's *Petition* on Ground Three.

4 ***4. Ground Four: Failure of Counsel to Challenge Validity of Search Warrant.***

5 In his Fourth Ground, Skinner alleges that the affidavit was deliberately false, contained
6 material misrepresentations, and was made in bad faith. In addition, the affidavit itself was not
7 sufficiently particular. Petitioner contends that that his counsel was ineffective because Mr. Frey
8 failed to challenge the validity of the search warrant on this basis. Moreover, Skinner opines that
9 Mr. Frey knew Skinner was under medical duress at the time of plea negotiations and also failed
10 to adequately investigate the case.

11 First and foremost, this Court recognizes that Skinner's argument is belied by both Mr.
12 Frey's testimony specifically, and the record as a whole. At the time of his representation, Mr.
13 Frey was a seasoned public defender with experience in filing motions to suppress based upon
14 the validity of search warrants. However, in Skinner's case, Mr. Frey reviewed the affidavits
15 supporting the search warrant, the search warrants themselves, and police reports. Evidentiary
16 Hearing Transcript (EHT) 155. In reviewing all pertinent information, Mr. Frey was "unable to
17 glean" any information that would raise a "meritorious" Fourth Amendment challenge. EHT
18 155:22-24. Hence this Court finds that Mr. Frey's decision to not challenge the validity of the
19 search warrant was a strategic one, not one that in any way supports an ineffectiveness claim. *See*
20 *Means, supra*, 120 Nev. at 1011, 103 P.3d at 33.

21 Moreover, this Court finds that Mr. Frey was acting in accordance with the rules of
22 professional responsibility governing all Nevada attorneys. Nevada Rules of Professional
23 Conduct provide in pertinent part that:

24 "a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein,
25 unless there is a basis in law and fact for doing so *that is not frivolous, which includes a*
26 *good faith argument* for an extension, modification or reversal of existing law. A lawyer
27 for the defendant in a criminal proceeding or the respondent in a proceeding that could
28 result in incarceration, may nevertheless so defend the proceeding as to require that every
element of the case be established."

1 See N.R.P.C. 3.1 (*emphasis added*). Mr. Frey testified that he found no "meritorious" Fourth
2 Amendment challenge. Were Mr. Frey to have filed such a Motion, knowing it was frivolous, it
3 could have placed him at risk of violating professional standards.

4 With respect to Skinner's medical duress portion of this claim as well as his notion that
5 Mr. Frey failed to adequately investigate, the Court addresses it *infra*, as part of the voluntariness
6 of the plea agreement and Ground Eleven and thus incorporates those analyses into Ground Four.

7 Ultimately, there is nothing in the record to suggest that, as it pertains to Ground Four,
8 Mr. Frey's representation was anything but effective in defending Skinner. Because Skinner's
9 contention is belied by the record and is in direct contravention of Mr. Frey's testimony, the
10 claim is **DENIED**.

11 **5. Ground Four (A): Search Warrant Timing.**

12 Petitioner also contends that his apartment was searched eight minutes before the time
13 reported in the search warrant affidavit. More specifically, Skinner contends that the search
14 warrant was authorized at 10:08 p.m.; however, the police commenced their search at about
15 10:00 p.m., eight minutes before the search warrant was authorized.

16 The Court finds that Skinner's assertion is not a meritorious claim for relief. Pursuant to
17 NRS 34.720, a post-conviction petition for a writ of habeas corpus is available to address two
18 types of claims: (1) requests for relief from a judgment of conviction or sentence in a criminal
19 case and (2) challenges to the computation of time that the petitioner has served pursuant to a
20 judgment of conviction." *McConnell v. State*, 125 Nev. 243, 247, 212 P.3d 307, 310 (2009)
21 (internal citations omitted). This means that the scope of a post-conviction habeas relief must
22 challenge the validity of the conviction or sentence. *See Id.*, 125 Nev. at 310, 212 P.3d at 310
23 (reasoning that "a claim that is cognizable in a post-conviction habeas petition must challenge
24 the validity of the conviction or sentence"). Petitioner is making a claim based upon neither of
25 these contentions as he is challenging the *timing* listed in a search warrant. If anything, this is a
26 pre-trial motion which, as this Court has previously addressed, Mr. Frey did not find any
27 "meritorious Fourth Amendment challenge." Thus, this is not a proper basis for post-conviction
28 relief.

1 Therefore, the Court **DENIES** this claim.

2 **6. *Five: Petitioner's Length of Detention.***

3 Petitioner alleges that prior to having his apartment searched, he was detained longer than
4 sixty minutes before being arrested and was not permitted to re-enter the apartment in the
5 meantime.

6 Petitioner is not seemingly challenging either his sentencing or validity of conviction. See
7 NRS 34.720; See also *McConnell v. State*, 125 Nev. at 247, 212 P.3d at 311. Rather, Petitioner
8 argues what amounts to a pre-trial motion. This Court has previously addressed pre-trial issues
9 and refers to the abovementioned analysis.

10 Therefore, the Court **DENIES** the Petition as to Ground Five.

11 **7. *Ground Six: Additional Unlawful Detention Claim.***

12 In ground six of his Petition, Skinner reiterates the same claims as were addressed in
13 Ground Five. He additionally adds that counsel was ineffective in failing to challenge the search
14 warrant upon these grounds. The State contends that this argument is simply an extension of
15 Ground Five and is repeating the same arguments. The Court agrees with the State that these
16 arguments are already alleged in Ground Five.

17 Therefore, Ground Six of Skinner's Petition is **DENIED**.

18 **8. *Ground Seven: Failure of Counsel to Suppress Search Warrant.***

19 In his Seventh Ground for relief Petitioner argues that the warrant authorizing a search of
20 his computer was generalized. Skinner contends that since the search warrant was "unbounded"
21 it violates legal requirements on probable cause, namely that of the particularity requirement. In
22 addition, Petitioner opines that counsel was "clearly ineffective" for not filing a Motion to
23 Suppress the search warrant on these grounds.

24 The Court finds that Petitioner's allegations are belied by the record. First, a search
25 warrant is required to state with particularity the places to be searched or the persons or items to
26 be seized. *Keese v. State*, 110 Nev. 997, 1001, 879 P.2d 63, 66-67, citing the Fourth
27 Amendment and Nev. Const. art I, § 18. In this case, the *Search Warrant* stated exactly this.
28 There was specific evidence set forth that show probable cause for the allegations relating to

1 CR13-1601. Specifically, the search warrant very clearly states the places or things to be
2 searched: a Toshiba laptop, a black Hitachi External Hard drive, a blue Seagate External hard
3 drive, a Samsung hard drive, and two Buffalo hard drives all found at Petitioner's residence. *See*
4 Exhibit 21A of *Petition*, pp. 1-2. The evidence for which officers were looking to seize included
5 the following: evidence corroborating sexual abuse of the victim such as pornography disclosed
6 during the interview, internet searches and website visits involving child abuse, and indicia and
7 timeline event history revealing the suspect's activities. Thus, there is no merit to Skinner's
8 contention that the search warrant was generalized.

9 In addition, the search warrant was also supported by the affidavit of Detective Michel
10 Brown ("Brown"). The affidavit was both informative and described at length the basis for
11 which Det. Brown was requesting a search warrant of the computer and hard drives. First, as an
12 experience detective, Brown had training that computers maintain evidence of web site visits,
13 caches, internet files and search terms, all of which may reveal a user's activity on the internet
14 such as what they googled. *See Affidavit of Det. Brown*, p. 2. Second, the affidavit included
15 details of the initial investigation into Skinner after a child witness informed her mother, and
16 subsequently police, of the inappropriate conduct Skinner displayed while in the presence of the
17 child witness as well as another child and Skinner's own daughter. In pertinent part, it states that
18 Skinner was watching pornography on his computer and masturbating while in the same room as
19 the children. The affidavit further alleged that Skinner went so far as to show the child witness
20 the pornography images he was viewing on the computer in question.⁸ Moreover, Brown
21 described the amount of data that may be stored in the hard drives as "enormous." Thus, a search
22 warrant that is specifically looking into the computer and hard drive's contents along with other
23 pertinent information is corroborated by the record. Therefore, Skinner's allegation that there
24 was no probable cause is wholly without merit.

25 Additionally, Skinner's argument that counsel failed to suppress the search warrant is
26 unfounded. Since the Court has already discussed at length in *Ground Four* why Mr. Frey's

27
28 ⁸ More specifically, the child witness described the images that Skinner showed her on his
computer as "nasty videos."

1 actions were the epitome of effective assistance of counsel and neither fell below the objective
2 standards of reasonableness nor were any error that could have "prejudiced the defense" the
3 Court incorporates the abovementioned grounds into Ground Seven and declines to address it
4 again.

5 Therefore, the Court finds that Petitioner's claims are unsupported by the record and
6 **DENIES** the *Petition* as to Ground Seven.

7 **9. *Ground Eight: Involuntary Guilty Plea and Failure of Counsel to Adequately Explain***
8 ***the Charges.***

9 In his Ground Eight for relief, Skinner contends that his guilty plea was not entered
10 knowingly, voluntarily or intelligently because it was uninformed. He argues that Mr. Frey failed
11 to adequately explain the essential elements of the crime charged. Conversely, had Skinner been
12 explained the elements of his crimes, he would have insisted on going to trial and not taken a
13 plea agreement. Furthermore, Skinner contends that because he was a foreign national he was
14 especially unable to know the nature of the charges being levied against him.

15 "A defendant who pleads guilty upon the advice of counsel may attack the validity of the
16 guilty plea by showing that he received ineffective assistance of counsel under the Sixth
17 Amendment." *Molina v. State*, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004) *citing Hill v.*
18 *Lockart*, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985) (holding that *Strickland*'s two-
19 part test applies to challenges of guilty pleas based on ineffective assistance of counsel).
20 However, guilty pleas are presumptively valid, especially when entered on advice of counsel,
21 and a defendant has a heavy burden to show the district court that he did not enter his plea
22 knowingly, intelligently or voluntarily. *Id.* In determining the validity of a guilty plea, the district
23 court must look to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13
24 P.3d 442, 48 (2000) (finding that "this court will not invalidate a plea as long as the totality of
25 the circumstances, as shown by the record, demonstrates that the plea was knowingly and
26 voluntarily made and that the defendant understood the nature of the offenses and the
27 consequences of the plea").
28

1 The Court finds that the Skinner's contention is wholly belied by the record for a myriad
2 of reasons.

3 A. **Petitioner Entered His Plea Knowingly and Voluntarily Because He Was A**
4 **Sophisticated Party.**

5 First, Skinner is not an unsophisticated party. Prior to his detour to the United States,
6 Skinner had previously served in law enforcement for eight years. More specifically, he was a
7 police officer for the Australian Federal Police for two and a half years and later, Queensland
8 State Police Officer for five and a half years. EHT 100:18-23. Skinner then served an additional
9 twelve months after his car accident and subsequently, two years as an academy driving
10 instructor for the same police department. Defendant further testified that his employment was
11 similar to that of the Nevada Highway Patrol in the form of traffic enforcement and safety,
12 including understanding how to identify drunk drivers.

13 Moreover, as a consequence of his profession, Skinner's job occasionally resulted in
14 contested arrests, meaning, he would have to appear in court. EHT 103:20-22. While Skinner
15 stated he had not been trained on *how* to testify, he admitted that he *had in fact* testified in court
16 "a couple of times." EHT 103:17-20. Petitioner had likely more dealings than the average
17 person to know the interworking of the criminal justice system, albeit an Australian one. It is
18 difficult for this Court to understand how Petitioner now claims he did not comprehend the
19 elements of the charges against him when he was at the very least familiar with criminal justice
20 matters in general. Therefore, Skinner's statements are contradicted by the record.

21 B. **Petitioner's Statements to His Counsel Show That The Guilty Plea Was**
22 **Entered Into Voluntarily.**

23 In Mr. Frey's lengthy evidentiary hearing testimony, he sated that Skinner did not
24 maintain his innocence throughout Mr. Frey's representation nor did Mr. Frey "drag him
25 [Skinner] kicking and screaming to the table and coerce him into a plea to the extent that is the
26 suggestion from Petitioner's counsel." EHT 165:15-17. To the contrary, Skinner made comments
27 to Mr. Frey suggesting that to some degree he knew he was guilty. See EHT 165:18-20. As Mr.
28 Frey puts it, this included "the evidence begin[ing] to compile... and it appeared as if Mr.
Skinner was able to process the fact that perhaps there was evidence here sufficient to convict

him. And his degree of acceptance of responsibility changed." EHT 165:3-9. Moreover, Mr. Frey's assessment of Skinner before entering his plea of guilty was that:

"Mr. Skinner was completely lucid. He understood the terms and examines of the plea agreement. He *understood the charge*. He *understood the elements*. He *understood the facts*. I had no qualms about proceeding to an entry of plea with Mr. Skinner endorsing that as the next step in the representation whatsoever. He did not protest. He did not indicate a lack of understanding. He *endorsed the plea*. He took responsibility for the conduct memorialized in the guilty-plea memorandum. There were no tears. There was no hesitation much. There was no reluctance. There was no non-verbal cues that indicates that he had second thoughts. This was a *joint decision* over the course of a number of weeks....I had zero qualms about proceeding to the entry of plea in this case."

EHT 166-67 (*emphasis added*). Thus, this was not the case of a defendant being ill-informed by his counsel, as Petitioner alleges. Rather, Skinner had a number of days in which to contemplate the charge and was fully and thoroughly explained by counsel all pertinent details as it relates to the plea agreement and charges alleged against him.

As a result, as to Petitioner's contention that counsel's conduct falls below the objective standards of reasonableness, this suggestion is not supported. Moreover, Mr. Frey's conduct as it relates to the voluntariness of the plea agreement did not prejudice Skinner. The Court finds that Mr. Frey thoroughly and adequately explained to Skinner the elements of the charges and repercussions a guilty plea brings with it. Therefore, as to the portion of Ground Seven alleging Mr. Frey was ineffective, Skinner's Petition is **DENIED**.

C. Petitioner's Own Words Indicate He Understood His Plea.

While Skinner contends that he did not understand the charges against him, Petitioner's own words tell a different story. In a statement to the Division of Parole and Probation, in pertinent part, Skinner stated that he "betrayed the values of the community." EHT 127-128. In addition, during sentencing, Petitioner told Judge David Hardy that he was "ripe for it." EHT 130-131.⁹ To the Court, these comments are a very clear indication that he understood the elements of the charges against him. In addition, at one point in time Petitioner was actually

⁹ The Court acknowledges Skinner's contention at the evidentiary hearing that he did not mean "ripe" but rather "right" for the crime. In either case, the Court understands either of these two words to mean that he was knowledgeable of what he had done and the crimes with which he was being charged.

remorseful for his actions. Thus, all indications of Skinner's conduct show this Court that he *did* know the charges entered against him and his plea was done knowingly, voluntarily and intelligently.

D. Petitioner's Guilty Plea Was Given After a Full Canvas.

Skinner's own statements to the Court during the plea canvas are also telling. The Court finds that Skinner's responses give a distinct picture as to the voluntariness of his guilty plea. First, Judge Hardy placed Defendant under oath. Thus this Court can infer that any statements Skinner made to the judge were accurate and truthful.¹⁰ Second, after swearing under oath to do so, Skinner stated to the Court that the decision to plea was his, and his alone. *See Arraignment Transcript (APT)*, p. 5. He was informed that no one could force him to plead guilty. He was informed that he could go to trial and force the State to prove each element of the crime charged. Defendant declined to do so. The State read Skinner the details of the charge against him. *Id.*, at 7. In response to the Court asking Skinner whether he understood the elements that Mr. Bogale had just read, Skinner responded "Yes Your Honor." *Id.*, 7:22. When asked whether Skinner did what he was accused of doing, Mr. Frey stated that they were stipulating to a factual basis of the charge, to which Skinner told the court he understood and agreed and thus conceded that he was guilty. *Id.*, 8:21-24. Judge Hardy subsequently found that Skinner understood both the nature of the charge and its consequences. *Id.*, 9:16-17.

Furthermore, this Court finds that the Petitioner cannot, credibly, on one hand testify *while under oath*, that he fully knew the charges against him, and was entering a knowingly, voluntarily, and intelligent plea, yet on the other hand, claim that those statements are no longer accurate and he never understood the elements of the charge.

Based on the abovementioned findings, the Court finds that there are no basis to Petitioner's argument and the Court **DENIES** the Petition on Ground Eight.

¹⁰ The Court notes that the alternative (which Skinner now seemingly alleges) namely that the statements were involuntarily and not knowingly, would be evidence that Skinner perjured himself when he told Judge Hardy he was going to tell the truth, the whole truth, and nothing but the truth.

10. ***Ground Nine: Failure of Counsel In Engaging in Plea Negotiations While Under Medical Duress.***

2 In his ninth ground for relief, Petitioner opines that his plea was not entered into
3 knowingly, voluntarily, or intelligently as he was suffering from serious medical duress. As a
4 result, Skinner contends that his medical duress overbore his will to make decisions effecting his
5 freedom. More specifically, Skinner argues he suffers from debilitating phantom limb and nerve
6 pain, he has Chron's disease, neck cancer, and other material medical issues.¹¹ Thus, Skinner
7 argues that due to these issues, Petitioner was entitled to adequate medical care, and effective
8 treatment of his pain. Moreover, Skinner claims that Mr. Frey was constitutionally ineffective in
9 "failing to safeguard petitioner's best interest and not engaging in plea negotiations." See
10 *Petition*, Ground Nine.

11 The Court acknowledges that Skinner has a myriad of medical issues and gives that due
12 weight in its decision; however, the Court finds the following. First, Skinner's accident was in
13 the 1980s, nearly thirty years before the events occurring in the present case. EHT 102:10-11.
14 Second, while Skinner may have experienced ongoing medical problems during his stay with the
15 Washoe County Jail, the issues he presents this Court with were several months before he ever
16 entered his plea. Third, while at the Washoe County jail, Petitioner filed several claims with the
17 state. However, those claims never included one for medical duress. More specifically in the
18 evidentiary hearing, the Court notes the following:

19 Ms. Noble: "Did you ever file a grievance related to your claims of
20 mistreatment in the Washoe County Jail?"

21 Skinner: Well, all that had mistreatment and everything which led up to the
22 intentional rupture happened after about 30 days. And then, after I
23 have gone to the hospital and come back, I put in a couple of
grievances about *six months later*, about *unrelated things*.

24 Ms. Noble: So you put in grievances, but not about that?

25 Skinner: No."

26
27 ¹¹ Other material medical issues include: abnormal blood chemistry, liver issues, and
28 inflammation over numerous part of his body all of which he alleges he did not receive timely
treatment for.

1 Fourth this court notes Mr. Frey's testimony about the plea. In relevant part, Mr. Frey
2 stated that, as previously noted, Skinner was "completely lucid" he understood everything, he did
3 not have hesitation or reluctance in entering his plea, but rather, he "endorsed the plea." ¹² EHT
4 167. Additionally, when asked by Mrs. Noble whether Skinner had ever communicated to Mr.
5 Frey that he was only pleading guilty because he was afraid he was going to die in the Washoe
6 County Jail and was innocent, Mr. Frey answered with a resounding "no."

7 Moreover, when asked whether Skinner ever actually told Mr. Frey about his pain,
8 Skinner replied "he knew." But as this Court have previously found, even if Mr. Frey "knew," it
9 is clear from Mr. Frey's testimony and the record that this in no way impacted Skinner's ability
10 to enter a plea. Rather, there is a very clear indication to the court that Skinner was never under
11 so much medical duress that he was unable to make an informed, voluntary and intelligent
12 decision. EHT 168.

13 This Court also considers the action of the plea canvas itself. Skinner was asked multiple
14 questions about his plea. Judge Hardy ensured that Skinner was not just pleading because he was
15 told to, that he was making an informed decision, and that this was a decision that he agreed to.
16 No one forced him to make such a decision, and Petitioner indicated as much to the Court.

17 Therefore, based on the above-mentioned findings, as to Ground Nine of the Petition, the
18 Court **DENIES** Skinner's Petition.

19 **11. Ground Ten: Skinner Himself Did Not Plead Guilty.**

20 In his tenth ground for relief, Petitioner states that he did not plead guilty in the plea
21 canvas, rather, it was Mr. Frey who pled for him. Specifically, Skinner contends that when asked
22 whether he was pleading guilty, Skinner states that he hesitated because he was not sure if he
23 was in fact guilty. At that point, Mr. Frey jumped in and pled guilty for him. Additionally,
24 Skinner opines that he was not "enthusiastic" about pleading guilty as was evidenced by "Judge
25 Hardy engaging in a series of conclusory questions." See Ground 10 of *Petition*.

26 It is evident from the record that the plea was given by Skinner. According to
27 Arraignment Transcripts, Skinner said that it was his decision to plead, his and his alone. APT 5.

28 ¹² The Court has already noted the specific statements of Mr. Frey in previous analysis.

1 He understood no one was forcing him to plea. Thereafter, the record clearly indicates that the
2 *Defendant, not his lawyer*, stated "I enter a plea of guilty Your Honor." APT 8:16. Thereafter,
3 Skinner was asked more than once if he was entering the plea, understood it, and agreed. APT 9.
4 No evidence before the Court suggests that Skinner faltered when giving the plea, asked to
5 change the plea he had just entered, or that his lawyer was giving the plea. Rather, it was only
6 *after* Defendant had stated that he was pleading guilty that Mr. Frey stated that they were
7 stipulating to a factual basis for the charge.

8 A reading of the record at no time evinces that Mr. Frey ever stated that he was entering a
9 plea of guilty on his client's behalf or as Petitioner puts it "stepped in and interjected we plead
10 guilty to the facts." Rather, as Mr. Frey testified, Skinner "accepted responsibility for the
11 conduct that was memorialized within the guilty plea memorandum," there was no hesitation or
12 reluctance, no "nonverbal cues indicating second thoughts." In addition, counsel testified that he
13 did not "coerce him into a plea." Therefore, Petitioner's claims are belied by the record.

14 This Court also notes that the "series of questions" Judge Hardy posed to Skinner, and
15 which Petitioner now contends are evidence of his assertions, are nothing more than a plea
16 canvas conducted regularly on any defendant entering a plea.

17 Therefore, the Court finds that as to Ground Ten, Skinner's Petition is **DENIED**.

18 ***12. Ground Eleven: Failure to Investigate, Interview, and Pursue Available Witnesses.***

19 Petitioner claims that his counsel's performance was below the range of competency
20 required of attorneys in criminal cases. In particular, he avers that Mr. Frey failed to: pursue
21 available defenses, interview witnesses, investigate witness tampering, and commission an
22 expert defense report. Additionally, Skinner claims that Mr. Frey also failed to impeach
23 witnesses during sentencing.

24 Petitioner's claims are noticeably belied by the record, and his argument fails on multiple
25 grounds. First, there was a very clear effort to investigate the case. During the evidentiary
26 hearing, Skinner placed the blame for pornography images on the fact that he had purchased his
27 computer from EBay, there were multiple users of the laptop, and the owner of the apartment he
28 was staying at, Joseph Chipetto had unfettered access to the apartment. The clear inference was

1 that Skinner was claiming it was not him who was viewing the pornography images, but rather
2 Mr. Chipetto. In his testimony, Mr. Frey stated that he did in fact interview Mr. Chipetto. Mr.
3 Frey went through "a number of things that [they] thought were pertinent to the case." However,
4 Mr. Frey found that "the interview did not impact the way that we defended the case."
5 Additionally, even though Mr. Frey may have been aware of Mr. Chipetto's unrestricted access
6 to the apartment, he "did not specifically recall that as a defense strategy that they had
7 entertained... if it was entertained, it was for a brief moment." EHT 160. Moreover, as Mr. Frey
8 pointed out, even though Mr. Chipetto owned the apartment, Frey had clear forensics from the
9 computer which "clearly indicated to [Mr. Frey]... and [his] assessment to a jury would have
10 been that it would have indicated that the user of the computer was Roderic Skinner." EHT
11 160;13:20.

12 This was not the only investigation that Mr. Frey did. Rather, Mr. Frey stated that just
13 some of his investigation included subpoenaing school records of the two young girls who made
14 the initial police report, serving subpoenas on the Washoe County Sherriff's Office, and
15 procuring their own defense expert, Leon Mare, to investigate the hard drive of the computer just
16 as the State's own expert had done. This included viewing multiple spreadsheets that built upon
17 each other, and this Court has previously noted, indicated that the findings corroborated the Sgt.
18 Carry's findings.

19 Moreover, Mr. Frey did extensive work on a sentencing memorandum. In fact, the
20 memorandum was so comprehensive that the State requested time to more fully review it as it
21 was nearly "400 pages" long. Aside from that, part of Mr. Frey's sentencing defense was to
22 arrange from multiple witnesses to be available to testify. This included coordinating for an out
23 of country witness to appear in person, a phone call for Courtney Skinner to testify from
24 Brisbane, as well as other witnesses. As Mr. Frey put it, "we fought our heart out for Mr.
25 Skinner."

26 As a result, on Ground Eleven, there is no evidence to suggest that his counsel's
27 performance was deficient or that Skinner was prejudiced.

28

Therefore, this Court finds that Mr. Frey's conduct did not fall below the objective standard of reasonableness and Skinner's *Petition* is **DENIED**.

13. *Ground Twelve: Failure of Appellate Counsel to Federalize Claims.*

With regard to Skinner's claim that his appellate counsel was ineffective, the two-pronged *Strickland* standard applies to appellate counsel, but with emphasis on the presumption that counsel acted in the interest of best strategy. To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was (1) deficient in that it fell below an objective standard of reasonableness, and (2) the resulting prejudice [was] such that the omitted issue would have had a reasonable probability of success on appeal.

Kirksey, supra, 112 Nev. at 998, 923 P.2d at 1113-14.

Skinner contends that Mr. Petty failed to federalize claims and that Mr. Petty's abuse of discretion argument was neither *the* claim to be raised nor the only claim to be raised on direct appeal.¹³ However, appellate counsel is not required to raise every non-frivolous issue on appeal. *McConnell v. State*, 125 Nev. 243, 253, 212 P.3d 307, 314 (2009) (citing *Jones v. Barnes*, 463 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983)). Rather, appellate counsel is "*most effective* when every conceivable issue is *not* raised on appeal. *See McConnell, supra*, 125 Nev. at 253, 212 P.3d at 314 (citing *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989)) (*emphasis added*).

Moreover, the Supreme Court recognizes that appellate practice bears "natural limitations" which encourage certain forms of brevity or particularity. *Johnson v. State*, 133 Nev. 571, 575, 402 P.3d 1273, 1273 (citing *Knox v. United States*, 400 F.3d 519, 521 (7th Cir. 2005)) ("Lawyers must curtail the number of issues they present, not only because appellate briefs are limited in length but also because the more issues a brief presents the less attention each receives, and thin presentation may submerge or forfeit a point." (internal brackets omitted)). Accordingly, appellate counsel is not *per se* ineffective for omitting a claim for the purposes of promoting claims with a higher likelihood of success. *Id.* at 1274 (citing *Jones*, 463 U.S. at 751—

¹³ See EHT 127:16-20, Skinner stating that "this abuse of discretion ground that he went with, that the judge has abused his discretion in sentencing, was not even an issue really that should have been raised on appeal, and other things should have been raised on appeal."

1 52 (1983) ("Experienced advocates since time beyond memory have emphasized the importance
2 of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or
3 at most on a few key issues.").

4 This Court first notes that Mr. Petty is a seasoned appellate attorney for the Washoe
5 County Public Defender's Office with nearly forty years of experience and found his testimony
6 credible. Second, just as he testified, Mr. Petty drew upon his decades of experience and
7 hundreds of appellate briefs filed over the years to know which claims to raise in Petitioner's
8 case. EHT 143:12-13. In Skinner's case, Mr. Petty testified that because certain pre-trial motions
9 had not been reserved under statute, the appealable issues were limited to solely sentencing
10 issues. EHT 147. A reading of the record clearly evinced that there were no other appealable
11 issues, other than the abovementioned abuse of discretion issue. In addition, while Mr. Petty
12 acknowledged that Skinner had hoped more claims would be raised, namely that of effective
13 assistance of counsel claim, Skinner's suggested claim is prohibited from being raised on direct
14 appeal. Also, there was nothing else in Skinner's multiple letters to Mr. Petty that would be
15 permitted to raise upon direct appeal.

16 Moreover, Mr. Petty testified that "had there been something that was brought to [his]
17 attention that might have attraction on appeal, [he] would have used it." EHT 149:18-20. The
18 fact that Mr. Petty did not raise any other issues on direct appeal, suggests that "there was
19 nothing there" that would have been a proper basis for appeal. See EHT at 149:18-21.

20 Based on the abovementioned findings, Mr. Petty's conduct could not have prejudiced
21 Skinner. Mr. Petty did not "omit any issues" which would have had a reasonable probability of
22 success on appeal because there were none. Thus, this court finds that not only did Skinner not
23 suffer any prejudice based on Mr. Petty's conduct, his conduct was also not conduct that fell
24 below the "objective standards of reasonableness."

25 Thus, due to this Court finding no basis in a finding of deficient counsel or prejudicial
26 performance, as Skinner alleges, this Court **DENIES** Petitioner's claim.

27 ///

28 ///

1 ***14. Ground Thirteen: Defense Counsel's Misleading Claims on Forensic Report.***

2 In his thirteenth ground for relief, petitioner alleges that Mr. Frey was ineffective because
3 he told Skinner that a defense forensic report of the computer in question existed when it did not.
4 More specifically, the report was alleged to have corroborated the State's allegations, and was in
5 part, one of the reasons compelling Petitioner to accept the plea deal. However, Skinner alleges
6 neither he, nor his Australian attorneys, were ever shown the report and was thus "kept in the
7 dark" as to the evidence brought against him. Thus, as a result of not being permitted to review
8 the report, his rights to such evidence were violated and Skinner was coerced by Mr. Frey into
9 taking the plea deal.

10 The Court has already noted above its findings that Skinner entered his plea knowingly,
11 voluntarily, and intelligently. As to this point, the Court refers to the analysis above, incorporates
12 it into the present ground, and declines to reiterate the same analysis again.

13 As to Petitioner's argument that he was misled as to the forensic report, the record belies
14 Skinner's contention. The Court notes Mr. Frey admitted there was no *written* forensic report of
15 the computer the State analyzed. However, Mr. Frey qualified his answer with reasons as to why.

16 As Mr. Frey testified, his own forensic analyst, Leon Mare, performed the exact same
17 tests as the State's analyst Sgt. Carry. This included Mr. Mare performing his own independent
18 examination of the forensic information, repeating the steps Sgt. Carry had done, EHT 162:17-
19 22. Mr. Mare verified and corroborated Sgt. Carry's findings that the evidence was not
20 exculpatory but inculpatory. EHT 164:4-6. Specifically, the reports were cumulative, building
21 off each other, and were all associated with child pornography. This means that the evidence was
22 not of such a nature as would have reflected favorably upon Petitioner, but rather negatively.
23 Moreover, as a result of such adverse findings, it was Mr. Mare's assessment that Skinner should
24 "jump on" the plea deal the State was offering. EHT 163:3-6.

25 Furthermore, Mr. Frey purposefully did not make a written forensic report. EHT 167:15-
26 16. In his testimony Mr. Frey indicated that this was because the "findings were adverse." His
27 statement was qualified with the following:
28

1 "if the findings were adverse, had they proceeded to trial, and used that expert, it [the
2 defense's report of adverse findings] could have been exposed in discovery, subjected to
3 damaging impeachment, and would have only I think, corroborated the State's case,
4 when obviously the job of defending a case is to do quite the opposite.

5 EHT 167:18-24. Thus, even though a written report was never prepared, a report of Mr. Mare's
6 findings was in fact *relayed* to Mr. Frey that it was not in the best interests of Skinner to have
7 such a written report made.

8 It is therefore, this Court's finding that Mr. Frey's failure to give Skinner a written report
9 was neither a failure nor an oversight in his representation of Petitioner. Rather, Mr. Frey did not
10 have a written report made so as to *protect* his client and ensure damaging information was not
11 brought to light by the defense's own experts. Mr. Frey's conduct as to the forensic report did
12 not fall below the objective standards of reasonableness. Nor did Mr. Frey make any errors that
13 would have prejudiced Mr. Skinner. The Court finds Mr. Frey acted as effective counsel and
14 there is no merit to Petitioner's claims.

15 Therefore, because Petitioner's arguments are belied by the record, the Court **DENIES**
16 Skinner's *Petition* as to Ground Thirteen.

17 **15. *Ground Fourteen: Ineffective Counsel in CR13-1601.***

18 In his fourteenth ground for relief, Petitioner alleges errors were committed in another
19 matter, CR13-1601, and as a result, this affected the outcome off the current case. In particular,
20 Skinner claims that a child witness's testimony was manipulated and thus tainted. Had there not
21 been such taint, Skinner contends that there would not have been a search and seizure of his
22 computer containing pornographic images. Thus, since Mr. Frey did not seek to suppress this
23 testimony, Skinner was deprived of his due process rights and Mr. Frey's conduct constituted
24 ineffective assistance of counsel.

25 The Court is unclear what effect the proceedings in CR13-1601 have on the current case
26 as Petitioner's arguments add nothing to the Court's analysis. Petitioner's case in CR13-1601
27 was dismissed pursuant to a global resolution plea deal. It would be of no benefit for Petitioner to
28 litigate claims in an already dismissed case, especially considering the case dismissal was to
 Skinner's benefit.

1 Additionally, the Court finds that Mr. Frey's conduct in CR13-1601 was neither
2 ineffective nor prejudicial to Petitioner. Petitioner had two different yet related cases. Both cases
3 carried serious consequences with them. Skinner was facing nearly twenty-one counts, nearly
4 half of which carried ten to life sentences, on each count. *See State's Brief*, p.3. Mr. Frey used his
5 expertise as a skilled negotiator to bargain the State down to charging Skinner with only a single
6 count of Lewdness with a Minor. As a result, this Court finds that Mr. Frey both acted in
7 Petitioner's best interests and made a strategic decision to negotiate a plea deal in both of
8 Skinner's cases.

9 Therefore, the Court finds that as to Ground Fourteen, there is no basis to Petitioner's
10 claims and **DENIES** the *Petition*.

11 ***16. Supplemental Petition: Ground One, Failure to Preserve Evidences***

12 In Ground One for his *Supplemental Petition*, Petitioner alleges that the State failed to
13 preserve evidence relating to the child pornography charges and file sharing information. He
14 contends that the Washoe County District Attorney's office destroyed said evidence contained on
15 the hard drive of Skinner's computer and thus now, on post-conviction writ, there is no evidence
16 from which Petitioner's current defense team and forensic expert, Tami Loehrs, can review and
17 prove Skinner's innocence.

18 Due process requires the state to preserve material evidence. *Steese v. State*, 114 Nev.
19 479, 491, 960 P.2d 321, 329 (1998) (citing *State v. Hall*, 105 Nev. 7, 9, 768 P.2d 349, 350
20 (1989)). However, the Supreme Court has held that unless the defendant can show that the state
21 acted in bad faith in failing to preserve potentially useful evidence, it does not constitute a denial
22 of due process of the law. *See Arizona v. Youngblood*, 488 U.S. 51, 57-58, 109 S. Ct. 333, 102 L
23 Ed. 2d 281(1988) (finding that a bad faith requirement both limits the extent of the police's
24 obligation to preserve evidence to reasonable grounds and confines it to that class of cases where
25 the interests of justice most clearly require it). The State admits that someone at the District
26 Attorney's office signed off on having the evidence in question destroyed. However, there is no
27 indication that the District attorney's office in any way acted in bad faith in allowing its
28 destruction.

Moreover, the destruction of evidence occurred *after* the Defendant was convicted. As the State points out, the "mere failure to preserve evidence which could have been subjected to tests which might have exonerated the defendant does not constitute a due process violation. *U.S. v. Hernandez*, 109 F.3d 1450, 1455 (9th Cir. 1997). The case cited to by the State was a pre-trial related issue. Petitioner is requesting post-conviction relief. Thus, since Skinner is requesting relief for something that the Ninth Circuit has held is not warranted *even* in a pre-trial setting, the Court finds it even more compelling that there is no due process violation in Petitioner's case.

Moreover, it would be an undue burden to place on the state to keep every piece of evidence from every person who may conceivably argue for post-conviction relief. There is no authority from which the Court can glean that places a requirement on the State to preserve evidence in post-conviction cases such as Skinner's.

Therefore, this Court finds that the State was within its right to destroy the evidence. Thus, Ground One of Petitioner's *Supplemental Petition* is **DENIED**.

17. Supplemental Petition: Ground Two, Defense Counsel Promising Probation.

In his *Supplemental Petition*, Skinner argues that Mr. Frey was ineffective because he allegedly promised Skinner that he would only receive probation, and Skinner believed that probation only was "pretty much a done deal." EHT 92:17. This belief was in part, based on the fact that Skinner was purportedly a first time offender with no criminal history, EHT 97:5-7. This decision was also based on a report corroborating the police's accounts and seemingly solidifying the case against Petitioner. Thus, Skinner opines that, because of Mr. Frey's factually incorrect probation assertion, Skinner's plea was involuntary as he was making a decision without fully understanding the consequences of the plea. Moreover, this plea was entered involuntary as a product of medical duress.

Skinner's claims are patently belied by the record. *See Hargrove v. State*, 100 Nev. at 503, 686 P.2d at 225 (finding that a defendant is not even entitled to a post-conviction hearing when the factual allegations are belied or repelled by the record)). In the evidentiary hearing, Skinner admitted that while Mr. Frey may have been "pretty convincing," Mr. Frey had never actually *guaranteed* that Skinner would receive probation. EHT 116-117. In fact, this Court

counts multiple times in which Mr. Frey adamantly denied that he never promised Skinner probation in his testimony. Mr. Frey had been wary about Judge Hardy's sentencing decision as "Judge Hardy at that moment in time was cautious to remind everyone about his sentencing discretion, so I (Mr. Frey) was in kind cautious about reminding my client that sentencing is really up to the judge's discretion, *especially* in this courtroom." EHT 157:5-7 (*emphasis added*). Mr. Frey testified that Skinner "absolutely" understood sentencing to be solely at the judge's discretion. EHT 171:3-5. Further, Mr. Frey "absolutely did not" given an indication that Skinner was assured to get probation as that was "not something he would have done." EHT 170:17-18, 185:11.¹⁴

Moreover, the argument for probation was undermined after Mr. Frey was notified by the Division of Parole and Probation that Skinner's two year old daughter was found to have a sexually transmitted disease possibly given to her by Skinner. EHT 170. Adding to this difficulty were reports disclosed to Mr. Frey indicating that Skinner had been investigated by Australia's federal authorities for sex tourism in Asia, a place Skinner visited. EHT 126: 21-24.

The sentencing court's own comments are also dispositive with Skinner's contentions being belied by the plea canvas. At arraignment, the Court ensured Skinner that he was "looking at *either* probation or life in prison with parole eligibility after five years." AT 9:21-22 (*emphasis added*). The Court then asked Petitioner if "anybody had promised [him] anything, or threatened [him] in any way to obtain [his] plea" to which Skinner responded "no." AT 8:18-20. The Court told Skinner that, despite the State and Skinner coming to a plea agreement, the Court was in no way bound by such an agreement, and the "sentencing decision is mine [the courts]" to which Skinner responded "I understand." APT 7-8. Words do not get clearer than this. By so answering, Skinner was both denying, under oath, that Mr. Frey had ever *promised* him probation and he also understood he (Petitioner) may not even receive probation. Thus, Skinner's contention that Mr. Frey had promised probation is unfounded.

¹⁴ Mr. Frey additionally testified that he "absolutely did not" ever suggest that it was almost a hundred percent likely or extraordinarily likely that Skinner would receive probation. EHT 170:17-22.

1 The *Guilty Plea Memorandum*, filed on May 27, 2014, also provides additional support in
2 contravention of Skinner's contention. The *Memorandum* itself contained language placing
3 Skinner on notice of what he could be sentenced to. More specifically, the signed *Memorandum*
4 specifically denotes that "a consequence of his guilty plea are that [he] may be imprisoned for a
5 *period for life with 5* to the Parole Board... and that I am *not eligible for probation unless a*
6 *psychosexual evaluation is completed...* certifying that [he] does not represent a high risk to
7 *reoffend...*" See *Guilty Plea Memorandum*, p. 3 ¶ 6. Thus, even if Mr. Frey had somehow
8 promised probation, the *Memorandum* itself contains specific and certain language that Skinner
9 was unlikely to receive *solely* probation.

10 Since sentencing is ultimately at the Court's discretion, and Skinner was fully informed
11 of this, the *Memorandum* plainly contradicting Skinner's assertions, and this Court finds Mr.
12 Frey's contentions adamantly denying a promise of probation, this Court finds that Mr. Frey's
13 conduct neither fell below an objective standard of reasonableness nor prejudiced Skinner at any
14 time.

15 Additionally, to the extent that this ground claims Skinner's guilty plea was not entered
16 voluntary due to medical duress, this claim has already been addressed at length above, the Court
17 defers to this analysis and incorporates it therein. Thus, this portion of Ground One of the
18 *Supplemental Petition* will not be addressed again.

19 Therefore, on this claim, Skinner's *Petition* is **DENIED**.

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CONCLUSION

Based on the foregoing, the Court finds there is no factual or legal basis to any of Petitioner's claims. Additionally, the law requires that Petitioner show ineffective assistance of counsel by preponderance of the evidence. The burden has not been met on either prong of *Strickland*. Accordingly, Skinner's *Petition for Writ of Habeas Corpus* is **DENIED**. This Order resolves all claims raised in both *Petitions* and is considered final.

IT IS SO ORDERED.**DATED** this 9th day of October, 2019.
BARRY L. BRESLOW
District Judge

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 9 day of October, 2019, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:



Judicial Assistant

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-10-09 14:34:55.925.

JOHN PETTY, ESQ. - Notification received on 2019-10-09 14:34:55.566.

DIV. OF PAROLE & PROBATION - Notification received on 2019-10-09 14:34:55.55.

CHRISTOPHER FREY, ESQ. - Notification received on 2019-10-09 14:34:55.519.

EDWARD REED, ESQ. - Notification received on 2019-10-09 14:34:55.628.

CHRISTINE BRADY, ESQ. - Notification received on 2019-10-09 14:34:55.597.

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Judge:

HONORABLE BARRY L. BRESLOW

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10-09-2019:14:34:13

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Ord Denying

Filed By:

Judicial Asst. LWatts-Vial

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The following people were served electronically:

EDWARD TORRANCE REED, ESQ. for
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CODE 2540

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

RODERICK STEPHAN SKINNER,

Plaintiff,

Case No: CR14-0644

vs.

Dept. No: 8

STATE OF NEVADA,

Defendant.

_____ /

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on October 9, 2019, the Court entered a decision or order in this matter, a true and correct copy of which is attached hereto.

You may appeal to the Supreme Court from the decision or Order of the Court. If you wish to appeal, you must file a Notice of Appeal with the Clerk of this Court within thirty-three (33) days after the date this notice is mailed to you.

Dated October 9, 2019.

JACQUELINE BRYANT

Clerk of the Court

/s/N. Mason

N. Mason-Deputy Clerk

CERTIFICATE OF SERVICE

Case No. CR14-0644

Pursuant to NRCP 5 (b), I certify that I am an employee of the Second Judicial District Court; that on October 9, 2019, I electronically filed the Notice of Entry of Order with the Court System which will send a notice of electronic filing to the following:

DIV. OF PAROLE & PROBATION

EDWARD TORRANCE REED, ESQ. for RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK STEPHEN SKINNER

JOHN REESE PETTY, ESQ. for RODERICK STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF NEVADA

I further certify that on October 9, 2019, I deposited in the Washoe County mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the attached document, addressed to:

Attorney General's Office
100 N. Carson Street
Carson City, NV 89701-4717

Roderick S. Skinner (#1126964)
NNCC
P. O. Box 7000
Carson City, NV 89702

The undersigned does hereby affirm that pursuant to NRS 239B.030 and NRS 603A.040, the preceding document does not contain the personal information of any person.

Dated October 9, 2019.

/s/N. Mason
N. Mason- Deputy Clerk

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

RODERICK STEPHAN SKINNER,

Petitioner,

v.

ISIDRO BACA, WARDEN OF NNCC,
AND NEVADA ATTORNEY GENERAL,

Respondents.

Case No. CR14-0644

Dept. No. 8

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

Before the Court is a *Petition for Writ of Habeas Corpus (Post-Conviction)*, timely filed October 7, 2016, by RODERICK STEPHAN SKINNER ("Skinner" or "Petitioner"), Defendant in this matter. Respondents, THE STATE OF NEVADA, opposed the request for habeas relief in its *Answer to Amended Petition for Writ of Habeas Corpus (Post-Conviction)*, filed November 22, 2016. A *Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)* was subsequently filed on January 12, 2018 by Petitioner's counsel Edward T. Reed, Esq. The State filed an *Answer to Supplemental Petition for Writ of Habeas Corpus* on February 26, 2018. Both parties subsequently submitted pre-hearing briefs in September 2019. The matter proceeded to an evidentiary hearing on September 26, 2019.

1 Having reviewed the Petition, the accompanying briefs, the arguments of counsel, and
 2 being fully apprised of the issues therein, the Court **DENIES** the *Petition*. The Court sets forth
 3 the following reasons for this denial.

4 BACKGROUND

5 Based on the testimony presented at the evidentiary hearing, the parties' pre-hearing
 6 briefings, and other documentary evidence submitted, the Court is aware of the following facts:

7 According to the record, Skinner was charged with several offenses in two different
 8 cases, stemming from the same event. In CR13-1601, Skinner was charged with Open and Gross
 9 Lewdness arising out of an incident that took place in Skinner's apartment. It was alleged that
 10 with other children present, Skinner was viewing pornography on his computer while
 11 simultaneously masturbating with his two-year-old daughter on his lap. A search warrant for
 12 Skinner's computer was subsequently authorized by Sparks Justice Court. An execution of the
 13 warrant produced Skinner's computer, multiple hard drives, and disclosed child pornography.
 14 See Exhibit 25, Police Report of Sgt. Carry, p. 2. Reno Justice Court subsequently authorized a
 15 second search warrant in which Washoe County Sheriff's Office forensic analyst Dennis Carry
 16 examined the computer. Sgt. Carry found, among other things, that there was file sharing and
 17 encryption software on the computer as well as dates indicating that Skinner was the user of the
 18 computer at the time the pornography was being viewed.

19 The findings of the forensic analysis resulted in Skinner being charged with twenty
 20 felony counts of Promotion of a Sexual Performance of a Minor Age 13 or Younger and
 21 Possession of Visual Pornography of a Person Under the Age of 16 Years.¹ Each Promotion
 22 charge alone carried a sentence of life in prison with the possibility of parole in ten years and
 23 each Possession charge carried a possible punishment of one to six years in prison.

24 Christopher Frey ("Frey") was appointed Skinner's counsel.² Pursuant to plea
 25 negotiations with the State, Skinner agreed to plead guilty to one count of Promotion of a Sexual

26 ¹ More specifically, per the State's Brief, there were ten counts of *Promotion of a Sexual*
 27 *Performance of a Minor*, and ten counts of *Possession of Visual Pornography*.

28 ² The Court notes that Mr. Frey, formerly a Washoe County Public Defender, is now a Federal
 Public Defender.

1 Performance of a Minor over 14 in exchange for all other charges being dropped and the Open
2 and Gross Lewdness charge in CR13-1601 being dismissed. Skinner subsequently signed a
3 *Guilty Plea Memorandum* ("Memorandum"), fully acknowledging his plea. At that time, Skinner
4 was canvassed by presiding Judge David Hardy and placed under oath, acknowledging his guilty
5 plea, and was fully informed that he may or may not receive probation as Judge Hardy had the
6 discretion to choose whether to follow the plea agreement. Skinner also acknowledged the
7 accuracy of the *Memorandum* and Judge Hardy accepted Skinner's guilty plea as being knowing
8 and voluntary.

9 Weeks later, during a three-phase sentencing, Frey presented a lengthy Sentencing
10 Memorandum in mitigation, which was "400 pages." See *Sentencing Proceeding Transcript* p.
11 4. During the hearings, Mr. Frey presented three witnesses on behalf of Skinner, and in which the
12 Court was also apprised of additional evidence.³ This evidence included testimony from the
13 Division of Parole and Probation that Skinner's young daughter Sophie was diagnosed with
14 genital warts, allegedly obtained through sexual abuse. Furthermore, Queensland Police
15 Department had also investigated Skinner for his travel plans to Thailand for engaging in child-
16 sex tourism. In addition, Skinner purportedly had plans to have built a more secure computer for
17 the purpose of storing child pornography. See *State's Brief*, p.5. Moreover, Skinner was found to
18 meet the criteria for pedophilic sexual orientation and with unmonitored access to the internet, all
19 child pornography victims remained at risk. Upon conclusion of the sentencing hearings, Judge
20 Hardy sentenced Skinner to life with the possibility of parole after five years.

21 On direct appeal, Skinner was represented by Chief Deputy Public Defender for the
22 Appellate Division John Petty ("Petty"). Petty argued that Skinner's sentencing was an abuse of
23 discretion and he should have received probation. The direct appeal was denied and the Nevada
24 Court of Appeals affirmed the Judgment of Conviction on July 14, 2015.

25 Skinner now submits his *Petition for Writ of Habeas Corpus* and *Supplemental Petition*
26 alleging seventeen separate grounds for relief. In summary, Skinner's *Petition* asserts multiple

27 ³ The Court notes that Mr. Frey's representation also included procuring a witness to travel all
28 the way from Australia, as well as setting up a live feed with Skinner's oldest daughter in
Australia.

1 ineffective assistance of counsel claims on the part of Washoe County Public Defenders Frye and
2 Petty as well as destruction of evidence claims. The Court now addresses each of these claims in
3 turn and finds the following:

4 STANDARD OF REVIEW

5 I. Post-Conviction Petition for Writ of Habeas Corpus.

6 "Any person convicted of a crime and under sentence of death or imprisonment who
7 claims that the conviction was obtained, or that the sentence was imposed, in violation of the
8 Constitution of the United States or the Constitution or laws of this State . . ." may file a post-
9 conviction petition for writ of habeas corpus. NRS 34.724(1). A defendant seeking post-
10 conviction relief must support claims with specific factual allegations that if true would entitle
11 him to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (per curiam). In
12 cases where the conviction was obtained through a plea of guilty, a petition for writ of habeas
13 corpus is limited to claims that the plea was "involuntarily or unknowingly entered or that the
14 plea was entered without effective assistance of counsel." NRS 34.810(1)(a).

15 II. Ineffective Assistance of Trial and Appellate Counsel.

16 The Sixth Amendment guarantees individuals in criminal cases the right to counsel to
17 protect their fundamental right to a fair trial. This right includes the right to effective assistance
18 of counsel.

19 The district court reviews whether a person has received the effective assistance of
20 counsel under *Strickland v. Washington*. See *Strickland v. Washington*, 466 U.S. 668, 686-87
21 (1984); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). *Strickland* sets out a
22 two prong test for assessing whether there was effective assistance of counsel. First, the Court
23 must determine whether counsel's performance was deficient such that it fell below an objective
24 standard of reasonableness. *Kirksey*, 112 Nev. at 988, 923 P.2d at 1107 (citing *Dawson v. State*,
25 108 Nev. 112, 115, 825 P.2d 593, 595 (1992)). This prong takes into account the proper measure
26 of an attorney's performance under prevailing professional norms and the totality of the
27 circumstances. *Strickland*, 466 U.S. at 688; *Homick v. State* 112 Nev. 304, 310, 913 P.2d 1280,
28 1285 (1996). Second, the deficient performance must have prejudiced the defense. *Id.* Prejudice

1 is demonstrated when there is a reasonable probability that, but for counsel's errors, the result of
 2 the proceeding would have been different. *Kirksey*, 112 Nev. at 988, 923 P.2d at 1107. A
 3 reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.*

4 Petitioner is required to prove disputed factual allegations underlying his ineffective
 5 assistance of counsel claim by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001
 6 1013, 103 P.3d 25, 33 (2004) ("choosing consistency with federal authority, we now hold that a
 7 habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-
 8 assistance claim by a preponderance of evidence."). Whether this burden of proof has been
 9 shown is found by assessing whether both elements of *Strickland* have been met. *See Kirksey*,
 10 112 Nev. at 988, 923 P.2d at 1107 ("a court may consider the two elements in any order and need
 11 not consider both prongs if the defendant makes an insufficient showing on either one"). Where
 12 an insufficient showing on either element has been made, the claim must be denied. *Id.*

13 FINDINGS OF FACT AND CONCLUSIONS OF LAW

14 1. *Ground One: Failure of Counsel to Challenge Lack of Corpus Delicti.*

15 In *Ground One* for relief, Skinner alleges that the prosecutor knowingly lacked corpus
 16 delicti in indicting him.⁴ Petitioner claims, this "lack of corpus delicti" is exhibited by there
 17 being no evidence of "download by means of file sharing software" upon which Skinner could
 18 have been indicted. He contends that his counsel, Mr. Frey, was ineffective for failing to
 19 challenge the sufficiency of evidence upon this ground. Thus, Skinner maintains he was
 20 deprived of both his due process rights and his right to effective assistance of counsel as
 21 guaranteed by the Constitution.

22 The showing of a corpus delicti is a threshold question; one that the State has the burden
 23 of proving and that the State has met in this case. The standard for proving corpus delicti is the
 24 same standard required to bind a defendant for trial. *See Sheriff, Washoe County v. Middleton*,
 25 112 Nev. 956, 961, 921 P.2d 282, 286 (1996); *See also Frutiger v. State*, 111 Nev. 1385, 1389,
 26 907 P.2d 158, 160 (1995) (finding that "before a person can be held for trial, the grand jury must

27
 28 ⁴ The Court also now clarifies that contrary to Skinner's *Petition*, Petitioner was not indicted. Rather, an *Information* was filed by the State.

determine that there is probable cause to believe that an offense (otherwise known as corpus delicti) has been committed, and the defendant has committed it"); *Middleton, supra*, 112 Nev. at 961, 921 P.2d at 286 ("we now clarify that at the preliminary hearing stage, the State's burden with respect to the corpus delict is the same as its burden to show probable cause, [they] must present evidence supporting a "reasonable inference"). Corpus delicti may be established by the State solely with circumstantial evidence. *See generally West v. State*, 119 Nev. 410, 418, 75 P.3d 808, 813 (2003) (finding that for murder convictions, the State may establish corpus delicti solely with circumstantial evidence, notwithstanding the lack of a body or actual cause of death). Indeed, when it comes to the preliminary hearing stage, "probable cause to bind a defendant over for trial may be based on slight, [or] even marginal evidence because it does not involve a determination of guilt or innocence of the accused." *Middleton, supra*, 112 Nev. at 961, 921 P.2d at 286 (quoting *Sheriff, Washoe County v. Hodex*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980)).

First, the Court notes that Skinner's argument is filled with vague assertions, but no specific contentions as to how the State failed to show corpus delicti or what exactly the failure of proof was for the file sharing software. Second, to the extent the Court is able to comprehend Skinner's argument, it is readily belied by the record. Petitioner originally faced multiple charges in CR13-1601 and CR14-0644. CR13-1601 contained one charge. CR14-0644 had twenty counts, and the Court refers to the Background above for the specific allegations.

Second, testimony presented at the Evidentiary Hearing produced considerable evidence of guilt. Specifically, not only did the State's forensic expert, Sergeant Carry, find pornography and evidence of file sharing software and encryption on Skinner's computer, but Petitioner's own defense expert, Leon Mare, was able to corroborate the State's findings.⁵ The evidentiary hearing also revealed that there were eyewitnesses to some of Skinner's charges.⁶ These facts certainly weigh heavily in there being more than enough evidence for a probable cause finding.

⁵ For example, Exhibit 25 of the *Petition* states that "child pornography has already been recovered on the computer and evidence at this time indicates Skinner's use of the computer during those time periods..."

⁶ Notably, eyewitnesses are alleged to have seen pornography-related images on Skinner's own laptop and per the search warrant transcripts, Skinner told the eyewitnesses what he was viewing.

1 Aside from that fact, pursuant to a plea deal reached by both parties, CR13-1601 was
2 dismissed and the State agreed it would pursue the single charge alleged in the *Information*. It
3 was further stipulated that the State would not file any additional charges resulting from the
4 arrest. Arraignment Proceedings Transcripts (APT) 4:9-14. During arraignment, Judge David
5 Hardy read the single account alleged in the indictment that included a statement that there were
6 "over 50 images or videos of underage children..." See APT 7:8-15; See also *Criminal*
7 *Information*. Both parties stipulated to a factual basis for the allegation alleged in the
8 *Information*, and after a plea canvas, Skinner pled guilty. There was never a point during
9 proceedings or otherwise that would have lent itself to Petitioner's theory that the State had a
10 lack of corpus delicti. If anything, the State had more than sufficient evidence to charge Skinner
11 with all twenty-one counts initially alleged. Thus, Petitioner's contention is unfounded.

12 The Court also determines that there is no basis to Skinner's contention that Mr. Frey was
13 ineffective in failing to challenge the sufficiency of the evidence on the charge. Rather, as
14 discussed above, Skinner had multiple charges pending against him at the time. Mr. Frey used
15 his experience as a Public Defender to negotiate Skinner's multiple life sentences down to a
16 single count, as noted above. Mr. Frey's conduct is the essence of effective assistance of counsel.
17 On this ground, there is very clearly no indication that Mr. Frey's representation came close to
18 falling below the "prevailing professional norms" or objective standards of reasonableness.
19 Moreover, this Court is not persuaded that on Ground One, but for counsel's errors the result of
20 the proceeding would have been different, as the Court is unable to glean any error in Mr. Frey's
21 representation.

22 Ultimately, with regard to *Ground One*, Skinner's *Petition* is both unsupported and belied
23 by the record and is accordingly **DENIED**.

24 **2. *Ground Two: Failure of Counsel to Challenge NRS 200.720.***

25 In the *Second Ground* for relief, Skinner avers that his counsel was ineffective for failing
26 to challenge a perceived misapplication of NRS 200.720, and this application was in direct
27 contravention of legislative intent. Skinner argues the statute is overbroad and the terms defined
28 therein are not applicable to him. More specifically, Petitioner contends the term promote means

1 procure under NRS 200.700 and he has "not procured anything." See *Petition*. It appears as
2 though the Petitioner is not challenging that he was charged, but rather, *which statute* he was
3 charged under. If anything, Skinner seemingly contends he should have been prosecuted under a
4 different statute.

5 First, the Court finds no merit to Skinner's contention that essentially, NRS 200.720 is
6 inapplicable to him. While Skinner is correct in his assessment that legislative intent is a factor in
7 statutory interpretation, the plain meaning rule prevails. See *State v. Lucero*, 127 Nev. 92, 95,
8 249 P.3d 1226, 1228 (2011) (citing *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957,
9 959 (1983)). That is, it is well established that when "the language of a statute is plain and
10 unambiguous, and its meaning clear and unmistakable, there is no room for construction and the
11 courts are not permitted to search for its meaning beyond the statute itself." *Nelson v. Heer*, 123
12 Nev. 217, 224, 163 P.3d 420, 425 (2007) (quoting *State v. Jepsen*, 123 Nev. 217, 196, 209 P.501,
13 502 (1922)). It is only when the statute is capable of being understood in two or more senses by
14 reasonably informed persons or that the statute is ambiguous that the Court may then look
15 beyond the statute in determining legislative intent. *Lucero, supra*, 127 Nev. at 95-96, 249 P.3d
16 at 1228. Moreover, considering and giving effect to the statute's plain meaning is "the best
17 indicator" of the Legislature's intent. *Dezzani v. Kern & Assocs.*, 412 P.3d 56, 59 (Nev. 2018).

18 The Court finds that the statute is neither vague nor ambiguous and the plain meaning of
19 the statute must be applied. As a result, the State properly prosecuted Skinner under this statute.
20 Additionally, this Court is inclined to agree with the State, that Petitioner has provided no
21 argument as to *how* the statute is vague nor how it is *not* subject to the plain meaning rule.

22 Secondly, this Court notes that a district attorney is vested with considerable discretion in
23 deciding whether to prosecute a particular defendant and necessarily involves a degree of
24 selectivity. *Salaiscooper v. Eighth Judicial Dist. Court ex rel. County of Clark*, 117 Nev. 892,
25 903 34 P.3d 509 (2001); See also *State v. Barman*, 183 Wis.2d 180, 515 N.W.2d 493, 497
26 (Cl.App.1994) (reasoning that the prosecuting attorney has great latitude in determining *which of*
27 several related crimes to file against a defendant, thus this discretion involves a degree of
28

selectivity).⁷ The Supreme Court has likewise recognized that the prosecution is the one vested with the authority to choose *which charge* to bring against a defendant. See *U.S. v. Armstrong*, 517 U.S. 456, 464 116 S. Ct. 1480, 1486, 134 L. Ed. 2d 687 (1996) (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364, 98 S.Ct. 663, 668, 54 L.Ed.2d 604 (1978)) (finding that “so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute and what charge to file or bring before a grand jury generally rests *entirely in his discretion*”). (*Emphasis added*). Thus, it is the prosecution alone which has the ultimate decision which statute to prosecute a defendant under, not the defendant.

Furthermore, there has been no evidence presented that, with respect to the ineffective counsel argument, Mr. Frey acted ineffectively or in a way that prejudiced Skinner. Rather, Mr. Frey’s choice not to challenge the charge was a strategic decision. See *Means*, *supra*, 120 Nev. at 1011, 103 P.3d at 33 (“the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy”).

Thus, based on the aforementioned findings, this Court finds that *Ground Two* of the Petition is **DENIED**.

3. *Ground Three: Disparate Treatment.*

In his third ground, Skinner contends that he was subject to disparate treatment. Specifically, Skinner seemingly argues that other similarly situated defendants, i. e., other child pornography offenders, have been prosecuted differently. That is, they were not prosecuted under NRS 200.720 as Skinner was in the present case.

The Court finds no merit in Skinner’s contention. In particular, Petitioner fails to provide concrete examples of other “similarly situated” pornography offenders who have been not been subject to such prosecution. Rather, Skinner’s claims consists of merely “bare or “naked” claims, unsupported by any *specific* factual allegations that if true would “entitle him to relief.” *Hargrove*, *supra*, 100 Nev. at 502, 686 P.2d at 225 (1984). With an argument devoid of facts to support such a contention, Petitioner’s argument cannot stand.

⁷ This case is not cited for any binding effect, simply for explanation of its analysis.

1 Therefore, because Petitioner advances allegations lacking facts and arguments from
2 which the Court can glean a purpose, nor valid grounds for making such a claim, Petitioner's
3 claims have no basis. Thus, the Court **DENIES** Skinner's *Petition* on Ground Three.

4 ***4. Ground Four: Failure of Counsel to Challenge Validity of Search Warrant.***

5 In his Fourth Ground, Skinner alleges that the affidavit was deliberately false, contained
6 material misrepresentations, and was made in bad faith. In addition, the affidavit itself was not
7 sufficiently particular. Petitioner contends that that his counsel was ineffective because Mr. Frey
8 failed to challenge the validity of the search warrant on this basis. Moreover, Skinner opines that
9 Mr. Frey knew Skinner was under medical duress at the time of plea negotiations and also failed
10 to adequately investigate the case.

11 First and foremost, this Court recognizes that Skinner's argument is belied by both Mr.
12 Frey's testimony specifically, and the record as a whole. At the time of his representation, Mr.
13 Frey was a seasoned public defender with experience in filing motions to suppress based upon
14 the validity of search warrants. However, in Skinner's case, Mr. Frey reviewed the affidavits
15 supporting the search warrant, the search warrants themselves, and police reports. Evidentiary
16 Hearing Transcript (EHT) 155. In reviewing all pertinent information, Mr. Frey was "unable to
17 glean" any information that would raise a "meritorious" Fourth Amendment challenge. EHT
18 155:22-24. Hence this Court finds that Mr. Frey's decision to not challenge the validity of the
19 search warrant was a strategic one, not one that in any way supports an ineffectiveness claim. *See*
20 *Means, supra*, 120 Nev. at 1011, 103 P.3d at 33.

21 Moreover, this Court finds that Mr. Frey was acting in accordance with the rules of
22 professional responsibility governing all Nevada attorneys. Nevada Rules of Professional
23 Conduct provide in pertinent part that:

24 "a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein,
25 unless there is a basis in law and fact for doing so *that is not frivolous, which includes a*
26 *good faith argument* for an extension, modification or reversal of existing law. A lawyer
27 for the defendant in a criminal proceeding or the respondent in a proceeding that could
28 result in incarceration, may nevertheless so defend the proceeding as to require that every
element of the case be established."

1 See N.R.P.C. 3.1 (*emphasis added*). Mr. Frey testified that he found no "meritorious" Fourth
2 Amendment challenge. Were Mr. Frey to have filed such a Motion, knowing it was frivolous, it
3 could have placed him at risk of violating professional standards.

4 With respect to Skinner's medical duress portion of this claim as well as his notion that
5 Mr. Frey failed to adequately investigate, the Court addresses it *infra*, as part of the voluntariness
6 of the plea agreement and Ground Eleven and thus incorporates those analyses into Ground Four.

7 Ultimately, there is nothing in the record to suggest that, as it pertains to Ground Four,
8 Mr. Frey's representation was anything but effective in defending Skinner. Because Skinner's
9 contention is belied by the record and is in direct contravention of Mr. Frey's testimony, the
10 claim is **DENIED**.

11 **5. Ground Four (A): Search Warrant Timing.**

12 Petitioner also contends that his apartment was searched eight minutes before the time
13 reported in the search warrant affidavit. More specifically, Skinner contends that the search
14 warrant was authorized at 10:08 p.m.; however, the police commenced their search at about
15 10:00 p.m., eight minutes before the search warrant was authorized.

16 The Court finds that Skinner's assertion is not a meritorious claim for relief. Pursuant to
17 NRS 34.720, a post-conviction petition for a writ of habeas corpus is available to address two
18 types of claims: (1) requests for relief from a judgment of conviction or sentence in a criminal
19 case and (2) challenges to the computation of time that the petitioner has served pursuant to a
20 judgment of conviction." *McConnell v. State*, 125 Nev. 243, 247, 212 P.3d 307, 310 (2009)
21 (internal citations omitted). This means that the scope of a post-conviction habeas relief must
22 challenge the validity of the conviction or sentence. *See Id.*, 125 Nev. at 310, 212 P.3d at 310
23 (reasoning that "a claim that is cognizable in a post-conviction habeas petition must challenge
24 the validity of the conviction or sentence"). Petitioner is making a claim based upon neither of
25 these contentions as he is challenging the *timing* listed in a search warrant. If anything, this is a
26 pre-trial motion which, as this Court has previously addressed, Mr. Frey did not find any
27 "meritorious Fourth Amendment challenge." Thus, this is not a proper basis for post-conviction
28 relief.

1 Therefore, the Court **DENIES** this claim.

2 **6. *Five: Petitioner's Length of Detention.***

3 Petitioner alleges that prior to having his apartment searched, he was detained longer than
4 sixty minutes before being arrested and was not permitted to re-enter the apartment in the
5 meantime.

6 Petitioner is not seemingly challenging either his sentencing or validity of conviction. See
7 NRS 34.720; See also *McConnell v. State*, 125 Nev. at 247, 212 P.3d at 311. Rather, Petitioner
8 argues what amounts to a pre-trial motion. This Court has previously addressed pre-trial issues
9 and refers to the abovementioned analysis.

10 Therefore, the Court **DENIES** the Petition as to Ground Five.

11 **7. *Ground Six: Additional Unlawful Detention Claim.***

12 In ground six of his Petition, Skinner reiterates the same claims as were addressed in
13 Ground Five. He additionally adds that counsel was ineffective in failing to challenge the search
14 warrant upon these grounds. The State contends that this argument is simply an extension of
15 Ground Five and is repeating the same arguments. The Court agrees with the State that these
16 arguments are already alleged in Ground Five.

17 Therefore, Ground Six of Skinner's Petition is **DENIED**.

18 **8. *Ground Seven: Failure of Counsel to Suppress Search Warrant.***

19 In his Seventh Ground for relief Petitioner argues that the warrant authorizing a search of
20 his computer was generalized. Skinner contends that since the search warrant was "unbounded"
21 it violates legal requirements on probable cause, namely that of the particularity requirement. In
22 addition, Petitioner opines that counsel was "clearly ineffective" for not filing a Motion to
23 Suppress the search warrant on these grounds.

24 The Court finds that Petitioner's allegations are belied by the record. First, a search
25 warrant is required to state with particularity the places to be searched or the persons or items to
26 be seized. *Keese v. State*, 110 Nev. 997, 1001, 879 P.2d 63, 66-67, citing the Fourth
27 Amendment and Nev. Const. art I, § 18. In this case, the *Search Warrant* stated exactly this.
28 There was specific evidence set forth that show probable cause for the allegations relating to

1 CR13-1601. Specifically, the search warrant very clearly states the places or things to be
2 searched: a Toshiba laptop, a black Hitachi External Hard drive, a blue Seagate External hard
3 drive, a Samsung hard drive, and two Buffalo hard drives all found at Petitioner's residence. *See*
4 Exhibit 21A of *Petition*, pp. 1-2. The evidence for which officers were looking to seize included
5 the following: evidence corroborating sexual abuse of the victim such as pornography disclosed
6 during the interview, internet searches and website visits involving child abuse, and indicia and
7 timeline event history revealing the suspect's activities. Thus, there is no merit to Skinner's
8 contention that the search warrant was generalized.

9 In addition, the search warrant was also supported by the affidavit of Detective Michel
10 Brown ("Brown"). The affidavit was both informative and described at length the basis for
11 which Det. Brown was requesting a search warrant of the computer and hard drives. First, as an
12 experience detective, Brown had training that computers maintain evidence of web site visits,
13 caches, internet files and search terms, all of which may reveal a user's activity on the internet
14 such as what they googled. *See Affidavit of Det. Brown*, p. 2. Second, the affidavit included
15 details of the initial investigation into Skinner after a child witness informed her mother, and
16 subsequently police, of the inappropriate conduct Skinner displayed while in the presence of the
17 child witness as well as another child and Skinner's own daughter. In pertinent part, it states that
18 Skinner was watching pornography on his computer and masturbating while in the same room as
19 the children. The affidavit further alleged that Skinner went so far as to show the child witness
20 the pornography images he was viewing on the computer in question.⁸ Moreover, Brown
21 described the amount of data that may be stored in the hard drives as "enormous." Thus, a search
22 warrant that is specifically looking into the computer and hard drive's contents along with other
23 pertinent information is corroborated by the record. Therefore, Skinner's allegation that there
24 was no probable cause is wholly without merit.

25 Additionally, Skinner's argument that counsel failed to suppress the search warrant is
26 unfounded. Since the Court has already discussed at length in *Ground Four* why Mr. Frey's

27
28 ⁸ More specifically, the child witness described the images that Skinner showed her on his
computer as "nasty videos."

1 actions were the epitome of effective assistance of counsel and neither fell below the objective
2 standards of reasonableness nor were any error that could have "prejudiced the defense" the
3 Court incorporates the abovementioned grounds into Ground Seven and declines to address it
4 again.

5 Therefore, the Court finds that Petitioner's claims are unsupported by the record and
6 **DENIES** the *Petition* as to Ground Seven.

7 **9. Ground Eight: Involuntary Guilty Plea and Failure of Counsel to Adequately Explain**
8 **the Charges.**

9 In his Ground Eight for relief, Skinner contends that his guilty plea was not entered
10 knowingly, voluntarily or intelligently because it was uninformed. He argues that Mr. Frey failed
11 to adequately explain the essential elements of the crime charged. Conversely, had Skinner been
12 explained the elements of his crimes, he would have insisted on going to trial and not taken a
13 plea agreement. Furthermore, Skinner contends that because he was a foreign national he was
14 especially unable to know the nature of the charges being levied against him.

15 "A defendant who pleads guilty upon the advice of counsel may attack the validity of the
16 guilty plea by showing that he received ineffective assistance of counsel under the Sixth
17 Amendment." *Molina v. State*, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004) *citing Hill v.*
18 *Lockart*, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985) (holding that *Strickland*'s two-
19 part test applies to challenges of guilty pleas based on ineffective assistance of counsel).
20 However, guilty pleas are presumptively valid, especially when entered on advice of counsel,
21 and a defendant has a heavy burden to show the district court that he did not enter his plea
22 knowingly, intelligently or voluntarily. *Id.* In determining the validity of a guilty plea, the district
23 court must look to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13
24 P.3d 442, 48 (2000) (finding that "this court will not invalidate a plea as long as the totality of
25 the circumstances, as shown by the record, demonstrates that the plea was knowingly and
26 voluntarily made and that the defendant understood the nature of the offenses and the
27 consequences of the plea").
28

1 The Court finds that the Skinner's contention is wholly belied by the record for a myriad
2 of reasons.

3 A. **Petitioner Entered His Plea Knowingly and Voluntarily Because He Was A**
4 **Sophisticated Party.**

5 First, Skinner is not an unsophisticated party. Prior to his detour to the United States,
6 Skinner had previously served in law enforcement for eight years. More specifically, he was a
7 police officer for the Australian Federal Police for two and a half years and later, Queensland
8 State Police Officer for five and a half years. EHT 100:18-23. Skinner then served an additional
9 twelve months after his car accident and subsequently, two years as an academy driving
10 instructor for the same police department. Defendant further testified that his employment was
11 similar to that of the Nevada Highway Patrol in the form of traffic enforcement and safety,
12 including understanding how to identify drunk drivers.

13 Moreover, as a consequence of his profession, Skinner's job occasionally resulted in
14 contested arrests, meaning, he would have to appear in court. EHT 103:20-22. While Skinner
15 stated he had not been trained on *how* to testify, he admitted that he *had in fact* testified in court
16 "a couple of times." EHT 103:17-20. Petitioner had likely more dealings than the average
17 person to know the interworking of the criminal justice system, albeit an Australian one. It is
18 difficult for this Court to understand how Petitioner now claims he did not comprehend the
19 elements of the charges against him when he was at the very least familiar with criminal justice
20 matters in general. Therefore, Skinner's statements are contradicted by the record.

21 B. **Petitioner's Statements to His Counsel Show That The Guilty Plea Was**
22 **Entered Into Voluntarily.**

23 In Mr. Frey's lengthy evidentiary hearing testimony, he sated that Skinner did not
24 maintain his innocence throughout Mr. Frey's representation nor did Mr. Frey "drag him
25 [Skinner] kicking and screaming to the table and coerce him into a plea to the extent that is the
26 suggestion from Petitioner's counsel." EHT 165:15-17. To the contrary, Skinner made comments
27 to Mr. Frey suggesting that to some degree he knew he was guilty. See EHT 165:18-20. As Mr.
28 Frey puts it, this included "the evidence begin[ing] to compile... and it appeared as if Mr.
Skinner was able to process the fact that perhaps there was evidence here sufficient to convict

him. And his degree of acceptance of responsibility changed." EHT 165:3-9. Moreover, Mr. Frey's assessment of Skinner before entering his plea of guilty was that:

"Mr. Skinner was completely lucid. He understood the terms and examines of the plea agreement. He *understood the charge*. He *understood the elements*. He *understood the facts*. I had no qualms about proceeding to an entry of plea with Mr. Skinner endorsing that as the next step in the representation whatsoever. He did not protest. He did not indicate a lack of understanding. He *endorsed the plea*. He took responsibility for the conduct memorialized in the guilty-plea memorandum. There were no tears. There was no hesitation much. There was no reluctance. There was no non-verbal cues that indicates that he had second thoughts. This was a *joint decision* over the course of a number of weeks....I had zero qualms about proceeding to the entry of plea in this case."

EHT 166-67 (*emphasis added*). Thus, this was not the case of a defendant being ill-informed by his counsel, as Petitioner alleges. Rather, Skinner had a number of days in which to contemplate the charge and was fully and thoroughly explained by counsel all pertinent details as it relates to the plea agreement and charges alleged against him.

As a result, as to Petitioner's contention that counsel's conduct falls below the objective standards of reasonableness, this suggestion is not supported. Moreover, Mr. Frey's conduct as it relates to the voluntariness of the plea agreement did not prejudice Skinner. The Court finds that Mr. Frey thoroughly and adequately explained to Skinner the elements of the charges and repercussions a guilty plea brings with it. Therefore, as to the portion of Ground Seven alleging Mr. Frey was ineffective, Skinner's Petition is **DENIED**.

C. Petitioner's Own Words Indicate He Understood His Plea.

While Skinner contends that he did not understand the charges against him, Petitioner's own words tell a different story. In a statement to the Division of Parole and Probation, in pertinent part, Skinner stated that he "betrayed the values of the community." EHT 127-128. In addition, during sentencing, Petitioner told Judge David Hardy that he was "ripe for it." EHT 130-131.⁹ To the Court, these comments are a very clear indication that he understood the elements of the charges against him. In addition, at one point in time Petitioner was actually

⁹ The Court acknowledges Skinner's contention at the evidentiary hearing that he did not mean "ripe" but rather "right" for the crime. In either case, the Court understands either of these two words to mean that he was knowledgeable of what he had done and the crimes with which he was being charged.

1 remorseful for his actions. Thus, all indications of Skinner's conduct show this Court that he *did*
2 know the charges entered against him and his plea was done knowingly, voluntarily and
3 intelligently.

4 **D. Petitioner's Guilty Plea Was Given After a Full Canvas.**

5 Skinner's own statements to the Court during the plea canvas are also telling. The Court
6 finds that Skinner's responses give a distinct picture as to the voluntariness of his guilty plea.
7 First, Judge Hardy placed Defendant under oath. Thus this Court can infer that any statements
8 Skinner made to the judge were accurate and truthful.¹⁰ Second, after swearing under oath to do
9 so, Skinner stated to the Court that the decision to plea was his, and his alone. *See Arraignment*
10 *Transcript* (APT), p. 5. He was informed that no one could force him to plead guilty. He was
11 informed that he could go to trial and force the State to prove each element of the crime charged,
12 Defendant declined to do so. The State read Skinner the details of the charge against him. *Id.*, at
13 7. In response to the Court asking Skinner whether he understood the elements that Mr. Bogale
14 had just read, Skinner responded "Yes Your Honor." *Id.*, 7:22. When asked whether Skinner did
15 what he was accused of doing, Mr. Frey stated that they were stipulating to a factual basis of the
16 charge, to which Skinner told the court he understood and agreed and thus conceded that he was
17 guilty. *Id.*, 8:21-24. Judge Hardy subsequently found that Skinner understood both the nature of
18 the charge and its consequences. *Id.*, 9:16-17.

19 Furthermore, this Court finds that the Petitioner cannot, credibly, on one hand testify
20 *while under oath*, that he fully knew the charges against him, and was entering a knowingly,
21 voluntarily, and intelligent plea, yet on the other hand, claim that those statements are no longer
22 accurate and he never understood the elements of the charge.

23 Based on the abovementioned findings, the Court finds that there are no basis to
24 Petitioner's argument and the Court **DENIES** the Petition on Ground Eight.

25
26
27 ¹⁰ The Court notes that the alternative (which Skinner now seemingly alleges) namely that the
28 statements were involuntarily and not knowingly, would be evidence that Skinner perjured
himself when he told Judge Hardy he was going to tell the truth, the whole truth, and nothing but
the truth.

10. ***Ground Nine: Failure of Counsel In Engaging in Plea Negotiations While Under Medical Duress.***

2 In his ninth ground for relief, Petitioner opines that his plea was not entered into
3 knowingly, voluntarily, or intelligently as he was suffering from serious medical duress. As a
4 result, Skinner contends that his medical duress overbore his will to make decisions effecting his
5 freedom. More specifically, Skinner argues he suffers from debilitating phantom limb and nerve
6 pain, he has Chron's disease, neck cancer, and other material medical issues.¹¹ Thus, Skinner
7 argues that due to these issues, Petitioner was entitled to adequate medical care, and effective
8 treatment of his pain. Moreover, Skinner claims that Mr. Frey was constitutionally ineffective in
9 "failing to safeguard petitioner's best interest and not engaging in plea negotiations." See
10 *Petition*, Ground Nine.

11 The Court acknowledges that Skinner has a myriad of medical issues and gives that due
12 weight in its decision; however, the Court finds the following. First, Skinner's accident was in
13 the 1980s, nearly thirty years before the events occurring in the present case. EHT 102:10-11.
14 Second, while Skinner may have experienced ongoing medical problems during his stay with the
15 Washoe County Jail, the issues he presents this Court with were several months before he ever
16 entered his plea. Third, while at the Washoe County jail, Petitioner filed several claims with the
17 state. However, those claims never included one for medical duress. More specifically in the
18 evidentiary hearing, the Court notes the following:

19 Ms. Noble: "Did you ever file a grievance related to your claims of
20 mistreatment in the Washoe County Jail?"

21 Skinner: Well, all that had mistreatment and everything which led up to the
22 intentional rupture happened after about 30 days. And then, after I
23 have gone to the hospital and come back, I put in a couple of
grievances about *six months later*, about *unrelated things*.

24 Ms. Noble: So you put in grievances, but not about that?

25 Skinner: No."

26
27 ¹¹ Other material medical issues include: abnormal blood chemistry, liver issues, and
28 inflammation over numerous part of his body all of which he alleges he did not receive timely
treatment for.

1 Fourth this court notes Mr. Frey's testimony about the plea. In relevant part, Mr. Frey
 2 stated that, as previously noted, Skinner was "completely lucid" he understood everything, he did
 3 not have hesitation or reluctance in entering his plea, but rather, he "endorsed the plea." ¹² EHT
 4 167. Additionally, when asked by Mrs. Noble whether Skinner had ever communicated to Mr.
 5 Frey that he was only pleading guilty because he was afraid he was going to die in the Washoe
 6 County Jail and was innocent, Mr. Frey answered with a resounding "no."

7 Moreover, when asked whether Skinner ever actually told Mr. Frey about his pain,
 8 Skinner replied "he knew." But as this Court have previously found, even if Mr. Frey "knew," it
 9 is clear from Mr. Frey's testimony and the record that this in no way impacted Skinner's ability
 10 to enter a plea. Rather, there is a very clear indication to the court that Skinner was never under
 11 so much medical duress that he was unable to make an informed, voluntary and intelligent
 12 decision. EHT 168.

13 This Court also considers the action of the plea canvas itself. Skinner was asked multiple
 14 questions about his plea. Judge Hardy ensured that Skinner was not just pleading because he was
 15 told to, that he was making an informed decision, and that this was a decision that he agreed to.
 16 No one forced him to make such a decision, and Petitioner indicated as much to the Court.

17 Therefore, based on the above-mentioned findings, as to Ground Nine of the Petition, the
 18 Court **DENIES** Skinner's Petition.

19 ***11. Ground Ten: Skinner Himself Did Not Plead Guilty.***

20 In his tenth ground for relief, Petitioner states that he did not plead guilty in the plea
 21 canvas, rather, it was Mr. Frey who pled for him. Specifically, Skinner contends that when asked
 22 whether he was pleading guilty, Skinner states that he hesitated because he was not sure if he
 23 was in fact guilty. At that point, Mr. Frey jumped in and pled guilty for him. Additionally,
 24 Skinner opines that he was not "enthusiastic" about pleading guilty as was evidenced by "Judge
 25 Hardy engaging in a series of conclusory questions." See Ground 10 of *Petition*.

26 It is evident from the record that the plea was given by Skinner. According to
 27 Arraignment Transcripts, Skinner said that it was his decision to plead, his and his alone. APT 5.

28 ¹² The Court has already noted the specific statements of Mr. Frey in previous analysis.

1 He understood no one was forcing him to plea. Thereafter, the record clearly indicates that the
2 *Defendant, not his lawyer*, stated "I enter a plea of guilty Your Honor." APT 8:16. Thereafter,
3 Skinner was asked more than once if he was entering the plea, understood it, and agreed. APT 9.
4 No evidence before the Court suggests that Skinner faltered when giving the plea, asked to
5 change the plea he had just entered, or that his lawyer was giving the plea. Rather, it was only
6 *after* Defendant had stated that he was pleading guilty that Mr. Frey stated that they were
7 stipulating to a factual basis for the charge.

8 A reading of the record at no time evinces that Mr. Frey ever stated that he was entering a
9 plea of guilty on his client's behalf or as Petitioner puts it "stepped in and interjected we plead
10 guilty to the facts." Rather, as Mr. Frey testified, Skinner "accepted responsibility for the
11 conduct that was memorialized within the guilty plea memorandum," there was no hesitation or
12 reluctance, no "nonverbal cues indicating second thoughts." In addition, counsel testified that he
13 did not "coerce him into a plea." Therefore, Petitioner's claims are belied by the record.

14 This Court also notes that the "series of questions" Judge Hardy posed to Skinner, and
15 which Petitioner now contends are evidence of his assertions, are nothing more than a plea
16 canvas conducted regularly on any defendant entering a plea.

17 Therefore, the Court finds that as to Ground Ten, Skinner's Petition is **DENIED**.

18 ***12. Ground Eleven: Failure to Investigate, Interview, and Pursue Available Witnesses.***

19 Petitioner claims that his counsel's performance was below the range of competency
20 required of attorneys in criminal cases. In particular, he avers that Mr. Frey failed to: pursue
21 available defenses, interview witnesses, investigate witness tampering, and commission an
22 expert defense report. Additionally, Skinner claims that Mr. Frey also failed to impeach
23 witnesses during sentencing.

24 Petitioner's claims are noticeably belied by the record, and his argument fails on multiple
25 grounds. First, there was a very clear effort to investigate the case. During the evidentiary
26 hearing, Skinner placed the blame for pornography images on the fact that he had purchased his
27 computer from EBay, there were multiple users of the laptop, and the owner of the apartment he
28 was staying at, Joseph Chipetto had unfettered access to the apartment. The clear inference was

1 that Skinner was claiming it was not him who was viewing the pornography images, but rather
2 Mr. Chipetto. In his testimony, Mr. Frey stated that he did in fact interview Mr. Chipetto. Mr.
3 Frey went through "a number of things that [they] thought were pertinent to the case." However,
4 Mr. Frey found that "the interview did not impact the way that we defended the case."
5 Additionally, even though Mr. Frey may have been aware of Mr. Chipetto's unrestricted access
6 to the apartment, he "did not specifically recall that as a defense strategy that they had
7 entertained... if it was entertained, it was for a brief moment." EHT 160. Moreover, as Mr. Frey
8 pointed out, even though Mr. Chipetto owned the apartment, Frey had clear forensics from the
9 computer which "clearly indicated to [Mr. Frey]... and [his] assessment to a jury would have
10 been that it would have indicated that the user of the computer was Roderic Skinner." EHT
11 160;13:20.

12 This was not the only investigation that Mr. Frey did. Rather, Mr. Frey stated that just
13 some of his investigation included subpoenaing school records of the two young girls who made
14 the initial police report, serving subpoenas on the Washoe County Sheriff's Office, and
15 procuring their own defense expert, Leon Mare, to investigate the hard drive of the computer just
16 as the State's own expert had done. This included viewing multiple spreadsheets that built upon
17 each other, and this Court has previously noted, indicated that the findings corroborated the Sgt.
18 Carry's findings.

19 Moreover, Mr. Frey did extensive work on a sentencing memorandum. In fact, the
20 memorandum was so comprehensive that the State requested time to more fully review it as it
21 was nearly "400 pages" long. Aside from that, part of Mr. Frey's sentencing defense was to
22 arrange from multiple witnesses to be available to testify. This included coordinating for an out
23 of country witness to appear in person, a phone call for Courtney Skinner to testify from
24 Brisbane, as well as other witnesses. As Mr. Frey put it, "we fought our heart out for Mr.
25 Skinner."

26 As a result, on Ground Eleven, there is no evidence to suggest that his counsel's
27 performance was deficient or that Skinner was prejudiced.

28

Therefore, this Court finds that Mr. Frey's conduct did not fall below the objective standard of reasonableness and Skinner's *Petition* is **DENIED**.

13. Ground Twelve: Failure of Appellate Counsel to Federalize Claims.

With regard to Skinner's claim that his appellate counsel was ineffective, the two-pronged *Strickland* standard applies to appellate counsel, but with emphasis on the presumption that counsel acted in the interest of best strategy. To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was (1) deficient in that it fell below an objective standard of reasonableness, and (2) the resulting prejudice [was] such that the omitted issue would have had a reasonable probability of success on appeal.

Kirksey, supra, 112 Nev. at 998, 923 P.2d at 1113-14.

Skinner contends that Mr. Petty failed to federalize claims and that Mr. Petty's abuse of discretion argument was neither *the* claim to be raised nor the only claim to be raised on direct appeal.¹³ However, appellate counsel is not required to raise every non-frivolous issue on appeal. *McConnell v. State*, 125 Nev. 243, 253, 212 P.3d 307, 314 (2009) (citing *Jones v. Barnes*, 463 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983)). Rather, appellate counsel is "*most effective* when every conceivable issue is *not* raised on appeal. See *McConnell, supra*, 125 Nev. at 253, 212 P.3d at 314 (citing *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989)) (*emphasis added*).

Moreover, the Supreme Court recognizes that appellate practice bears "natural limitations" which encourage certain forms of brevity or particularity. *Johnson v. State*, 133 Nev. 571, 575, 402 P.3d 1273, 1273 (citing *Knox v. United States*, 400 F.3d 519, 521 (7th Cir. 2005)) ("Lawyers must curtail the number of issues they present, not only because appellate briefs are limited in length but also because the more issues a brief presents the less attention each receives, and thin presentation may submerge or forfeit a point." (internal brackets omitted)). Accordingly, appellate counsel is not *per se* ineffective for omitting a claim for the purposes of promoting claims with a higher likelihood of success. *Id.* at 1274 (citing *Jones*, 463 U.S. at 751—

¹³ See EHT 127:16-20, Skinner stating that "this abuse of discretion ground that he went with, that the judge has abused his discretion in sentencing, was not even an issue really that should have been raised on appeal, and other things should have been raised on appeal."

1 52 (1983) ("Experienced advocates since time beyond memory have emphasized the importance
2 of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or
3 at most on a few key issues.").

4 This Court first notes that Mr. Petty is a seasoned appellate attorney for the Washoe
5 County Public Defender's Office with nearly forty years of experience and found his testimony
6 credible. Second, just as he testified, Mr. Petty drew upon his decades of experience and
7 hundreds of appellate briefs filed over the years to know which claims to raise in Petitioner's
8 case. EHT 143:12-13. In Skinner's case, Mr. Petty testified that because certain pre-trial motions
9 had not been reserved under statute, the appealable issues were limited to solely sentencing
10 issues. EHT 147. A reading of the record clearly evinced that there were no other appealable
11 issues, other than the abovementioned abuse of discretion issue. In addition, while Mr. Petty
12 acknowledged that Skinner had hoped more claims would be raised, namely that of effective
13 assistance of counsel claim, Skinner's suggested claim is prohibited from being raised on direct
14 appeal. Also, there was nothing else in Skinner's multiple letters to Mr. Petty that would be
15 permitted to raise upon direct appeal.

16 Moreover, Mr. Petty testified that "had there been something that was brought to [his]
17 attention that might have attraction on appeal, [he] would have used it." EHT 149:18-20. The
18 fact that Mr. Petty did not raise any other issues on direct appeal, suggests that "there was
19 nothing there" that would have been a proper basis for appeal. See EHT at 149:18-21.

20 Based on the abovementioned findings, Mr. Petty's conduct could not have prejudiced
21 Skinner. Mr. Petty did not "omit any issues" which would have had a reasonable probability of
22 success on appeal because there were none. Thus, this court finds that not only did Skinner not
23 suffer any prejudice based on Mr. Petty's conduct, his conduct was also not conduct that fell
24 below the "objective standards of reasonableness."

25 Thus, due to this Court finding no basis in a finding of deficient counsel or prejudicial
26 performance, as Skinner alleges, this Court **DENIES** Petitioner's claim.

27 ///

28 ///

1 **14. Ground Thirteen: Defense Counsel's Misleading Claims on Forensic Report.**

2 In his thirteenth ground for relief, petitioner alleges that Mr. Frey was ineffective because
3 he told Skinner that a defense forensic report of the computer in question existed when it did not.
4 More specifically, the report was alleged to have corroborated the State's allegations, and was in
5 part, one of the reasons compelling Petitioner to accept the plea deal. However, Skinner alleges
6 neither he, nor his Australian attorneys, were ever shown the report and was thus "kept in the
7 dark" as to the evidence brought against him. Thus, as a result of not being permitted to review
8 the report, his rights to such evidence were violated and Skinner was coerced by Mr. Frey into
9 taking the plea deal.

10 The Court has already noted above its findings that Skinner entered his plea knowingly,
11 voluntarily, and intelligently. As to this point, the Court refers to the analysis above, incorporates
12 it into the present ground, and declines to reiterate the same analysis again.

13 As to Petitioner's argument that he was misled as to the forensic report, the record belies
14 Skinner's contention. The Court notes Mr. Frey admitted there was no *written* forensic report of
15 the computer the State analyzed. However, Mr. Frey qualified his answer with reasons as to why.

16 As Mr. Frey testified, his own forensic analyst, Leon Mare, performed the exact same
17 tests as the State's analyst Sgt. Carry. This included Mr. Mare performing his own independent
18 examination of the forensic information, repeating the steps Sgt. Carry had done, EHT 162:17-
19 22. Mr. Mare verified and corroborated Sgt. Carry's findings that the evidence was not
20 exculpatory but inculpatory. EHT 164:4-6. Specifically, the reports were cumulative, building
21 off each other, and were all associated with child pornography. This means that the evidence was
22 not of such a nature as would have reflected favorably upon Petitioner, but rather negatively.
23 Moreover, as a result of such adverse findings, it was Mr. Mare's assessment that Skinner should
24 "jump on" the plea deal the State was offering. EHT 163:3-6.

25 Furthermore, Mr. Frey purposefully did not make a written forensic report. EHT 167:15-
26 16. In his testimony Mr. Frey indicated that this was because the "findings were adverse." His
27 statement was qualified with the following:

1 "if the findings were adverse, had they proceeded to trial, and used that expert, it [the
2 defense's report of adverse findings] could have been exposed in discovery, subjected to
3 damaging impeachment, and would have only I think, corroborated the State's case,
4 when obviously the job of defending a case is to do quite the opposite.

5 EHT 167:18-24. Thus, even though a written report was never prepared, a report of Mr. Mare's
6 findings was in fact *relayed* to Mr. Frey that it was not in the best interests of Skinner to have
7 such a written report made.

8 It is therefore, this Court's finding that Mr. Frey's failure to give Skinner a written report
9 was neither a failure nor an oversight in his representation of Petitioner. Rather, Mr. Frey did not
10 have a written report made so as to *protect* his client and ensure damaging information was not
11 brought to light by the defense's own experts. Mr. Frey's conduct as to the forensic report did
12 not fall below the objective standards of reasonableness. Nor did Mr. Frey make any errors that
13 would have prejudiced Mr. Skinner. The Court finds Mr. Frey acted as effective counsel and
14 there is no merit to Petitioner's claims.

15 Therefore, because Petitioner's arguments are belied by the record, the Court **DENIES**
16 Skinner's *Petition* as to Ground Thirteen.

17 **15. *Ground Fourteen: Ineffective Counsel in CR13-1601.***

18 In his fourteenth ground for relief, Petitioner alleges errors were committed in another
19 matter, CR13-1601, and as a result, this affected the outcome off the current case. In particular,
20 Skinner claims that a child witness's testimony was manipulated and thus tainted. Had there not
21 been such taint, Skinner contends that there would not have been a search and seizure of his
22 computer containing pornographic images. Thus, since Mr. Frey did not seek to suppress this
23 testimony, Skinner was deprived of his due process rights and Mr. Frey's conduct constituted
24 ineffective assistance of counsel.

25 The Court is unclear what effect the proceedings in CR13-1601 have on the current case
26 as Petitioner's arguments add nothing to the Court's analysis. Petitioner's case in CR13-1601
27 was dismissed pursuant to a global resolution plea deal. It would be of no benefit for Petitioner to
28 litigate claims in an already dismissed case, especially considering the case dismissal was to
 Skinner's benefit.

1 Additionally, the Court finds that Mr. Frey's conduct in CR13-1601 was neither
2 ineffective nor prejudicial to Petitioner. Petitioner had two different yet related cases. Both cases
3 carried serious consequences with them. Skinner was facing nearly twenty-one counts, nearly
4 half of which carried ten to life sentences, on each count. *See State's Brief*, p.3. Mr. Frey used his
5 expertise as a skilled negotiator to bargain the State down to charging Skinner with only a single
6 count of Lewdness with a Minor. As a result, this Court finds that Mr. Frey both acted in
7 Petitioner's best interests and made a strategic decision to negotiate a plea deal in both of
8 Skinner's cases.

9 Therefore, the Court finds that as to Ground Fourteen, there is no basis to Petitioner's
10 claims and **DENIES** the *Petition*.

11 ***16. Supplemental Petition: Ground One, Failure to Preserve Evidences***

12 In Ground One for his *Supplemental Petition*, Petitioner alleges that the State failed to
13 preserve evidence relating to the child pornography charges and file sharing information. He
14 contends that the Washoe County District Attorney's office destroyed said evidence contained on
15 the hard drive of Skinner's computer and thus now, on post-conviction writ, there is no evidence
16 from which Petitioner's current defense team and forensic expert, Tami Loehrs, can review and
17 prove Skinner's innocence.

18 Due process requires the state to preserve material evidence. *Steese v. State*, 114 Nev.
19 479, 491, 960 P.2d 321, 329 (1998) (citing *State v. Hall*, 105 Nev. 7, 9, 768 P.2d 349, 350
20 (1989)). However, the Supreme Court has held that unless the defendant can show that the state
21 acted in bad faith in failing to preserve potentially useful evidence, it does not constitute a denial
22 of due process of the law. *See Arizona v. Youngblood*, 488 U.S. 51, 57-58, 109 S. Ct. 333, 102 L
23 Ed. 2d 281(1988) (finding that a bad faith requirement both limits the extent of the police's
24 obligation to preserve evidence to reasonable grounds and confines it to that class of cases where
25 the interests of justice most clearly require it). The State admits that someone at the District
26 Attorney's office signed off on having the evidence in question destroyed. However, there is no
27 indication that the District attorney's office in any way acted in bad faith in allowing its
28 destruction.

Moreover, the destruction of evidence occurred *after* the Defendant was convicted. As the State points out, the “mere failure to preserve evidence which could have been subjected to tests which might have exonerated the defendant does not constitute a due process violation. *U.S. v. Hernandez*, 109 F.3d 1450, 1455 (9th Cir. 1997). The case cited to by the State was a pre-trial related issue. Petitioner is requesting post-conviction relief. Thus, since Skinner is requesting relief for something that the Ninth Circuit has held is not warranted *even* in a pre-trial setting, the Court finds it even more compelling that there is no due process violation in Petitioner’s case.

Moreover, it would be an undue burden to place on the state to keep every piece of evidence from every person who may conceivably argue for post-conviction relief. There is no authority from which the Court can glean that places a requirement on the State to preserve evidence in post-conviction cases such as Skinner’s.

Therefore, this Court finds that the State was within its right to destroy the evidence. Thus, Ground One of Petitioner’s *Supplemental Petition* is **DENIED**.

17. Supplemental Petition: Ground Two, Defense Counsel Promising Probation.

In his *Supplemental Petition*, Skinner argues that Mr. Frey was ineffective because he allegedly promised Skinner that he would only receive probation, and Skinner believed that probation only was “pretty much a done deal.” EHT 92:17. This belief was in part, based on the fact that Skinner was purportedly a first time offender with no criminal history, EHT 97:5-7. This decision was also based on a report corroborating the police’s accounts and seemingly solidifying the case against Petitioner. Thus, Skinner opines that, because of Mr. Frey’s factually incorrect probation assertion, Skinner’s plea was involuntary as he was making a decision without fully understanding the consequences of the plea. Moreover, this plea was entered involuntary as a product of medical duress.

Skinner’s claims are patently belied by the record. *See Hargrove v. State*, 100 Nev. at 503, 686 P.2d at 225 (finding that a defendant is not even entitled to a post-conviction hearing when the factual allegations are belied or repelled by the record)). In the evidentiary hearing, Skinner admitted that while Mr. Frey may have been “pretty convincing,” Mr. Frey had never actually *guaranteed* that Skinner would receive probation. EHT 116-117. In fact, this Court

counts multiple times in which Mr. Frey adamantly denied that he never promised Skinner probation in his testimony. Mr. Frey had been wary about Judge Hardy's sentencing decision as "Judge Hardy at that moment in time was cautious to remind everyone about his sentencing discretion, so I (Mr. Frey) was in kind cautious about reminding my client that sentencing is really up to the judge's discretion, *especially* in this courtroom." EHT 157:5-7 (*emphasis added*). Mr. Frey testified that Skinner "absolutely" understood sentencing to be solely at the judge's discretion. EHT 171:3-5. Further, Mr. Frey "absolutely did not" given an indication that Skinner was assured to get probation as that was "not something he would have done." EHT 170:17-18, 185:11.¹⁴

Moreover, the argument for probation was undermined after Mr. Frey was notified by the Division of Parole and Probation that Skinner's two year old daughter was found to have a sexually transmitted disease possibly given to her by Skinner. EHT 170. Adding to this difficulty were reports disclosed to Mr. Frey indicating that Skinner had been investigated by Australia's federal authorities for sex tourism in Asia, a place Skinner visited. EHT 126: 21-24.

The sentencing court's own comments are also dispositive with Skinner's contentions being belied by the plea canvas. At arraignment, the Court ensured Skinner that he was "looking at *either* probation or life in prison with parole eligibility after five years." AT 9:21-22 (*emphasis added*). The Court then asked Petitioner if "anybody had promised [him] anything, or threatened [him] in any way to obtain [his] plea" to which Skinner responded "no." AT 8:18-20. The Court told Skinner that, despite the State and Skinner coming to a plea agreement, the Court was in no way bound by such an agreement, and the "sentencing decision is mine [the courts]" to which Skinner responded "I understand." APT 7-8. Words do not get clearer than this. By so answering, Skinner was both denying, under oath, that Mr. Frey had ever *promised* him probation and he also understood he (Petitioner) may not even receive probation. Thus, Skinner's contention that Mr. Frey had promised probation is unfounded.

¹⁴ Mr. Frey additionally testified that he "absolutely did not" ever suggest that it was almost a hundred percent likely or extraordinarily likely that Skinner would receive probation. EHT 170:17-22.

1 The *Guilty Plea Memorandum*, filed on May 27, 2014, also provides additional support in
2 contravention of Skinner's contention. The *Memorandum* itself contained language placing
3 Skinner on notice of what he could be sentenced to. More specifically, the signed *Memorandum*
4 specifically denotes that "a consequence of his guilty plea are that [he] may be imprisoned for a
5 *period for life with 5* to the Parole Board... and that I am *not eligible for probation unless a*
6 *psychosexual evaluation is completed...* certifying that [he] does not represent a high risk to
7 *reoffend...*" See *Guilty Plea Memorandum*, p. 3 ¶ 6. Thus, even if Mr. Frey had somehow
8 promised probation, the *Memorandum* itself contains specific and certain language that Skinner
9 was unlikely to receive *solely* probation.

10 Since sentencing is ultimately at the Court's discretion, and Skinner was fully informed
11 of this, the *Memorandum* plainly contradicting Skinner's assertions, and this Court finds Mr.
12 Frey's contentions adamantly denying a promise of probation, this Court finds that Mr. Frey's
13 conduct neither fell below an objective standard of reasonableness nor prejudiced Skinner at any
14 time.

15 Additionally, to the extent that this ground claims Skinner's guilty plea was not entered
16 voluntary due to medical duress, this claim has already been addressed at length above, the Court
17 defers to this analysis and incorporates it therein. Thus, this portion of Ground One of the
18 *Supplemental Petition* will not be addressed again.

19 Therefore, on this claim, Skinner's *Petition* is **DENIED**.

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CONCLUSION

Based on the foregoing, the Court finds there is no factual or legal basis to any of Petitioner's claims. Additionally, the law requires that Petitioner show ineffective assistance of counsel by preponderance of the evidence. The burden has not been met on either prong of *Strickland*. Accordingly, Skinner's *Petition for Writ of Habeas Corpus* is **DENIED**. This Order resolves all claims raised in both *Petitions* and is considered final.

IT IS SO ORDERED.**DATED** this 9th day of October, 2019.
BARRY L. BRESLOW
District Judge

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 9 day of October, 2019, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:



Judicial Assistant

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-10-09 15:55:59.864.

JOHN PETTY, ESQ. - Notification received on 2019-10-09 15:55:59.24.

DIV. OF PAROLE & PROBATION - Notification received on 2019-10-09 15:55:59.209.

CHRISTOPHER FREY, ESQ. - Notification received on 2019-10-09 15:55:59.178.

EDWARD REED, ESQ. - Notification received on 2019-10-09 15:55:59.833.

CHRISTINE BRADY, ESQ. - Notification received on 2019-10-09 15:55:59.537.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

10-09-2019:15:54:48

Clerk Accepted:

10-09-2019:15:55:29

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Notice of Entry of Ord

Filed By:

Deputy Clerk NMason

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RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

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JENNIFER NOBLE, ESQ. - Notification received on 2019-10-21 11:43:26.335.

JOHN PETTY, ESQ. - Notification received on 2019-10-21 11:43:24.01.

DIV. OF PAROLE & PROBATION - Notification received on 2019-10-21 11:43:22.029.

CHRISTOPHER FREY, ESQ. - Notification received on 2019-10-21 11:43:20.001.

EDWARD REED, ESQ. - Notification received on 2019-10-21 11:43:26.303.

CHRISTINE BRADY, ESQ. - Notification received on 2019-10-21 11:43:24.509.

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A filing has been submitted to the court RE: CR14-0644

Judge:

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Official File Stamp:

10-21-2019:11:39:51

Clerk Accepted:

10-21-2019:11:42:20

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Ex-Parte Mtn

Filed By:

Edward Torrance Reed

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STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

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CASE NO. CR14-0644

STATE VS. RODERICK STEPHEN SKINNER

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

09/26/2019
HONORABLE
BARRY L.
BRESLOW
DEPT. NO. 8
A. DeGayner
(Clerk)
I. Zihn
(Reporter)

PETITION FOR POST CONVICTION

Petitioner was present, in custody, represented by Court Appointed Attorney Edward Torrance Reed.

Deputy District Attorney Jennifer Noble and Deputy District Attorney Kevin Naughton represented the Respondent.

10:32 a.m. – Court convened with Court, respective counsel and Petitioner present.

CAA Reed addressed the Court and submitted a Stipulation for Admission of Evidence with attached WCDA Evidence Release form to the Court for filing, executed by DDA Noble and CAA Reed. (Filed by the Court Clerk September 26, 2019).

CAA Reed advised the Court that witness Dennis Carry is not present today. CAA Reed advised the Court that Dennis Carry was served a subpoena in July of 2018 for the original hearing set for January 3, 2019 and Dennis Carry was subsequently notified of the hearing change to September 26, 2019 to which Dennis Carry replied that he was aware of the date and the date was acceptable. CAA Reed further advised the Court of attempts to contact Dennis Carry through his formal employer, the Washoe County Sheriff's Office, and further attempts through an investigator.

CAA Reed asked the Court to admit the November 5, 2018 deposition transcript of Dennis Carry in lieu of his appearance in Court.

DDA Noble stated no objection to publishing the deposition transcript of Dennis Carry and asked the Court to take note of the objections lodged by Joseph Plater, Esq. in the transcript.

COURT ORDERED: Request to publish the deposition transcript of Dennis Carry – GRANTED. The Court will consider the deposition and note the objections contained therein.

Deposition of Dennis Carry taken on November 05, 2018 – **OPENED AND PUBLISHED.**

CAA Reed provided the Court with a brief overview of what the Petitioner believes the evidence will show at this hearing.

DDA Noble provided the Court with a brief overview of what the State believes the evidence will show at this hearing.

CAA called **Tammy Loehrs** who was sworn and direct examined by CAA Reed; cross examination conducted by DDA Naughton; re-direct examination conducted by CAA Reed; re-cross examination conducted by DDA Naughton; witness thanked and excused.

DDA Naughton **invoked** the rule of exclusion.

12:03 p.m. – Recess.

1:16 p.m. – Court reconvened with Court, respective counsel and Petitioner present.

CAA Reed called **Roderick Stephen Skinner** who was sworn and direct examined by CAA Reed; cross examination conducted by DDA Noble; re-direct examination conducted by CAA Reed; witness thanked and excused.

2:35 p.m. – Recess.

2:54 p.m. – Court reconvened with Court, respective counsel and Petitioner present.

CAA Reed advised the Court that he will not be calling any additional witnesses. CAA Reed advised the Court that the Petitioner will ask the Court to issue the writ and dismiss the charges against the Petitioner.

DDA Noble advised the Court of the effects if the Court grants the writ petition to include the judgment being set aside and the State's request for stay while appellate review is sought.

DDA Naughton called **John Petty, Esq.** who was sworn and direct examined by DDA Naughton; cross examination conducted by CAA Reed; witness thanked and excused.

DDA Noble called **Christopher Frey, Esq.** who was sworn, identified the Petitioner and direct examined by DDA Noble; cross examination conducted by CAA Reed; re-direct examination conducted by DDA Noble; witness thanked and excused.

3:51 p.m. – Recess.

3:58 p.m. – Court reconvened with Court, respective counsel and Petitioner present.

Counsel Reed argued in support of the Petition for Writ of Habeas Corpus to include that destruction of evidence warrants some kind of relief and this case should be dismissed. Counsel Reed argued that the habeas corpus should be granted, this matter should return to status prior to entry of plea and the conviction should be overturned.

Counsel Naughton argued that the Petition for Writ of Habeas Corpus and Supplemental Petition for Writ of Habeas Corpus should be denied in their entirety, due process was met in this case.

Counsel Reed argued further in support of granting the Petition.

COURT ORDERED: Petition for Writ of Habeas Corpus and Supplemental Petition for Writ of Habeas Corpus – UNDER SUBMISSION.

4:21 p.m. - Court stood in recess.

Petitioner remanded to the custody of NDOC.

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-10-21 14:28:16.127.

JOHN PETTY, ESQ. - Notification received on 2019-10-21 14:28:15.519.

DIV. OF PAROLE & PROBATION - Notification received on 2019-10-21 14:28:15.487.

CHRISTOPHER FREY, ESQ. - Notification received on 2019-10-21 14:28:15.472.

EDWARD REED, ESQ. - Notification received on 2019-10-21 14:28:15.971.

CHRISTINE BRADY, ESQ. - Notification received on 2019-10-21 14:28:15.815.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
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A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

10-21-2019:14:27:10

Clerk Accepted:

10-21-2019:14:27:44

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

***Minutes

Filed By:

Court Clerk ADeGayne

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RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

1 EDWARD T. REED, ESQ.
2 EDWARD T. REED, PLLC
3 Nevada State Bar No. 1416
4 P.O. Box 34763
5 Reno, NV 89533-4763
6 (775) 996-0687
7 *ATTORNEY FOR PETITIONER*

8
9
10 **IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**
12

13
14 RODERICK STEPHEN SKINNER,

15 Petitioner,

Case No. CR14-0644

16 vs.

Dept. No. 8

17
18 ISIDRO BACA, WARDEN, NORTHERN
19 NEVADA CORRECTIONAL CENTER.
20

21 Respondent.
22 _____ /

23 **NOTICE OF APPEAL**

24 NOTICE IS HEREBY GIVEN that Petitioner RODERICK STEPHEN
25 SKINNER hereby appeals to the Supreme Court of the State of Nevada from the Notice
26 of Entry of Order Denying Petition for Writ of Habeas Corpus, entered and served on
27 October 9, 2019.
28

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///

1 / Pursuant to NRS 239B.030, the undersigned does hereby affirm that the
2 preceding document does not contain the social security number of any person.

3 DATED this 4th day of November, 2019.

4
5 /s/Edward T. Reed
6 EDWARD T. REED, ESQ.
7 EDWARD T. REED, PLLC
8 Nevada State Bar No. 1416
9 P.O. Box 34763
10 Reno, NV 89533-4763
11 (775) 996-0687
12 Fax (775) 333-0201
13 *ATTORNEY FOR PETITIONER*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Edward T. Reed, PLLC, counsel for Petitioner, and that on this date I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Jennifer Noble, Esq.
Washoe County District Attorney's Office

And that I mailed a true and correct copy via the USPS, first class postage pre-paid, to:

Roderick Skinner #1126964
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

DATED this 4th day of November, 2019.

/s/ Edward T. Reed
Edward T. Reed

1 EDWARD T. REED, ESQ.
2 EDWARD T. REED, PLLC
3 Nevada State Bar No. 1416
4 P.O. Box 34763
5 Reno, NV 89533-4763
6 (775) 996-0687
7 *ATTORNEY FOR PETITIONER*

8
9
10 **IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**
12

13
14
15 Roderick Stephen Skinner,

16 Petitioner,

Case No. CR14-0644

17 vs.

Dept. No. 8

18
19 ISIDRO BACA, WARDEN, NORTHERN
20 NEVADA CORRECTIONAL CENTER.

21 Respondent.
22 _____/

23 **CASE APPEAL STATEMENT**

24 1. Name of appellant filing this case appeal statement: RODERICK STEPHEN
25 SKINNER, Petitioner/Appellant named above.

26 2. Identify the judge issuing the decision, judgment, or order appealed from: The
27 Honorable Barry Breslow, Second Judicial District Court, Washoe County, Department
28 8.

3. Identify each appellant and the name and address of counsel for each
appellant: RODERICK STEPHEN SKINNER, represented by Edward T. Reed, Esq.,
P.O. Box 34763, Reno, NV 89533-4763, (775) 996-0687.

1 4. Identify each respondent and the name and address of appellant counsel, if
2 known, for each respondent. Respondent is ISIDRO BACA, WARDEN, NORTHERN
3 NEVADA CORRECTIONAL CENTER. Appellate counsel for Respondent is Jennifer
4 Noble, Washoe County District Attorney's Office, Appellate Division, P.O. Box 11130,
5 Reno, NV 89520, (775) 328-3200.

6 5. Indicate whether any attorney identified above in response to question 3 or 4 is
7 not licensed to practice law in Nevada and, if so, whether the district court granted that
8 attorney permission to appear under SCR 42 (attach a copy of any district court order
9 granting such permission): None.

10 6. Indicate whether Petitioner/Appellant was represented by retained or appointed
11 counsel in the district court: Petitioner/Appellant was represented at the district court by
12 appointed counsel, Edward T. Reed, Esq.

13 7. Indicate whether Petitioner/Appellant is represented by retained or appointed
14 counsel on appeal: Petitioner/Appellant is currently represented on appeal by appointed
15 counsel, Edward T. Reed, Esq.

16 8. Indicate whether Petitioner/Appellant was granted leave to proceed in forma
17 pauperis, and the date of entry of the district court order granting such leave: The
18 Petitioner was granted leave to proceed in forma pauperis on July 15, 2016.

19 9. Indicate the date the proceedings commenced in the district court: The Petition
20 for Writ of Habeas Corpus was filed July 13, 2016. The Information in the underlying
21 case was originally filed May 2, 2014.

22 10. Provide a brief description of the nature of the action and result in the district
23 court, including the type of judgment or order being appealed and the relief granted by
24 the district court. The Petitioner entered a plea of guilty on May 27, 2014, to one count of
25 Promotion of a Sexual Performance of a Minor, Age 14 or Older, in violation of NRS
26 200.720 and NRS 200.750, a **Category A felony**, and was sentenced before the
27
28

1 Honorable David Hardy in Department 15, to a sentence of life, with the possibility of
2 parole after five years.

3 After a direct appeal in which the Court of Appeals affirmed the judgment of
4 conviction on July 14, 2015, in case number 66666, the Petitioner filed a petition for writ
5 of habeas corpus on July 13, 2016. On October 9, 2019, the district court entered an
6 order denying the petition for writ of habeas corpus.

7 11. Indicate whether the case has previously been the subject of an appeal to or
8 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court
9 docket number of the prior proceeding: The Petitioner did appeal his conviction to the
10 Nevada Supreme Court, and the Nevada Court of Appeals issued an order on July 14,
11 2015, dismissing Petitioner's appeal in Supreme Court docket numbers 66666, with the
12 case entitled: Roderick Skinner, Appellant, v. The State of Nevada, Respondent.

13 12. Indicate whether this appeal involves child custody or visitation: This case
14 does not involve child custody or visitation.

15 13. If this is a civil case, indicate whether this appeal involves the possibility of
16 settlement: N/A.

17 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the
18 preceding document does not contain the social security number of any person.

19 DATED this 4th day of November, 2019.

20
21 /s/ Edward T. Reed
22 EDWARD T. REED, ESQ.
23 EDWARD T. REED, PLLC
24 Nevada State Bar No. 1416
25 P.O. Box 34763
26 Reno, NV 89533-4763
27 (775) 996-0687
28 Fax (775) 333-0201
Attorney for Petitioner/Appellant
RODERICK STEPHEN SKINNER

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Edward T. Reed, PLLC., appointed counsel for the above-named Petitioner/Appellant, and that on this date I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send a notice of electronic filing to the following:

Jennifer Noble, Esq.
Washoe County District Attorney's Office
Appellate Division

DATED this 4th day of November, 2019.

/s/ Edward T. Reed

Edward T. Reed

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-11-04 09:41:34.237.

JOHN PETTY, ESQ. - Notification received on 2019-11-04 09:41:34.143.

DIV. OF PAROLE & PROBATION - Notification received on 2019-11-04 09:41:34.127.

CHRISTOPHER FREY, ESQ. - Notification received on 2019-11-04 09:41:34.096.

EDWARD REED, ESQ. - Notification received on 2019-11-04 09:41:34.205.

CHRISTINE BRADY, ESQ. - Notification received on 2019-11-04 09:41:34.174.

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PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

11-04-2019:09:40:33

Clerk Accepted:

11-04-2019:09:41:00

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Case Appeal Statement

Filed By:

Edward Torrance Reed

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STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
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JENNIFER NOBLE, ESQ. - Notification received on 2019-11-04 09:44:03.03.

JOHN PETTY, ESQ. - Notification received on 2019-11-04 09:44:02.968.

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CHRISTOPHER FREY, ESQ. - Notification received on 2019-11-04 09:44:02.921.

EDWARD REED, ESQ. - Notification received on 2019-11-04 09:44:03.015.

CHRISTINE BRADY, ESQ. - Notification received on 2019-11-04 09:44:02.999.

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A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

11-04-2019:09:38:09

Clerk Accepted:

11-04-2019:09:43:32

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Notice/Appeal Supreme Court

Filed By:

Edward Torrance Reed

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

EDWARD TORRANCE REED, ESQ. for
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

1 Code 1350

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3
4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF WASHOE

6 RODERICK STEPHAN SKINNER,

Case No. CR14-0644

7
8 Petitioner,

Dept. No. 8

9 vs.

10 ISIDRO BACA, WARDEN OF NNCC,
11 AND NEVADA ATTORNEY GENERAL,

12 Respondents.
13 _____/

14 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

15 I certify that I am an employee of the Second Judicial District Court of the State of Nevada,
16 County of Washoe; that on the 4th day of November, 2019, I electronically filed the Notice of
17 Appeal in the above entitled matter to the Nevada Supreme Court.

18 I further certify that the transmitted record is a true and correct copy of the original
19 pleadings on file with the Second Judicial District Court.

Dated this 4th day of November, 2019

20 Jacqueline Bryant
21 Clerk of the Court

22 By /s/ YViloria
23 YViloria
24 Deputy Clerk
25
26
27
28

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-11-04 10:21:17.995.

JOHN PETTY, ESQ. - Notification received on 2019-11-04 10:21:17.933.

DIV. OF PAROLE & PROBATION - Notification received on 2019-11-04 10:21:17.917.

CHRISTOPHER FREY, ESQ. - Notification received on 2019-11-04 10:21:17.73.

EDWARD REED, ESQ. - Notification received on 2019-11-04 10:21:17.98.

CHRISTINE BRADY, ESQ. - Notification received on 2019-11-04 10:21:17.964.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

11-04-2019:10:20:08

Clerk Accepted:

11-04-2019:10:20:48

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk YViloria

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STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

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

RODERICK STEPHEN SKINNER,
Appellant,
vs.
ISIDRO BACA, WARDEN OF NNCC,
Respondent.

Supreme Court No. 79981
District Court Case No. CR140644

08

RECEIPT FOR DOCUMENTS

TO: Edward T. Reed
Washoe County District Attorney \ Jennifer P. Noble
Jacqueline Bryant, Washoe District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

11/08/2019 Appeal Filing Fee waived. Criminal. (SC)

11/08/2019 Filed Notice of Appeal. Appeal docketed in the Supreme Court this
day. (Docketing statement mailed to counsel for appellant.) (SC)

DATE: November 08, 2019

Elizabeth A. Brown, Clerk of Court
df

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-11-12 15:34:54.868.

JOHN PETTY, ESQ. - Notification received on 2019-11-12 15:34:50.001.

DIV. OF PAROLE & PROBATION - Notification received on 2019-11-12 15:34:48.222.

CHRISTOPHER FREY, ESQ. - Notification received on 2019-11-12 15:34:45.726.

EDWARD REED, ESQ. - Notification received on 2019-11-12 15:34:51.639.

CHRISTINE BRADY, ESQ. - Notification received on 2019-11-12 15:34:50.812.

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PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

11-12-2019:15:32:10

Clerk Accepted:

11-12-2019:15:33:25

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

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STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

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Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-11-14 08:09:36.813.

JOHN PETTY, ESQ. - Notification received on 2019-11-14 08:09:36.704.

DIV. OF PAROLE & PROBATION - Notification received on 2019-11-14 08:09:36.673.

CHRISTOPHER FREY, ESQ. - Notification received on 2019-11-14 08:09:36.642.

EDWARD REED, ESQ. - Notification received on 2019-11-14 08:09:36.782.

CHRISTINE BRADY, ESQ. - Notification received on 2019-11-14 08:09:36.751.

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PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

11-13-2019:17:35:05

Clerk Accepted:

11-14-2019:08:09:00

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Ex-Parte Mtn

Filed By:

Edward Torrance Reed

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STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

1 EDWARD T. REED, ESQ.
2 EDWARD T. REED, PLLC
3 Nevada State Bar No. 1416
4 P.O. Box 34763
5 Reno, NV 89533-4763
6 (775) 996-0687

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 RODERICK SKINNER,

10 Petitioner,

Case No. CR14-0644

11 vs.

Dept. No. 8

12 THE STATE OF NEVADA,

13 Respondent.
14 _____ /

15 **REQUEST FOR TRANSCRIPT**
16

17 To: Isolde Zihn, Court reporter, Department 8

18 COMES NOW Petitioner RODERICK SKINNER, by and through his attorney
19 Edward T. Reed, Esq., and hereby requests a copy of the following transcript in this
20 case:

21 The transcript of the post conviction evidentiary hearing held on September
22 26, 2019.

23
24 **Pursuant to NRS 239B.030**, the undersigned does hereby affirm that the
25 preceding document does not contain the social security number of any person.

26 //

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Respectfully submitted this 14th day of November 2019.

/s/ Edward T. Reed
Edward T. Reed, Esq.
Edward T. Reed, PLLC
Nevada State Bar No. 1416
P.O. Box 34763
Reno, NV 89533-4763
(775) 996-0687
Fax (775) 333-0201
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I represent the Petitioner in this matter and that on this date I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Appellate Division
Washoe County District Attorney's Office

And via email to:

zihn@sbcglobal.net
Isolde Zihn, court reporter
c/o Dept. 8
Washoe County District Court
75 Court St.
Reno, NV 89501

DATED this 14th day of November, 2019.

/s/ Edward T. Reed
EDWARD T. REED

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-11-14 10:48:00.02.

JOHN PETTY, ESQ. - Notification received on 2019-11-14 10:47:59.957.

DIV. OF PAROLE & PROBATION - Notification received on 2019-11-14 10:47:59.942.

CHRISTOPHER FREY, ESQ. - Notification received on 2019-11-14 10:47:59.926.

EDWARD REED, ESQ. - Notification received on 2019-11-14 10:48:00.004.

CHRISTINE BRADY, ESQ. - Notification received on 2019-11-14 10:47:59.988.

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-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

11-14-2019:10:47:01

Clerk Accepted:

11-14-2019:10:47:29

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Req to Crt Rptr - Rough Draft

Filed By:

Edward Torrance Reed

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STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

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1 CODE 2777
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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6
7 IN AND FOR THE COUNTY OF WASHOE

8 RODERICK SKINNER,
9

10 Petitioner,

11 vs.

Case No. CR14-0644

12 THE STATE OF NEVADA,

Dept. No. 8

13 Respondent.
14 -----/

15 **RECOMMENDATION AND ORDER FOR PAYMENT OF**
16 **INTERIM ATTORNEY FEES – POST CONVICTION**

17 The Administrator, having reviewed the request for compensation and declaration of
18 counsel submitted by Edward T. Reed, for representation of Petitioner Roderick Skinner, who
19 was previously declared indigent, and the Court having previously entered an Order finding this
20 case appropriate for waiver of the \$750 statutory cap, pursuant to NRS 7.125(4),

21 The Administrator recommends that the Chief Judge of the Second Judicial District
22 Court finds that the time expended was both necessary and reasonable to handle the recent
23 issues in this matter and represent Petitioner's interests.

24 ///

1 The Administrator, having reviewed Mr. Reed's Motion and knowing that Petitioner is
2 indigent, recommends that the Chief Judge of the Second Judicial District Court approves the
3 payment of interim fees in the amount of \$5,032.80, made payable to Edward T. Reed, to be
4 paid by the State of Nevada Public Defender's Office.

5 Dated this 11th day of November, 2019.

6
7 
8 KRISTA MEIER, ESQ.
9 APPOINTED COUNSEL ADMINISTRATOR

10
11 **ORDER**

12 Pursuant to the Nevada Supreme Court Order in ADKT 411 and the Second Judicial
13 District Court's Model Plan to address ADKT 411, good cause appearing and in the interests of
14 justice,

15 IT IS HEREBY ORDERED that the recommendations of the Administrator are hereby
16 confirmed, approved and adopted as to the amount of \$ 5,032⁸⁰. This amount may not be
17 the same as the Administrator's recommendation. Counsel is notified that he may request a
18 prove-up hearing for any non-approved amounts before the Chief Judge of the District.

19 Counsel, Edward T. Reed, shall be reimbursed by the State of Nevada Public
20 Defender's Office his attorney fees in the amount of \$ 5032⁸⁰.

21 DATED this ~~11th~~^{3rd} day of December 2019.

22
23 
24 CHIEF DISTRICT JUDGE
25
26

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-12-03 13:48:44.09.

JOHN PETTY, ESQ. - Notification received on 2019-12-03 13:48:44.012.

DIV. OF PAROLE & PROBATION - Notification received on 2019-12-03 13:48:43.996.

CHRISTOPHER FREY, ESQ. - Notification received on 2019-12-03 13:48:43.965.

EDWARD REED, ESQ. - Notification received on 2019-12-03 13:48:44.059.

CHRISTINE BRADY, ESQ. - Notification received on 2019-12-03 13:48:44.043.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

12-03-2019:13:47:34

Clerk Accepted:

12-03-2019:13:48:11

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Ord Approving

Filed By:

Judicial Asst. BWard

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STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF WASHOE

8

HONORABLE BARRY L. BRESLOW

9

RODERICK SKINNER,

10

Petitioner,

11

vs.

Case No. CR14-0644

12

THE STATE OF NEVADA,

Department No. 8

13

Respondent.

14

-----/

15

TRANSCRIPT OF PROCEEDINGS

16

Hearing on post-conviction petition

September 26, 2019

17

APPEARANCES:

18

For the State:

Jenny Noble & Kevin Naughton

19

Deputy District Attorneys

1 South Sierra Street

Reno, Nevada

20

For the Petitioner:

Edward T. Reed

21

Attorney at law

Reno, Nevada

22

23

24

Reported by:

Isolde Zihn, CCR #87

1	INDEX				
2	PETITIONER'S WITNESSES:	Direct	Cross	Redirect	Recross
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4	Roderick Stephen Skinner	81	107	142	
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6	STATE'S WITNESSES:				
7	John Petty	149	157		
8	Chris Frey	161	180	185	
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1 RENO, NEVADA, THURSDAY, SEPTEMBER 26, 2019, 10:35 A.M.

2 THE COURT: Good morning, everyone.

3 Please be seated.

4 Okay. Welcome to Department 8.

5 I'm Judge Breslow.

6 We're on the record in the case of Roderick Skinner
7 versus State of Nevada, CR14-0644.

8 Starting with counsel for petitioner, please state
9 your appearance for the record, and please introduce your
10 client.

11 MR. REED: Thank you, Your Honor.

12 Edward T. Reed, on behalf of Roderick Skinner, who is
13 here today with me. He's in custody, but he is here.

14 THE COURT: Thank you very much.

15 Good morning, sir.

16 THE PETITIONER: Good morning.

17 THE COURT: All right. And then on behalf of the
18 State of Nevada.

19 MS. NOBLE: Good morning, Your Honor.

20 Jennifer Noble and Kevin Naughton, on behalf of the
21 State of Nevada.

22 THE COURT: Thank you. Welcome to both of you.

23 All right. A couple things, preliminarily.

24 First, I apologize for the late start this morning.

1 The Court was in trial this week. Of course, trials are part
2 art, part science, as probably would be true of this hearing.
3 So we estimated as closely as we could when the trial would
4 be over. And that's why I asked this matter be moved to a
5 10:30 start. Turns out the trial got over yesterday, late
6 afternoon. We could have started at 9:00. So my apologies
7 for making everybody wait until now. That's number one.

8 Number two, I've blocked out the Court's calendar for
9 the rest of the day today, and as long as we need tomorrow,
10 if we go into tomorrow. So nobody needs to rush. There's
11 no -- it's like baseball, not football. There's no time
12 limit here.

13 I want to make sure the Court understands and
14 appreciates the legal arguments, the evidence and testimony
15 that the Court will be asked to consider, and that people
16 have enough time to argue their position.

17 Whether the Court decides then right here and now on
18 the bench at the close of the proceeding is possible, but not
19 likely. More likely, it would be the Court taking it under
20 submission, and have a decision out before Halloween.
21 The Court has other matters that require its attention, as
22 you all are aware.

23 But this has been out there for a while, and I
24 realize that Mr. Skinner wants some finality and some

1 understanding of the Court's decision as soon as possible.
2 And, of course, the State is equally interested in having its
3 position put forward, in their mind, hopefully vindicated.

4 So that's the way this matter will go.

5 I did review the entire file. This was not my file
6 originally, as everyone knows. I believe it was originally
7 Judge Hardy's case. It came to the Court for purposes solely
8 of this writ of habeas corpus.

9 I've reviewed everything that was available in the
10 record.

11 I've also reviewed each side's respective pre-hearing
12 brief that was filed in the last day or two, which I
13 appreciate.

14 I found informative the summary of what the State's
15 position is going to be.

16 And then, Mr. Reed, I saw and reviewed the one you
17 filed, I believe, just yesterday, emphasizing to the Court
18 the petitioner's view of the importance, for purposes of the
19 Court's decision-making, on the lack of the available
20 evidence.

21 With that, we can begin to proceed.

22 I'm happy to entertain a very short overview from
23 each side, starting with petitioner, on what you believe this
24 hearing will demonstrate to the Court, and why you believe it

1 will result in what you're asking the Court to do.

2 And then I'll hear from the State briefly, you know,
3 a few minutes, on what you believe the evidence and testimony
4 and law will reflect here, what the State would be asking the
5 Court to do.

6 So, Mr. Reed, why don't you start, if you would,
7 please.

8 And you can address the Court there. We can bring
9 the lectern, if you're more comfortable standing and having
10 your notes on something to read from or review from. Or you
11 can even address the Court seated. It's a little bit
12 informal here, so.

13 MR. REED: Well, I would like to get the lectern.

14 THE COURT: Sure. The deputy will bring that out for
15 you, and we'll go from there.

16 Deputy, if you would just put it right in between the
17 tables, or close to it, that would be helpful.

18 Thank you.

19 MR. REED: And, Your Honor, the first order of
20 business is, I would like to submit a stipulation to you.
21 It's been signed by both me and Ms. Noble, for the State,
22 which --

23 THE COURT: The one you alluded to in the brief you
24 just filed?

1 MR. REED: That's correct; yes.

2 THE COURT: Tell me again, please, what the
3 stipulation provides.

4 MR. REED: Okay. Well, the stipulation provides that
5 the evidence release, which is attached to the stipulation,
6 should be admitted into evidence. It's the evidence release
7 signed by somebody in the District Attorney's Office, a
8 Deputy District Attorney --

9 THE COURT: For Mr. Bolenbaker?

10 MR. REED: Right.

11 THE COURT: He said he didn't sign it; right?

12 MR. REED: Exactly. Yeah. Somebody signed it. We
13 couldn't ever determine who.

14 But it was used to -- sent to Sergeant Carry at the
15 Washoe County Sheriff's Office, and he used it to then
16 sometime thereafter destroy the evidence.

17 THE COURT: Okay. Well, let's just start with the
18 stipulation.

19 The stipulation says that there's no dispute that
20 there was an evidence release prepared and signed by a Deputy
21 District Attorney, and forwarded to then Mr. Carry of the
22 Sheriff's Office --

23 MR. REED: Yes.

24 THE COURT: -- who then sometime, I understand,

1 thereafter believes that the evidence was disposed of.

2 MR. REED: Yes. Well, I'll get to that in a moment.

3 But may I approach --

4 THE COURT: You may.

5 MR. REED: -- Your Honor?

6 THE COURT: Any objection to the stipulation being
7 entered into the record, and the Court deeming it as a proven
8 fact?

9 MS. NOBLE: No, Your Honor.

10 THE COURT: All right. It will be admitted. Please
11 have it marked.

12 Let's file it in. If it's a stipulation, it will be
13 filed in, not marked as a separate exhibit.

14 Okay. So that having been established, tell me what
15 you believe the Court is going to find happened, and what the
16 legal effect of that is that the petitioner is asking the
17 Court to make of all that.

18 MR. REED: Well, Your Honor, if I may, if I can get
19 to one other order of business first.

20 THE COURT: Go right ahead. Sure.

21 MR. REED: Which is that we served a subpoena on
22 Dennis Carry. And this was back when he was still with the
23 Washoe County Sheriff's Office. It was served on him,
24 actually, in July, end of July, 2018, when the hearing at

1 that time was set for January 3rd of this year, 2019.

2 THE COURT: Yes.

3 MR. REED: And then, at the time that this hearing
4 was continued until this day, I notified Mr. Carry -- and
5 there's an e-mail attached to the subpoena, which the
6 subpoena has been filed in the record. And I don't see him
7 here today.

8 THE COURT: Well, you e-mailed him to indicate that
9 the hearing had been continued, and the new date was
10 September 26th?

11 MR. REED: That's correct; yes.

12 THE COURT: Did he respond that he acknowledges that?

13 MR. REED: He did respond. He said those dates were
14 okay, at the time. So he had notice of that. And I don't
15 see him here today.

16 We've done everything we could to get ahold of him.

17 And we've been in contact with the Sheriff's Office
18 during this period of time. Actually, about two months ago,
19 I sent him an e-mail to his original e-mail address, and said
20 that, you know, "I'd like to talk to you about the hearing,
21 when to be here," and all that.

22 And then we received back an e-mail from somebody --
23 this might have been an automatic e-mail -- from somebody at
24 the Sheriff's Office, said -- they gave me a phone number to

1 call, which I did.

2 And I have all the e-mails, if you'd like to see
3 them.

4 THE COURT: So what happened when you called the
5 number?

6 MR. REED: Pardon me?

7 THE COURT: What happened when you called the number?

8 MR. REED: Well, I called the number, and I spoke
9 to -- I ended up speaking to a gentleman, Captain Russ
10 Peterson, who, I guess, had been his supervisor when he was
11 at the Sheriff's Office. And he said that Sergeant Carry was
12 no longer with the Sheriff's Office. And so he wanted me to
13 send him the subpoena, and he would send it to Mr. Carry's
14 last known e-mail address.

15 And I asked him to have Mr. Carry get in touch with
16 me, to call me or e-mail me. So the subpoena was attached.

17 But then the next order of business was that I didn't
18 hear anything for a while. And then, so, in August -- or,
19 actually, I guess this was in September -- I e-mailed him the
20 subpoena in August, August 13th -- September, I e-mailed
21 Captain Peterson again --

22 THE COURT: So we are talking September this year, or
23 September a year ago?

24 MR. REED: This year.

1 THE COURT: So just a couple weeks ago, then.

2 MR. REED: Few weeks ago, yes.

3 So I e-mailed, as I stated, Captain Peterson. You
4 know, I e-mailed the subpoena for Dennis Carry. And he then
5 forwarded it to Dennis Carry.

6 "I have not heard anything back from Mr. Carry, and
7 I'm wondering if you could possibly give me his contact
8 information, such as address, phone number, and/or e-mail. I
9 would like to speak to him prior to the hearing, if possible.

10 "Also, can you tell me whether or not he's still
11 under investigation or has been charged with anything" --

12 MS. NOBLE: Objection. We are getting far afield
13 from service.

14 THE COURT: Well, I'm trying to follow along here.

15 The objection is that what is being read to the Court
16 now does not relate to the issue of Mr. Carry not being here
17 pursuant to valid service of subpoena.

18 MS. NOBLE: That's correct. If Mr. Reed wants to let
19 this Court know about his attempt to contact Mr. Carry
20 through his former employer, the Sheriff's Office, that's
21 fine; but getting into hearsay allegations regarding
22 Mr. Carry, I don't think that's necessary for purposes of
23 determining service.

24 Your Honor, I would also like to respond regarding

1 service, because I do not believe proper service has been
2 effected in this case. But I'll wait for Mr. Reed to finish.

3 THE COURT: Thank you.

4 Well, let's stay on the track here. Please educate
5 the Court on the efforts you've made to secure Mr. Carry's
6 appearance here. I mean, you're on that track, so let's just
7 stay on it.

8 MR. REED: And now Mr. Russell Peterson e-mailed me
9 back that, "I've not heard back from Mr. Carry. As far as
10 sharing this information with you, I'm checking with my
11 executive staff and District Attorney's Office for an answer.
12 For your records, I sent the e-mail containing a copy of the
13 subpoena to his last known e-mail address on August 13th,
14 2019."

15 Okay. And then the next -- I sent another e-mail,
16 when he came back with, "I am unable" --

17 THE COURT: So the e-mail you're now referring to was
18 about what date?

19 MR. REED: Okay. This one was -- the one where he
20 said, "I have not heard back from Mr. Carry" was September
21 10th.

22 THE COURT: Okay.

23 MR. REED: And then there was one September 12th.
24 "After discussing your request with Legal, I'm unable to

1 release Mr. Carry's personal contact information to you.

2 Sorry for the inconvenience."

3 And then my e-mail was, "Would you please tell me who
4 you spoke with in Legal about getting Mr. Carry's contact
5 information?"

6 And then he came back with that he had spoke with DA
7 Keith Munro in the Washoe County District Attorney's Office;
8 that they apparently -- you know, they went along with the
9 refusal to give me any contact information of Dennis Carry.

10 So that's the last e-mail.

11 Now, my investigator, Dustin Greg, was out also
12 trying to find him. We found a couple of addresses for him
13 in the area.

14 I sent out a certified letter, which was actually
15 signed for, and there was a return-receipt-requested letter,
16 which is right here.

17 THE COURT: Okay. What does the letter say?

18 MR. REED: The letter says, "Dear Mr. Carry" -- this
19 is September 17th. "As you know, you were served a subpoena
20 in the above-referenced case on July 30th, 2018. Then the
21 Court continued this case, and I let you know the available
22 dates for the continuance, and you were fine with those
23 dates, which are September 26th to 27th, 2019. I've attached
24 the subpoena and your e-mail in which you agreed to those

1 | dates. Please be at Department 8 no later than 9:00 a.m. on
2 | Thursday, September 26th, for your testimony on behalf of Mr.
3 | Skinner. Please contact me if you have any questions."

4 | Now, a separate letter was sent to his physical
5 | address --

6 | THE COURT: Same letter, basically?

7 | MR. REED: Yeah, the same letter.

8 | THE COURT: Now, you got the green part back, so he
9 | or somebody signed for that letter?

10 | MR. REED: Correct.

11 | THE COURT: Did he contact you?

12 | MR. REED: He never contacted me.

13 | And we also -- I was told by Ms. Noble that his
14 | attorney was Thomas Vilorio. And I sent him a letter, faxed
15 | a letter to him, as well, to pass along to Mr. Carry, about
16 | the hearing, and what time to be here, and all that.

17 | So that's basically the extent of it.

18 | THE COURT: Let's suppose he doesn't arrive. I mean,
19 | he's not here now. He hasn't indicated he is planning to
20 | show up. What would you ask the Court to do?

21 | Of course, you know, there are many options. If I
22 | find that service was properly effected -- albeit, quite a
23 | while ago -- and that there's no excuse for his
24 | non-appearance, what would you ask the Court to do?

1 I mean, do you want to continue this and have a
2 hearing until Sergeant Carry can attend? Do you want to go
3 forward in his absence and have the Court review and consider
4 the deposition transcript that you submitted just the other
5 day? Do you want to take another approach? What's the ask?

6 MR. REED: My suggestion right now would be to admit
7 the deposition transcript. And if we get that admitted into
8 court as part of the record, then I don't believe I would
9 need him here.

10 THE COURT: Okay. Let me hear -- thank you. Have a
11 seat, please.

12 Let me hear from Ms. Noble.

13 What's the State's position, please?

14 MS. NOBLE: Thank you, Your Honor.

15 Well, with that last sentence, Mr. Reed simplified
16 things for me greatly.

17 In terms of effective service, no, I don't think I've
18 heard that. But I'm not Mr. Carry's attorney.

19 Mr. Reed is correct. In August, I did inform him,
20 just because I had seen in media reports that he was
21 represented by Mr. Vilorio. I think the proper thing to do
22 would have been to serve a subpoena on Mr. Vilorio, who is
23 counsel of record for Mr. Carry, as I advised Mr. Reed back
24 in August.

1 However, if his suggestion is simply to admit the
2 deposition transcript, I have no objection to that. And when
3 Mr. Plater agreed, as a courtesy, to do a deposition rather
4 than live testimony here in court, that's what we
5 anticipated.

6 With that, Your Honor, I ask that, when you review
7 it, you keep in mind any objections that Mr. Plater made, and
8 consider whether or not you would consider that evidence or
9 sustain that objection.

10 That's it.

11 THE COURT: Okay. Let me ask you this, Mr. Reed.
12 The types of questions you would ask Mr. Carry, if he were
13 here, are essentially those that were asked of him in his
14 deposition. Is that fair?

15 MR. REED: That's correct; yes.

16 THE COURT: So, I mean, when Ms. Noble said, "Judge,
17 if that's going to be the request, we probably don't have a
18 dispute here. We just ask that, when you review the
19 deposition, you bear in mind the objections," what she should
20 have said is, "When you read the deposition again," because I
21 already read it one time in anticipation of this hearing, to
22 get a flavor of what it would -- the Court would expect the
23 line of questioning to be with Sergeant Carry.

24 So, well, it seems like we're full circle here. The

1 Court is inclined to grant the request, based upon a showing
2 of unavailability, or not being here. I'm not going to
3 assign to Sergeant Carry any good cause for not being here.
4 But for purposes of going forward, and to make sure that your
5 client gets a fair hearing, the Court will allow the
6 deposition to be published, to be made part of the record.
7 The Court will consider it. I'll read it a second time, if
8 I'm not prepared to rule from the bench after this hearing.
9 And I will note the objections. And if I believe I need
10 argument on those further, I'll let each side know. But
11 absent that, I'll assume that Sergeant Carry's testimony,
12 were he here, would have been consistent with that of his
13 sworn deposition testimony under oath.

14 Is that acceptable to the petitioner?

15 MR. REED: Yes; that's correct. Thank you, Your
16 Honor.

17 THE COURT: Acceptable to the defense?

18 MS. NOBLE: Yes, Your Honor.

19 THE COURT: To the State, rather?

20 Thank you.

21 Please approach the court clerk, and we'll have that
22 marked, published, and made part of the record.

23 THE CLERK: Marked as an exhibit, or filed?

24 THE COURT: Filed, please.

1 Now, let me ask this question, as well: Did Sergeant
2 Carry have an opportunity to review and sign? Does anyone
3 know? And, if so, did he make any edits or corrections?

4 MR. REED: As far as I know, he did. I mean, I
5 believe that came up with the court reporter at the end. But
6 there are no corrections that have been made.

7 THE COURT: Okay. So you got the original back from
8 the court reporter?

9 MR. REED: That's correct; yes.

10 THE COURT: All right.

11 THE CLERK: I'll need a cover page. There's not a
12 place to do the stamp.

13 Do you need this now?

14 THE COURT: No, I don't need it at the moment.

15 Please put a cover sheet on it before you make it
16 part of the record.

17 It's been opened and published. The Court will
18 consider it for purposes of this hearing.

19 So let's proceed. So what will the evidence show
20 from the petitioner's perspective; and what is the ask of the
21 petitioner by the close of this hearing, please?

22 And, again, I don't want you to do your summation
23 here, but give the Court a primer on what you believe will be
24 presented.

1 MR. REED: Well, I think the primary thing here is
2 the destruction of the evidence, with the consent of the
3 District Attorney's Office. And this was before Mr. Skinner
4 really -- before his rights to file a petition for writ of
5 habeas corpus had expired, so he's been put in a very bad
6 situation, where he's claiming his innocence. He claims he
7 was coerced through various means, not -- maybe not
8 intentionally, but through the system -- well, to some
9 extent, I think he feels it was intentionally coerced.

10 THE COURT: Well, isn't that conflating two different
11 ideas? If one of the arguments here is, "Hey, my client was
12 coerced into pleading guilty. Here's how he was coerced.
13 Here's what he would have done but for the coercion, and it
14 would have changed the result," that's one thought process.

15 The other is that, I guess, the argument is actual
16 innocence, and you're hamstrung from being able to
17 demonstrate that to the Court by a lack of evidence that
18 would be relevant to that inquiry. Is that fair?

19 MR. REED: Yes. Yeah, that's fair. But I do think
20 that the failure to have the evidence, which we maintain
21 would show actual innocence, if we had it, that does bear on
22 his grounds in his habeas corpus petition, such as the lack
23 of a corpus delicti, and the failure on the part of his
24 attorney to fully investigate this matter, and determine that

1 the evidence was lacking as far as his guilt was concerned.

2 THE COURT: Okay. Thank you.

3 I have questions, but I'm going to save them for the
4 right time during the process of the hearing.

5 If you would please have a seat.

6 Ms. Noble, what does the State believe the Court will
7 have determined by the end of this hearing; and what's the
8 ask, please?

9 MS. NOBLE: Thank you, Your Honor.

10 So I'm not going to go through each of the -- I think
11 it's approximately, actually, 16 grounds in the original
12 petition, in the interests of time right now. But they all
13 essentially allege ineffective assistance of counsel,
14 primarily of Mr. Frey, during the pre-trial proceedings,
15 failure to identify issues, et cetera, some regards to plea,
16 and sentencing.

17 The State is confident that, after you hear the
18 testimony of Chris Frey, who has been subpoenaed to appear at
19 this hearing, that the Court will find that there was no
20 ineffectiveness that's been demonstrated under the two prongs
21 of Strickland.

22 With respect to the supplemental petition's claims,
23 the first is the failure to preserve evidence type of claim,
24 or the corpus delicti claim.

1 First, on the failure to preserve issue, Mr. Reed has
2 identified no basis in law that stands for the proposition
3 that the State is obligated to preserve contraband evidence
4 for any --

5 THE COURT: Well, other than the Constitution. I
6 mean, there's no statute or rule that he pointed to, but he
7 said fundamental fairness, due process, things like that.
8 Doesn't that trump everything else?

9 MS. NOBLE: No, Your Honor, it doesn't. Not when it
10 contravenes strong public policy considerations.

11 We can say that due process would require someone to
12 have a petition for writ of habeas corpus 25 years after
13 they've been convicted, with no excuse -- no reason to excuse
14 that procedural default. At some point, the Court has to do
15 a balance. We have a statutory scheme in Nevada. We have
16 Chapter 34. Chapter 34 recognizes the types of claims that
17 can be made on this type of petition.

18 And, by the way, those don't include a free-standing
19 claim of actual innocence. A free-standing claim of actual
20 innocence can't be used to excuse a procedural bar for an
21 untimely petition.

22 Furthermore, I would submit to the Court that you'll
23 hear testimony from Mr. Frey that he independently consulted
24 an expert in forensic computer analysis, who examined the

1 hard drive, examined the computer, came up to Reno to do
2 that, and verified what Mr. Carry had represented in his
3 analysis for the State.

4 And so, in terms of no proof being on there that
5 there was child porn in the possession of this person and
6 accessed by this person, we believe that will fail, there
7 will be a failure of proof.

8 Second, with respect to Mr. Frey allegedly, in ground
9 2, not explaining or acting to ensure that his client's plea
10 was knowing, intelligent, and voluntary, the State also
11 believes that Mr. Frey's testimony will strongly contradict
12 that assertion, and this Court can make a credibility
13 determination while he testifies.

14 As a matter of housekeeping, Your Honor, the State
15 has two witnesses under subpoena today. One is Mr. John
16 Petty, who is the appellate attorney, who is seated in the
17 courtroom.

18 I also believe, by the way, with the claims with
19 respect to Mr. John Petty, those will be shown to be without
20 traction, and that Strickland analysis merits the conclusion
21 that there was no ineffective assistance of counsel.

22 I would like to ask, Your Honor, however, because I'm
23 not sure how many witnesses Mr. Reed is calling: Mr. Frey is
24 about 10 to 15 minutes away. He's expecting a message from

1 me, and can come at any time. He's a Federal Public
2 Defender, and he's trying to get his cases done. So I would
3 just try to give him a time to show up here. He is happy to
4 be here immediately, if the Court so desires, but I didn't
5 want to have him sitting around for no reason. The same with
6 Mr. Petty, who is in the courtroom today. If there's a time
7 that Mr. Reed and I could maybe agree upon, that's okay with
8 the Court, to have the State's witnesses come back, that
9 would be great.

10 THE COURT: Well, as I understand it, without Mr. --
11 without Sergeant Carry here, then the petitioner's witnesses
12 are the petitioner himself, and also their expert. So
13 however long that takes, it takes. I'm imagining that
14 Mr. Petty and Mr. Frey will be sometime mid-afternoon today.
15 That would be the Court's best estimate. We will take a
16 lunch recess from approximately 12:00 to 1:00 or 1:15, get
17 right back at it. So if that helps at all.

18 MS. NOBLE: That helps the State, Your Honor. I'm
19 happy to ask those witnesses to be here by 1:00 o'clock
20 today.

21 THE COURT: If you want to get a message to them
22 somehow that they don't need to be here until at least 1:15,
23 that's certainly fine. They don't have to be waiting right
24 now to possibly run right over. Or excuse me. For Mr. Petty

1 to wait here, and for Mr. Frey to run right over.

2 MS. NOBLE: Thank you. I think Mr. Petty probably
3 heard that. And I'm just going to e-mail quickly Mr. Frey,
4 and advise him.

5 THE COURT: All right.

6 MS. NOBLE: Thank you, Your Honor.

7 THE COURT: Thank you.

8 So, with that, Mr. Reed, please call the petitioner's
9 first witness.

10 MR. REED: Your Honor, we would call Tami Loehrs as
11 our first witness.

12 THE COURT: Okay. Thank you.

13 (Witness sworn.)

14 THE COURT: Good morning, ma'am.

15 THE WITNESS: Hi.

16 THE COURT: Please make yourself comfortable, slide
17 in, adjust the microphone any way you'd like. Please speak
18 closely to it. And please state your name, and then slowly
19 spell your last name.

20 THE WITNESS: Tami Loehrs: L-o-e-h-r-s.

21 THE COURT: Thank you very much.

22 Please proceed.

23

24

1 TAMI LOEHRS,
2 called as a witness on behalf of the Petitioner,
3 first having been duly sworn,
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. REED:

7 Q. Ms. Loehrs, what is your business, profession, or
8 occupation?

9 A. I am a digital forensics expert. And I own a digital
10 forensics company in Phoenix, Arizona.

11 Q. And how long have you had this business?

12 A. Since '99.

13 Q. What training have you had, and what certifications
14 do you hold to do this kind of work?

15 A. I have a Bachelor of Science in Information Systems.
16 I have thousands of hours of computer forensic training in
17 the industry.

18 I have four certifications in the industry. Two are
19 software-based: the ACE certification and the EnCase
20 certification. And two are general certifications, which is
21 a CHFI, which is a certified hacking forensic investigator;
22 and a CCFE, which is a certified computer forensic examiner.

23 Q. Now, on how many cases would you estimate that you
24 have served as an expert for the defense in child

1 exploitation cases?

2 A. Specifically, I think it's somewhere around half my
3 caseload, so about 500 to date, right around there.

4 THE COURT: The other half being for the
5 prosecution --

6 THE WITNESS: No --

7 THE COURT: -- or half of your workload?

8 THE WITNESS: Yeah. I have worked on over a thousand
9 cases all over the world, and it involves everything. You
10 know, drug cases, fraud cases, civil cases, criminal cases.

11 THE COURT: I see. Thank you.

12 THE WITNESS: Actual child pornography investigation,
13 I think probably about 500.

14 BY MR. REED:

15 Q. Now, on how many cases would you estimate that you
16 have served as an expert for the defense -- strike that.

17 How many times have you testified as an expert
18 witness on such cases, would you estimate?

19 A. I have testified, in total, I think, now 127 times.
20 I don't know that all of those -- they're not all child
21 pornography.

22 Q. Do most of those deal with examination of forensic
23 evidence involving child pornography?

24 A. Well, not all of my cases. But, again, approximately

1 half of them do.

2 Q. Now, as a result of your testimony, how many
3 dismissals and not-guilty verdicts would you estimate that
4 you have contributed to?

5 A. I wouldn't contribute it to my testimony; but to my
6 work, it's approximately 10 percent we've had dismissals and
7 not-guiltys.

8 Q. Now, in this particular case, what did you review as
9 far as discovery materials?

10 A. I reviewed Sergeant Carry's report. I reviewed -- I
11 think there's some general police reports. I reviewed
12 Sergeant Carry's deposition transcript. There might have
13 been a couple other things.

14 Q. Now, in Mr. Carry's deposition, he mentions that he
15 previewed the devices seized from Mr. Skinner. In your
16 experience, what does it mean to preview evidence?

17 A. A preview is just like a quick look. We go in to
18 preview evidence to see if there's anything that's of
19 evidentiary value, what we're looking for. So in a case like
20 this, a preview would be to look at the computer and see if
21 there's child pornography. If there is, now you're ready to
22 go to the next step.

23 Q. And I would note that Mr. Carry indicated that a full
24 analysis was never completed. What is a full analysis?

1 A. A full analysis is when you go in and answer all the
2 questions about that evidence. So, again, using a case like
3 this, we know there's child pornography on the computer. Now
4 we have to analyze it, and determine how those files got
5 there, when they got there. Were they shared? Uploaded?
6 Downloaded? Were they obtained purposely or inadvertently?
7 Were they opened and viewed? Were they deleted? What
8 occurred with these files?

9 And, then, who was at the keyboard at any particular
10 time involving activity surrounding those files.

11 Q. Now, Mr. Carry, in his deposition, on page 19, states
12 that, "Any data that resides on the computer in that user's
13 account is viewable to that user." Do you agree with this?

14 A. Absolutely not.

15 Q. Why not?

16 A. There's tons of data on all of our computers that we
17 can't see. Just because you have a user account doesn't mean
18 that you can see all of the data. Obviously, you can see
19 files that you've put in your documents folder or your
20 pictures folder. But computers have data that's created
21 automatically, data that's cached in hidden locations that we
22 don't see. There's data that's created by viruses and
23 Trojans. There's data that's created by other people who use
24 the computer.

1 And if I put files on your computer, and you don't
2 happen to go to that folder because I have it hidden from
3 you, you'll never see it.

4 There's data on our computers that were there maybe
5 before we got it. You go buy a computer from Best Buy and
6 find out it was used. There's a bunch of data in there from
7 the previous user that you have no idea about. There's lots
8 of data on our computers that we don't see and aren't aware
9 of.

10 Q. How would you determine that someone had knowledge of
11 a particular file on their computer?

12 A. The way we do that is, first, you have to find the
13 file that is of issue. So, again, say, a child pornography
14 file. Find the date and time that that file was created on
15 the computer. Then we do a timeline analysis of that date
16 and time, and just go look at the activity and see what
17 happened.

18 Best-case scenario is, somebody gets on a webcam,
19 they have logged in, there's a picture of them. You know
20 that person is at the keyboard, and it's happening at the
21 same time as child pornography. There's your person.

22 That's not always that clear. So we look for things
23 like, you know, did somebody specifically search for that
24 file? Download that file? Click on it, open it, and view

1 it? Share it with somebody? You know, talk about the file
2 with somebody? Do something with it? Put it in the hidden
3 location? So we're just looking for activity as to who is at
4 the computer, and what they are doing with the file, to show
5 that they have knowledge of it.

6 Q. Is it possible that a user could be unaware of
7 file-sharing software and files downloaded with such
8 software?

9 A. Absolutely.

10 Q. Would you explain that.

11 A. Again, same reason. Let's say you have multiple
12 people using the same computer. One person downloads
13 file-sharing software, and they download files with that, and
14 that's put into a folder.

15 If you are a user on the computer, and you're unaware
16 that that software has been installed, unless you know enough
17 to go into your computer and review every application that's
18 ever been installed in it, you won't even know that
19 application is there.

20 We have software on our computers, again, that we
21 don't know about. Software that comes -- you download
22 anti-virus, and it installs two other pieces of software that
23 you don't know about.

24 We have software that comes with our operating

1 systems; software, again, that's installed by other people.
2 So unless you're specifically going and looking for it and
3 actively using it, you may not know it's there.

4 Q. Now, how do you determine if a user had knowledge of
5 a particular piece of software on their computer?

6 A. Same thing: that timeline analysis. You find out
7 when that software was installed. You do a timeline analysis
8 on that date and time. Did the person sit down, check their
9 e-mail, go online, search for that software, download that
10 software, put it in their downloads folder, execute it, then
11 use the software, download a file, send another e-mail?
12 That's all information showing who is at the keyboard, what
13 they're doing, that they've installed the software, and
14 they're using it.

15 Q. Now, if somebody had, say, a new hard drive installed
16 after maybe they purchased a computer, and then sometime
17 later they, for some reason, had a new hard drive
18 installed --

19 A. Bless you.

20 Q. -- if that hard drive had something on there, child
21 porn, or whatever, could that be on there unbeknownst to the
22 person that had the hard drive put in?

23 A. Sure. It happens all the time.

24 Q. Now, did you review the laptop or any computer hard

1 drive taken from Mr. Skinner that allegedly provided the
2 evidence of possession of child pornography or file-sharing
3 that was the basis of the charges in this case?

4 A. No, I have not.

5 Q. And why were you not able to review those items?

6 A. We requested them. And then we were informed -- I
7 believe it was in October -- that the evidence -- my
8 understanding was, a server crashed, and that created -- I
9 guess the forensic images were on the server, and then the
10 original evidence had been destroyed. That's my
11 understanding.

12 Q. Now, is there any reason -- and I'd represent to you
13 that there were several items, several pieces of equipment in
14 this case that were seized as part of a search warrant on Mr.
15 Skinner's apartment. And there was a laptop, and several --
16 and some external hard drives, and that kind of thing. Why
17 would you want to see, say, not just the laptop they
18 allegedly found child pornography on, but all this other
19 equipment, as well?

20 A. Well, we like to examine everything that was seized
21 because sometimes that will give us information about what's
22 on the main computer.

23 So let's say there's a bunch of child pornography on
24 the laptop, and we can't determine who the user is, who was

1 on the laptop doing it. Sometimes you will find one of those
2 external hard drives belongs to a particular person -- maybe
3 it's a roommate or somebody else in the house -- and then you
4 find similar information in the same files that are on the
5 laptop. And that sometimes connects that person with the use
6 of the laptop, even though it's not their computer.

7 And we have actually proven this in cases where we've
8 found out it was a relative. Based on what they're doing on
9 their computer, they were doing the same thing on the family
10 computer. And so we -- that's how we tie those people
11 together. So we like to see the other evidence that's been
12 seized, as well.

13 Q. Now, did you review the digital evidence and
14 narrative report produced by Sergeant Carry of the Washoe
15 County Sheriff's Office?

16 A. Yes, I did.

17 Q. And what were your conclusions about that report?

18 A. Well, that report is all opinion. It was a statement
19 by Sergeant Carry. It didn't include any forensic evidence
20 for me to look at, so I can't draw any conclusions. I can't
21 corroborate or refute anything that's in that report because
22 there's no forensic evidence to corroborate it.

23 Q. Now, at the bottom of page 1 of Mr. Carry's report,
24 he says, "The report details the initial" -- he used that

1 word -- "initial examination." Does that indicate to you
2 that an examination has not been conducted?

3 A. Yeah. In fact, I think he actually stated in there
4 that a full analysis had not been conducted, and that he
5 actually suggested that more analysis needed to be done,
6 because it was just an initial, like, preview.

7 Q. And I would also note that Mr. Carry provides at
8 least one of the registered owners as Mike -- or the
9 registered owner as Mike, with four user accounts: for Mike,
10 Rod, Sophie, and Sophie 2. What does that indicate to you?

11 A. That would indicate to me that, well, A, the computer
12 was registered to a person named Mike, who, based on the
13 name, is not Mr. Skinner. And that, based on the multiple
14 user accounts, likely, multiple people had access to the
15 computer, which complicates things. It's not a one-owner
16 machine. We have multiple people now that we have to try to
17 decide who conducted the activity that we're interested in.

18 Q. Is this important?

19 A. It's extremely important. It's hard enough to
20 identify activity by a user if they're the only person who
21 uses the computer, because there's still outside things that
22 can cause data to be on there. People get hacked, and
23 there's viruses and Trojans, and they'll have friends use
24 their computer, family members. But it's just registered to

1 | them, and they are the only user account. So that's
2 | difficult, in and of itself.

3 | But when you have other people who are actually named
4 | on the computer, and it's registered to another person, now
5 | you have to start looking for who all had access to this
6 | computer, and who had access during the times of activity
7 | that's in question.

8 | Q. Then Mr. Carry indicated that he located file-sharing
9 | software. When was that software installed?

10 | A. I have no idea. He lists multiple file-sharing
11 | applications. But, again, there's no forensic evidence
12 | included in the reports. So there's no install date, there's
13 | no install logs. I don't know if that software was installed
14 | prior to him owning the computer, or after he owned the
15 | computer. I have no idea when any of those applications were
16 | installed.

17 | THE COURT: Let me ask you a question, please.

18 | Ms. Loehrs, please educate the Court. I mean, this
19 | is your field, and so this might sound like a silly question.
20 | But what exactly is file-sharing software?

21 | THE WITNESS: There's no silly questions.

22 | File-sharing software is, typically, we get it for
23 | free, people get it on the internet, and it allows people to
24 | share files back and forth.

1 Do you remember Napster?

2 THE COURT: I've heard of it.

3 THE WITNESS: Where people would get music files,
4 they would use Napster. That came from the server. So if
5 you wanted to get free music, without buying the CD, you
6 would get it from Napster. That got shut down.

7 So file-sharing software allows the files to be
8 shared directly from computer to computer over the internet
9 anonymously.

10 So if I want to get music files now, I download free
11 file-sharing software, search for that song, and it will come
12 up with a list of computers all over the world that have that
13 song available, and then I can just download them.

14 THE COURT: Thank you.

15 BY MR. REED:

16 Q. As far as when the file-sharing software might have
17 been installed, if you examined the computer, would you be
18 able to determine that?

19 A. Absolutely.

20 Q. Now, there's also -- in his report, there's a huge
21 list of search terms. Where did Mr. Carry obtain these from?

22 A. I have no idea. There's no information about the
23 tool he used, or where those terms came from. I don't even
24 know that those are actually search terms.

1 I find this -- very often, we have forensic tools
2 that will pull out -- quote -- search terms, but they're not
3 really search terms. They're just terms associated with the
4 files in the file-sharing software. You have to actually go
5 in and analyze it and find out if those are actual searches
6 that somebody typed in.

7 But I don't know, because it doesn't say what tool he
8 used, where those terms came from. There's no dates and
9 times. Nothing associated with those. It's just a list of
10 names, of terms.

11 Q. Now, do you have any idea what dates these searches
12 were conducted?

13 A. No. There's no dates in the report. I have no idea.

14 Q. Under "Media file information," the section in the
15 report, I believe Mr. Carry mentions finding adult and child
16 pornography within user-created folders. What information is
17 missing from this section of Carry's report?

18 A. Well, first, he claims there's adult and child
19 pornography. That's actually very important in an analysis.
20 Is it a thousand adult pornography images or files, and only
21 a few child pornography that maybe came in with it? Because
22 in file-sharing that's very common.

23 He says that they're in personal user folders, but
24 doesn't mention which user folders. So I don't know if those

1 are in Mike's user folders, or in Sophie's user folders.
2 There's no details about where those files are, how many of
3 them there are, dates and times of those files, nothing.
4 It's just there's adult and child pornography in user
5 folders. That tells me nothing.

6 Q. Are you able to make any determinations whatsoever
7 about these files based on Mr. Carry's report?

8 A. No.

9 Q. And the next section is "Internet history." Again,
10 what information, if any, is missing here for you to offer
11 any opinions about the evidence?

12 A. Well, internet history is huge. The internet history
13 has tons of important information in it. There's typically
14 millions of files in the internet history that will be cached
15 images, website URLs -- those are the addresses of websites
16 visited -- files that have been opened, things people are
17 searching for. The website -- the internet history is
18 something that we can spend many, many hours analyzing.

19 All I know is, there were some websites visited.
20 There's no internet history provided. Typically, you can
21 extract that from the computer and produce huge reports of
22 internet history. So we can go in and look and see dates and
23 times of what's going on, what websites people are visiting,
24 what websites were visited on purpose, and what websites were

1 pop-ups or Spam or -- all kinds of different information.

2 None of that is in there.

3 Q. Now, Mr. Carry talks about encryption being found,
4 and then it was a hidden volume of child pornography in it.
5 What is missing here?

6 A. Again, I know nothing about -- he just says there's
7 an encrypted volume. I don't know if it's an encrypted
8 volume. He doesn't provide any details about the encryption,
9 when it was encrypted, why he thinks it's an encrypted
10 volume.

11 Encryption can be -- encryption can be tricky because
12 it's hidden. Depending on what you encrypt it with, it may
13 look like something that it is not.

14 So I have no idea. There's no details whatsoever.
15 He just says it's an encrypted volume.

16 Q. Without the computer equipment and hard drives taken
17 from Mr. Skinner, what can you conclude about the accuracy
18 and reliability of the findings of Sergeant Carry in this
19 case?

20 A. Nothing.

21 Q. You just have to accept his word on it?

22 A. That's what you would have to do. But that's not my
23 job, as a digital forensic expert.

24 Q. Now, what do you notice significant in Sergeant

1 Carry's report as to whether his report does or does not
2 conclusively incriminate Mr. Skinner?

3 A. I believe he actually mentions in his report that
4 more analysis is needed for that exact purpose: to either
5 incriminate Mr. Skinner, or show that he was innocent.

6 Q. So he actually uses that phrase: "that if more
7 analysis is done, Mr. Skinner could either be cleared or
8 incriminated"?

9 A. Correct.

10 Q. If you had the evidence, what issues noted by
11 Sergeant Carry would you want to look into?

12 A. Well, again, my job, on the defense side of being a
13 digital forensics expert, is to take what the State or the
14 government has said: "These are the allegations. This is
15 what we found in the evidence." I go in, and I corroborate
16 or review that with my forensic findings.

17 So I prepare very detailed reports, with the forensic
18 evidence, and say, "Yes, you know, this is when this is
19 installed, and I found this person at the keyboard, and these
20 files were downloaded on these dates and times, and they were
21 opened, and they were viewed."

22 Sometimes I go in, and I find, like, well, those
23 aren't actually search terms. That's the software pulling
24 out terms from file-sharing. The actual search terms are

1 | these.

2 | So there's always a mixture of some things are
3 | corroborated, and some things are refuted.

4 | Q. Now, Carry indicates that files were carved from
5 | unallocated space. What does that mean to you?

6 | A. Files carved in unallocated space we can't tell
7 | anything about, other than they existed at one time. Once a
8 | file is in unallocated space, you have a picture. Once it's
9 | deleted, it goes into unallocated space. All the information
10 | about that file disappears: the date and time it was
11 | created, modified, accessed, the file name, the location
12 | where it was at.

13 | Our forensic tools go through unallocated space and
14 | look for file headers. So it will find a file header for a
15 | picture, carve out that data until it gets to the footer, and
16 | brings the picture back, so we can see it. But that's all we
17 | know. It was a picture that existed at one time. I can't
18 | say if it came from the internet. I can't say if it was
19 | created a week ago, or five years ago. It's just a picture
20 | on the drive.

21 | So files of unallocated space are very difficult in
22 | criminal cases because you can't prove anything with them,
23 | other than they existed at one time.

24 | Q. Now, I believe I already asked you this, or you've

1 already answered this, but is it possible that data may
2 reside on a computer without the user's knowledge or consent?

3 A. Yes.

4 Q. And to determine whether this is true, what should
5 the defense do in its examination of the circumstances
6 surrounding this evidence?

7 A. Again, I think I've kind of explained all of that. I
8 would do a very detailed timeline analysis of all the dates
9 and times at issue.

10 Q. Do you see any evidence of Sergeant Carry
11 investigating Mike or anyone else who may have previously had
12 access to this computer?

13 A. I didn't see any mention about looking into that at
14 all, no.

15 Q. What factors are involved in determining whether a
16 defendant had knowing receipt, possession, or distribution of
17 child pornography?

18 A. And, again, I think I've kind of described that, as
19 well. In order to determine knowledge, we want to show that
20 that person was, A, sitting at the keyboard, maybe searched
21 for the file; that they downloaded the file purposely; that
22 they opened and viewed it, shared it with somebody, discussed
23 it, tried to hide it, saved it. Just the person sitting at
24 the keyboard did something with that file, and knew what the

1 content was.

2 Q. In your training, and as part of the certifications
3 you have received, what are the professional standards for
4 evidence preservation?

5 A. In my training, I mean, we still have evidence in our
6 lab that's over 10 years old. We're taught to follow,
7 obviously, local rules, statutes, whatever those are. I
8 don't work for a law enforcement facility, but, on the
9 defense side, we keep stuff for years and years and years,
10 until we know absolutely for sure that it's done, or unless
11 there's a court order telling us to destroy it, or
12 somebody -- you know, we have to send it back.

13 Q. Typically, when somebody is examining a computer,
14 would they make a copy of the hard drive? Would then that
15 copy be examined, or would the original hard drive be
16 examined? Or if you could explain that a little further.

17 A. Yeah. The standard is, you don't do any work on the
18 original evidence. And when you get the original evidence,
19 the first thing you do is, you make a forensic image of it,
20 so you've preserved that, and then you can put the original
21 evidence in an evidence locker and forget about it.

22 The forensic image is also susceptible to damage, so,
23 typically, we'd want to make a backup of that image. So now
24 you have two separate hard drives with an exact copy and

1 exact duplicate of the original evidence.

2 One of those copies, again, goes into your evidence
3 safe, and you don't touch it. It's just a backup. Those are
4 the things, like, in our lab, could exist for years and years
5 and years.

6 The second copy is the one that we do all of our work
7 on. So all of the forensic analysis, all the processes we're
8 running, is on one of the copies. The other copy and the
9 original are sitting in an evidence safe somewhere. We just
10 forget about them.

11 Q. So without being able to review the evidence reviewed
12 by Sergeant Carry, can Mr. Skinner receive an adequate
13 defense to these charges, or be able to prove his innocence
14 of these charges?

15 A. I certainly can't corroborate or refute what the
16 State has alleged, because I have nothing to look at.

17 MR. REED: Thank you, Your Honor.

18 That's all the questions I have at this time.

19 THE COURT: Thank you.

20 Examination by the State.

21 MR. NAUGHTON: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. NAUGHTON:

24 Q. Good morning, Miss Loehrs.

1 A. Good morning.

2 Q. I want to start with your qualifications on your
3 report on page 1.

4 You indicate that you've worked on over 400 child
5 exploitation cases.

6 A. Correct.

7 Q. And, in fact, you think that's actually closer to 500
8 now?

9 A. Well, that was back in January of 2018, so, yeah.

10 Q. So you continue to work in this area?

11 A. Oh, yeah.

12 Q. Do you always work for the defense?

13 A. In criminal cases, I've worked for the defense, yes,
14 because I'm not law enforcement; except for one case in
15 Georgia, where I worked for both sides, because evidence was
16 hidden from me, and so the other side actually hired me to
17 come in.

18 Q. And you pointed out that, of those 400 cases at that
19 point in time, approximately 80 resulted in dismissals, and
20 several resulted in not-guiltys, and there were a number of
21 favorable pleas; is that correct?

22 A. Correct.

23 Q. And how many of those cases resulted in guilty
24 convictions?

1 A. As far as went to trial?

2 Q. Yes.

3 A. I think most of the trial cases ended in convictions.

4 Q. So it's more an exception to the rule that your
5 expertise is able to provide an alternative explanation for
6 the presence of child pornography on these computers?

7 A. Only -- once a case goes to trial, I mean, that's up
8 to a jury. Most of our dismissals have been based on our
9 work pre-trial.

10 Q. Okay. Of those 400 cases at that point in time,
11 about 500 now, at that point in time, there's about 80 that
12 resulted in dismissals prior to going to trial; is that
13 correct?

14 A. Correct.

15 Q. And so the majority --

16 THE COURT: Excuse me. Hold on.

17 You're both speaking very quickly.

18 THE WITNESS: Sorry.

19 THE COURT: It's even hard for the Court to
20 completely dial in.

21 Madam Reporter, are you tracking all this?

22 THE COURT REPORTER: Yes. But I would ask you to
23 slow down.

24 THE COURT: Just a little bit, if you could each do

1 so. Thank you.

2 Please proceed.

3 MR. NAUGHTON: Thank you, Your Honor.

4 BY MR. NAUGHTON:

5 Q. Miss Loehrs, of those 400 or 500 cases, do the vast
6 majority of them wind up going to trial or resulting in some
7 additional litigation?

8 A. No, the vast majority do not go to trial. There's
9 very few that go to trial. Most of them resolve in some way,
10 whether it's a plea or a dismissal, or something.

11 Q. And most of those resolutions are other than
12 dismissal. Is that fair?

13 A. Correct.

14 Q. Okay. Of your 500, approximately, examinations in
15 this area, have you ever conducted an investigation that
16 confirmed law enforcement's findings?

17 A. Sure.

18 Q. How often does that happen?

19 A. I mean, again, all the time, because, like I said, a
20 lot of them are kind of a mixture of: Yes, I have
21 corroborated this, but I refute that.

22 Q. And do you ever find additional incriminating
23 evidence on hard drives, in your view, that law enforcement
24 possibly missed?

1 A. All the time.

2 Q. What do you do when you find that?

3 A. Tell the attorney.

4 Q. Do you generate a report?

5 A. Usually, when I tell the attorney, they ask me not to
6 do a report.

7 Q. You also indicated that you had reviewed some of the
8 certifications that Sergeant Carry had; is that correct?

9 A. Correct.

10 Q. And, in fact, you shared some of those same
11 certifications.

12 A. Correct.

13 Q. Such as CCFE?

14 A. Correct.

15 Q. CHFI?

16 A. Yes.

17 Q. ACE?

18 A. Yes.

19 Q. And EnCase?

20 A. I don't think he has EnCase.

21 Q. Are those types of certifications you would expect a
22 professional in this field to have to conduct these sorts of
23 examinations?

24 A. Yes.

1 Q. Do you have any POST training: Peace Officer
2 Standards Training?

3 A. No. I'm not a peace officer, no.

4 Q. You're a private investigator; is that correct?

5 A. I am a private investigator, yes. I have a state --
6 an agency license in the State of Arizona.

7 Q. Mr. Reed asked you some questions about the items you
8 reviewed in this case in preparing your report or your
9 declaration. How did you select which items to review in
10 this particular case?

11 A. They're provided to me by the attorney.

12 Q. Okay. Did you ask for any additional information to
13 review?

14 A. Not that I know of. I just asked for discovery.

15 Q. Were you aware that there was any other information
16 out there that might be available to you to review?

17 A. I honestly don't know what is in the case file.

18 Q. You reviewed one -- excuse me just one moment. I
19 want to make sure I use the correct language.

20 You reviewed one digital evidence report, that was
21 prepared by Sergeant Carry; is that correct?

22 A. Correct.

23 Q. And that was prepared in November of 2013?

24 A. That sounds about right.

1 Q. Were you aware of any additional digital evidence
2 report narratives that were prepared by Sergeant Carry?

3 A. I am not.

4 Q. Would that have been useful to you in preparing your
5 report in this case?

6 A. Yes.

7 Q. Do you know why you weren't provided with any
8 additional narratives?

9 A. I have no idea.

10 Q. Did you review a police report that was authored by
11 Sergeant Carry?

12 A. I honestly don't know. I know there was a couple of
13 police reports. I don't know if he was the author.

14 Q. Would a police report possibly contain additional
15 information that might be useful to you in forming your
16 opinion?

17 A. Not unless it contained forensic data.

18 Q. Were you aware of any spreadsheets that were created
19 by Sergeant Carry in this case?

20 A. I saw one spreadsheet, with some files in it.

21 Q. Can you describe what that spreadsheet contained or
22 described?

23 A. It was just a spreadsheet, with some file names. I'm
24 not sure of everything that was in it. I think there were

1 some dates and times on there. But I don't remember
2 everything that was in it.

3 Q. When you say "file names," is that a description of
4 various files?

5 A. It's just a file name. It's not necessarily a
6 description. File names aren't always accurate. Just the
7 name of the file.

8 Q. Do you recall how many items were listed in that
9 spreadsheet?

10 A. I don't.

11 Q. Do you recall what that spreadsheet was purported to
12 relate to?

13 A. I don't.

14 Q. Do you know if it was related to showing search terms
15 in Ares?

16 A. I don't believe it was.

17 Q. Are you familiar with what Ares is?

18 A. Very.

19 Q. And for the record, that's A-r-e-s; is that correct?

20 A. Correct.

21 Q. Can you describe what Ares is?

22 A. Ares is a file-sharing software.

23 Q. Okay. This is one of those peer-to-peer file-sharing
24 programs that you described earlier?

1 A. Correct.

2 Q. Are you familiar with Shareaza?

3 A. Yes, very.

4 Q. And that's spelled S-h-a-r-e-a-z-a.

5 A. Yes.

6 Q. Can you describe what that is?

7 A. Its another PTP file-sharing software.

8 Q. PTP is peer-to-peer?

9 A. Peer-to-peer.

10 Q. Did you review any spreadsheets related to any search

11 terms or files that may be related to Shareaza?

12 A. Again, not that I'm aware of. But, again, that

13 spreadsheet that I saw, I don't think there was any -- it was

14 just a spreadsheet, so I don't -- I don't think I even knew

15 where that came from.

16 Q. If Sergeant Carry had created these spreadsheets,

17 would they have been useful to you to review in forming your

18 opinion?

19 A. Sure.

20 Q. And those weren't provided to you in this case;

21 correct?

22 A. I saw that one.

23 Q. Were you aware -- excuse me. Were you aware of a

24 spreadsheet purportedly showing downloads in Ares?

1 A. That may be the one I saw.

2 Q. And that would have contained the file names?

3 A. Correct.

4 Q. Would it contain the download dates and times?

5 A. Yes, I believe so.

6 Q. Would it contain cache information?

7 A. It may.

8 Q. Can you describe what cache information is?

9 A. The cache value is like a fingerprint of a file.

10 Some of the file-sharing had their own cache values, so
11 that's how they identified files, that's how law enforcement
12 identifies known files.

13 Q. Would it contain file source information?

14 A. I don't know.

15 Q. Were you aware of a digital evidence report narrative
16 created by Sergeant Carry on March 18th of 2014?

17 A. I --

18 THE COURT: Let's be clear. She said she saw the
19 one. So is this a different date than the one she saw?

20 MR. NAUGHTON: That is correct, Your Honor.

21 THE COURT: Do you know that to be true?

22 THE WITNESS: I don't know. I'd have to look at it
23 and see. I really don't know.

24 MR. NAUGHTON: May I approach?

1 THE COURT: Yes.

2 BY MR. NAUGHTON:

3 Q. Miss Loehrs, can you describe the document that I
4 just handed to you?

5 A. It says, "Digital evidence report narrative." And
6 it's dated March 18th, 2014. "By Examiner Sergeant Dennis
7 Carry."

8 Q. Okay.

9 THE COURT: So let's circle back just for a minute.

10 I think the question was something like: Do you
11 believe you reviewed that report, as part of your work in
12 this matter?

13 MR. NAUGHTON: That's correct, Your Honor.

14 THE WITNESS: And I do not believe I've seen this
15 report.

16 MR. NAUGHTON: May I approach?

17 THE COURT: You may.

18 THE WITNESS: Although I will say some of this -- I
19 would have to compare this, because some of this looks like
20 the same language that was in the November report. And,
21 again, I'm just going on memory. But some of this -- this
22 page doesn't look familiar, but this language over here does.
23 So I'm not -- I'm not sure if it's from the same -- from the
24 first report.

1 BY MR. NAUGHTON:

2 Q. There appears to be additional information in the
3 March report, however. Is that fair to say?

4 A. There's a spreadsheet behind it, yes.

5 Q. And you did not have an opportunity to review that in
6 preparing for your testimony today?

7 A. Again, not that I know of. But I'd have to match it
8 to what I have.

9 Q. Would that have been important for you to review?

10 A. Looking at it, that wouldn't have changed my
11 opinions. There's nothing there that would have given me
12 what I need, if that's what you're asking.

13 Q. And, again, that's based on a just cursory review
14 there on the witness stand in less than 30 seconds,
15 approximately?

16 A. Well, there's no forensic evidence in there, so, yes.

17 Q. It's your opinion that the initial preview
18 examination conducted by Sergeant Carry was incomplete. Is
19 that fair to say?

20 A. It's not my opinion. He actually said it was
21 incomplete.

22 Q. And he said further examination was necessary; is
23 that right?

24 A. That's correct.

1 Q. And after his initial preview examination, he
2 prepared a report; is that correct?

3 A. Yes. The one in November, yes.

4 Q. That's the report that you reviewed?

5 A. Correct.

6 Q. And then you're now aware that an additional report
7 was prepared in March. Would that suggest additional
8 examination was completed in this case?

9 A. I have no idea. Just because another report was
10 created doesn't mean he did more analysis. I don't know why
11 that report was created, or what he did.

12 Q. Do you know what tool Sergeant Carry used to conduct
13 his examination in this case?

14 A. I do not.

15 Q. Do you have any way of knowing if the tools that you
16 would have used in this case would have arrived at different
17 or additional information?

18 A. It's possible. I mean, our tools should bring the
19 same information out. Some tools bring more than others.
20 But it's really in the analysis of the data that you're
21 pulling, not just the tool.

22 Q. You talked about timelines being important.

23 A. Yes.

24 Q. And that's in order to establish as best you can the

1 identity of the person responsible for various activities on
2 the computer. Is that fair?

3 A. Yes; that's correct.

4 Q. And you indicated in your report that you wanted to
5 know what information or how Sergeant Carry had arrived at
6 his conclusion that Mr. Skinner was the user at the time the
7 child pornography was created on this hard drive. Is that
8 accurate?

9 A. Yes.

10 Q. Are you aware that Sergeant Carry examined a timeline
11 in this case?

12 A. I am not aware. I didn't see that in any report.

13 Q. Are you aware that he identified Skype chat logs in
14 this case?

15 A. He does mention Skype.

16 Q. And do you recall the user name associated with that?

17 A. I believe it was Rod Skinner.

18 Q. And are you aware that Sergeant Carry concluded that
19 those Skype chat logs were created at the same time that the
20 child pornography was being accessed or otherwise created on
21 his hard drive?

22 A. Again, he made a statement, but he provided no
23 evidence to look at. He made a statement in his report to
24 that effect, yes.

1 Q. Is that the sort of timeline creation that you would
2 be looking at?

3 A. No. I would be looking for actual files from the
4 computer, with dates and times showing me exactly what's
5 occurring. Not just a statement that I found a Skype chat,
6 and it was happening at the same time.

7 Q. If you conclude -- if your conclusion is, as a result
8 of that timeline, that Skype was being used at the same time
9 as child pornography was being created on this computer, is
10 that the sort of timeline that you would be creating?

11 A. Well, no. Again, some of where my analysis where I
12 differ in law enforcement's opinions is, I was born and
13 raised in computers, and I understand the data. A lot of
14 these guys are pushing buttons, and the tool brings out data,
15 and they assume it means one thing.

16 Sometimes dates and times aren't accurate for various
17 reasons, and data isn't what it appears to be unless you get
18 in and really analyze it.

19 So my issue is that, yes, he says, "I found the Skype
20 chat that was happening at the same time the child
21 pornography was being downloaded." I don't know that that
22 conclusion is accurate until I go in and see exactly what
23 data he's looking at, to say, "Okay. Yes, he's correct.
24 That is exactly the date and time when that child pornography

1 was occurring, that was happening with Mr. Skinner, and that
2 was happening at the same time as child pornography." I
3 can't do that unless I see raw data. And I have no raw data.
4 So it's just a statement.

5 Q. Okay. So it's a conclusion that you can neither
6 confirm or deny.

7 A. Correct.

8 Q. And if you were creating a timeline, would your
9 conclusion possibly be related in the same way that Sergeant
10 Carry related his conclusion in this case?

11 A. It may very well be. But it would be included with
12 all of the files that I used to come to that conclusion.

13 Q. On page 5 of your declaration, you provided an
14 analysis of the word "knowing" --

15 A. Yes.

16 Q. -- as it relates to possession or distribution of
17 child pornography.

18 A. It's not analysis. It's what we're looking for in
19 the computer, what data shows us knowing, knowledge.

20 Q. Is that a legal definition?

21 A. It's not a legal conclusion. It's just what am I
22 going to look for on the computer to show somebody knew this
23 file was here?

24 If you go to a website, everything is automatically

1 cached to your computer. If you run "CNN," a hundred images
2 that are cached to your computer might be from a story you
3 never looked at. I want to show that you didn't know that
4 was there. That's not knowledge. Knowledge would be if you
5 went to that story and you clicked on it, then you downloaded
6 that picture and saved it to your computer. That's what I'm
7 looking for in data to show that somebody knew it was there.
8 So it's not a legal conclusion. It's just what data shows
9 somebody knew something was there.

10 Q. Is child pornography often downloaded from visiting
11 websites like CNN?

12 A. Oh, of course not. That was just an example.

13 Q. Is child pornography often downloaded through the use
14 of file-sharing software?

15 A. Yes, it is.

16 Q. And that would be the same type of file-sharing
17 software --

18 THE COURT REPORTER: I'm sorry. Can you slow down?

19 MR. NAUGHTON: Absolutely.

20 BY MR. NAUGHTON:

21 Q. And that would be the same type of file-sharing
22 software that was found on the computer in this case. Is
23 that accurate?

24 A. That's correct.

1 Q. If you see search terms or terminology used to
2 describe files in that file-sharing software, would that be
3 consistent with possession of child pornography on that hard
4 drive?

5 A. Yes. If those were search terms that somebody typed
6 in, absolutely.

7 Q. In your report, you also talk about you would want to
8 conduct an examination to locate, review, test, and
9 understand viruses, Trojans, and malware that might be
10 present?

11 A. Correct.

12 Q. Do you have any indication that there were viruses on
13 this particular hard drive?

14 A. I would have no way of knowing. Sergeant Carry
15 didn't mention anything about running a virus scan, so I have
16 no idea.

17 Q. Do you have any indication to believe that Trojans
18 might have been present on this hard drive?

19 A. Again, just the fact that he had file-sharing
20 software on the computer, I am sure there are viruses and
21 Trojans, because you almost can't have file-sharing without
22 having some sort of malware. It's a very, very dangerous
23 software. So I would assume there are. But, again, I
24 haven't seen any mention that anybody even looked for it.

1 Q. And that's not based on any of the actual reports or
2 evidence in this case. Just, in general, file-sharing
3 software typically comes with malware, in your opinion?

4 A. That's based on thousands of exams and me testing.
5 I've been testing and validating and researching file-sharing
6 software for years and years and years. And, yes, it comes
7 with malware.

8 Q. Do you find it every single time that you find
9 file-sharing software?

10 A. Almost every time there's viruses associated with
11 file-sharing, yes.

12 Q. But, again, you can't say whether or not there
13 actually was any malware, Trojans, or viruses on this
14 particular hard drive?

15 A. Correct. I have no idea.

16 Q. Do you have any reason to believe that viruses,
17 Trojans, or malware were responsible for the presence of
18 child pornography on this computer?

19 A. I would have no idea without analyzing it.

20 Q. In your report, you go on to talk about the
21 maintenance or the preservation of evidence. And you
22 indicate that, "All original evidence should be placed in an
23 evidence locker and maintained pursuant to local rules and
24 statutes."

1 A. Correct.

2 Q. Are you familiar with what the local rules and
3 statutes are in Washoe County governing preservation of hard
4 drives?

5 A. I have no idea.

6 Q. You also indicate that "Typical" -- excuse me --
7 "Typically, original evidence and/or forensic images are
8 maintained years after a matter has concluded, due to appeal
9 and other litigated issues."

10 A. Correct.

11 Q. And is that based upon statutes and local rules, as
12 well?

13 A. It's based upon my experience. Again, I work on
14 cases all over the world, so we have evidence from
15 everywhere. And everybody has different statutes and rules.
16 And we've maintained evidence for years on many cases all
17 over the world.

18 Q. Are you aware of any statute or rule in Washoe County
19 that would require the maintenance or preservation of this
20 evidence?

21 THE COURT: She already says she doesn't know.

22 THE WITNESS: I have no idea.

23 BY MR. NAUGHTON:

24 Q. Would you agree with me that child pornography is

1 | qualitatively different from many other types of evidence?

2 | A. Qualitatively different? I'm not sure I understand
3 | what you're asking.

4 | Q. Let me rephrase my question.

5 | Is child pornography contraband?

6 | A. Yes.

7 | Q. It's illegal just by virtue of its existence. Is
8 | that fair?

9 | A. Correct. We have to have a protective order just to
10 | maintain it in our lab. That's correct.

11 | Q. So, in other words, in a shooting case, for instance,
12 | a gun might be evidence.

13 | A. Yes.

14 | Q. A gun is not necessarily contraband?

15 | A. I don't know if they consider that a contraband, but
16 | I've heard the term. I don't work with guns. But it's not
17 | illegal contraband, if that's what you're talking about.

18 | Q. In other words, it's illegal to possess child
19 | pornography, under most circumstances.

20 | A. Correct.

21 | Q. Outside of specific litigation-related issues in
22 | these sorts of cases.

23 | A. To knowingly possess it, correct.

24 | Q. Are there reasons why you might not want to maintain

1 child pornography on a server or a hard drive?

2 A. I mean, if you already have it as evidence, you're
3 already in -- either you have a protective order or you're
4 law enforcement. And law enforcement doesn't need a
5 protective order. So it's just sitting in an evidence
6 locker. It's not plugged in or being shared. It's just
7 evidence sitting on a shelf.

8 Q. Aside from the standard experience that you have with
9 maintaining this, is there any reason that you would need or
10 want to maintain child pornography evidence after a
11 conviction has been secured?

12 A. Sure. We have lots of cases that we maintain it,
13 because people appeal, and there's all kinds of different
14 motions that they file afterwards. So, yeah, we have lots of
15 evidence that -- and we work on lots of cases after
16 convictions.

17 Q. Is there any rule that you're aware of in Nevada or
18 in the Ninth Circuit that would require preservation of child
19 pornography evidence by the State?

20 A. Again, I'm not aware of any Nevada rules or statutes
21 or any of that.

22 Q. In your report, you wrote, "However, according to the
23 State" -- and this is on page 6, at paragraph 16 -- "However,
24 according to the State, all of the original evidence seized

1 and all of the forensic images acquired by Sergeant Carry no
2 longer exist, and, therefore, an independent examination by
3 the defense is not possible."

4 A. Correct.

5 Q. Is it fair to say an independent examination is not
6 possible at this time?

7 A. That's what -- right. Correct. I can't conduct an
8 independent exam, me, personally, because there is no
9 evidence.

10 Q. Is it possible a defense examination could have been
11 produced earlier?

12 A. Of course.

13 Q. Are you aware whether a defense examination was done
14 in this case?

15 A. Not until I heard you in court this morning, or heard
16 Miss Noble in court this morning.

17 Q. Are you aware of an individual named Leon Mare?

18 A. I am not.

19 Q. Last name: M-a-r-e.

20 A. I am not.

21 Q. You don't know him to be a defense expert in this
22 area?

23 A. I don't.

24 Q. If another defense expert had previously examined

1 this child pornography evidence, would you have any reason to
2 conduct another defense examination at a later date?

3 A. Well, if he had --

4 THE COURT: Excuse me one second.

5 Are you okay?

6 THE COURT REPORTER: I just need a cough drop.

7 THE COURT: All right. Please proceed.

8 THE WITNESS: I mean, sure, I would still want to do
9 an exam, unless I saw a detailed report, again, with the
10 forensic evidence. So if he had -- if he had his own
11 conclusions, and he provided a report, with the forensic
12 evidence showing "These are my conclusions, and this is the
13 forensic evidence I used," then I may not need to do an
14 independent exam. But I would need to see that forensic
15 evidence.

16 Q. If he had concluded that Sergeant Carry's analysis
17 was accurate, would that be important in informing your
18 opinion at this point?

19 A. No. I've seen experts agree. I don't know anything
20 about him or his background, or how good he is, or what his
21 work is like, so that wouldn't end it for me, no.

22 Q. Is it possible that it might, depending on his
23 qualifications and the things he looked at?

24 A. Again, if I saw the forensic evidence that -- where

1 his conclusions came from, then I might be satisfied. But
2 without the forensic evidence, I would not be satisfied.

3 Q. Ultimately, your conclusion that you cannot perform
4 an independent examination at this point in time, is that
5 another way of saying you don't know what you would find on
6 this computer if you were to analyze it today?

7 A. Correct. I have no idea. Obviously, I have a pretty
8 good idea of what Sergeant Carry says is on there.

9 Q. But you can't say whether you would have confirmed or
10 been able to rebut the findings of Sergeant Carry. Is that
11 accurate?

12 A. That's correct.

13 Q. Okay. It's possible that Sergeant Carry's findings
14 are accurate?

15 A. It's possible, sure.

16 Q. On page 7 of your report, you indicate that, "The
17 defense cannot be provided with an adequate defense at this
18 point in time." Is that accurate?

19 A. Yes.

20 Q. And are you aware of any adequate defense that exists
21 in this case, based upon the analysis that you were able to
22 perform?

23 A. Well, I haven't performed an analysis, so I have no
24 idea what the defense is. Again, if I get into the computer,

1 and see that all this stuff is attributed to Mike, that would
2 be an adequate defense. But I have no idea.

3 Q. So it's possible that an adequate defense does not
4 exist at this point in time?

5 A. That is very possible.

6 Q. Do you find an adequate defense in every case that
7 you are retained upon?

8 A. No.

9 Q. Mr. Reed asked you about Sergeant Carry's findings of
10 encryption software on the computer. Do you recall that?

11 A. Yes.

12 Q. Can you describe, generally, what encryption software
13 is?

14 A. Encryption essentially hides data so you can --
15 there's a bunch of different types of encryption, different
16 tools you can use. You can encrypt at the root level of a
17 hard drive. You can encrypt a folder. You can encrypt a
18 partition. It's just essentially creating a container that's
19 locked down and hidden, that stores some sort of data.

20 Q. Do you come across these locked containers in your
21 line of work?

22 A. Yes.

23 Q. And what, generally, are put into these locked
24 containers?

1 A. It could be everything. It could be an entire
2 computer. And certainly some people put child pornography in
3 encryption. Some people use encryption because they're
4 paranoid. Some people use encryption for all kinds of
5 reasons, all kinds of stuff in there.

6 I will tell you all of our hard drives that we carry
7 around with us are encrypted. There's nothing nefarious in
8 there. Every removable storage drive that we carry is
9 encrypted.

10 Q. Is that to protect it?

11 A. Absolutely. Because if I lose it on a plane, I don't
12 want somebody opening up my hard drive and seeing everything
13 that's in it. So encryption is used for a lot of different
14 reasons.

15 Q. Do most people, in your experience, who possess child
16 pornography want it to be easily findable or accessible on
17 their hard drives?

18 A. Lots of people have incredibly accessible child
19 pornography on their hard drives.

20 To be honest, in most of my cases, I guess that's why
21 they catch them, is because they're not encrypted, and
22 they're not hidden, and they're just right out in the open.

23 Q. Does encryption typically indicate some desire to try
24 and hide or protect something on a hard drive?

1 A. Yes.

2 Q. And do you know what was trying to be hidden or
3 protected in this particular case?

4 A. I don't even know that there was encryption. I
5 haven't seen anything to show me that a volume was encrypted.
6 Encryption, again, can be misaccurately represented. So I
7 don't know that what he is seeing was encrypted because I
8 didn't see any forensic evidence showing me, oh, that's a
9 true crypt pattern.

10 Q. Along those same lines, you don't know what Sergeant
11 Carry found on this computer, so you're taking his word for
12 it. Is that accurate?

13 A. Correct.

14 Q. So these user names on that computer, you don't
15 necessarily know that those were all various users' names on
16 that computer?

17 A. Again, that's what he put in his report.

18 Q. And, in fact, when you use user names, is there any
19 requirement that you even put your actual name on these
20 computers?

21 A. No.

22 Q. And is it possible that you could input a totally
23 different name and still have access to that user profile?

24 A. Absolutely.

1 Q. In your opinion, if Mr. Skinner had told his attorney
2 that he had intentionally accessed child pornography, would
3 that change the degree to which you question Sergeant Carry's
4 findings?

5 A. No. I've had so many cases where the client has said
6 one thing, and their digital data told me another; including
7 I have had people admit that they were guilty, and I found
8 out that they were covering for somebody in their family. So
9 I don't take statements. I analyze digital data. That tells
10 me what happened.

11 Q. Are you aware of any other users of the computer or
12 hard drive at issue in this case?

13 A. I'm not.

14 Q. In this case, you indicated that you saw file names
15 at a certain point in your review of Sergeant Carry's
16 analysis. Is that accurate?

17 A. Yes.

18 Q. And are those descriptions of the images generally
19 consistent with child pornography?

20 A. Those file names appear to be child pornography, yes.

21 Q. And are those consistent with the descriptions that
22 were present in the charging documents in this case?

23 A. I honestly don't know.

24 Q. Are you familiar with the search term "PTHC"?

1 A. Yes.

2 Q. And can you describe what that means?

3 A. It's pre-teen hard-core.

4 Q. Is that consistent with the descriptions of the file
5 names that you saw Sergeant Carry related in his report?

6 A. I believe that those terms were in there.

7 Q. And is that consistent with the descriptions that
8 were provided in the charging document in this case, as well?

9 A. Again, I'm not familiar with the descriptions in the
10 charging document.

11 Q. If the search terms that Sergeant Carry provided
12 generally matched up with the file names that were also at
13 one point located somewhere on this computer, would that
14 indicate to you that it was more likely the child pornography
15 actually existed on this computer?

16 A. I don't doubt the child pornography exists on the
17 computer. I don't know that those are search terms. Again,
18 just looking at the list, I don't think they are, because
19 there's a lot of terms in there that people just wouldn't
20 search. I think they're terms that the tool pulled out of
21 those file names. But I have no doubt that there's child
22 pornography on the computer. That's not the issue.

23 Q. If the search terms appear to match the file names
24 that were eventually located on that computer, would that

1 generally indicate an intent to locate and procure child
2 pornography images?

3 A. Yes. If there was a search term put into the
4 file-sharing, and somebody downloaded a file with that term
5 in it, then, yes, that would be knowledge of them knowingly
6 having child pornography, yes.

7 MR. NAUGHTON: Court's indulgence, Your Honor.

8 THE COURT: Sure.

9 MR. NAUGHTON: No further questions.

10 Thank you.

11 THE COURT: Mr. Reed.

12 Excuse me one second before you continue with the
13 examination.

14 Please proceed.

15 MR. REED: I just have one follow-up question,
16 actually, on redirect.

17 Your Honor, if I may approach the witness.

18 THE COURT: You may.

19 REDIRECT EXAMINATION

20 BY MR. REED:

21 Q. I want to show you. This is the March 18th, 2014,
22 you know, report. And does that refresh your memory as to
23 whether you saw that report?

24 A. No. If this is the same one he showed me. And,

1 again, this information looks like another report I saw, but
2 I don't know that I saw this page. But, again, I'm going on
3 memory. I don't have my file in front of me.

4 This doesn't look familiar to me. But this page
5 does. It's possible maybe I'm missing a page. Because I
6 did -- I've seen this, this list of search terms. But I
7 thought these were all in the November report. I think
8 that's where I'm getting confused.

9 Q. Let me point out to you. I've highlighted just a
10 couple of headings here on the last page of the report.

11 Does that refresh your memory at all as to whether
12 you saw that report?

13 A. Well, again, I have seen this page.

14 Q. You saw that --

15 A. I have seen this page.

16 Q. Okay.

17 A. That's what I'm saying. I've seen this page. I've
18 seen this page. And this page. I've seen this page. But I
19 thought all of these were from the November report. Maybe
20 it's the November report I don't have. I'd have to see them
21 together. Because I don't recall this page. But that -- I
22 don't know if this was missing, or if this was from another
23 report. That's where I'm having trouble.

24 THE COURT: The record should reflect the witness was

1 going through different pages of the document that Mr. Reed
2 handed to her. "This page and this page," it won't
3 transcribe well. But the Court understands the point the
4 witness was trying to make here.

5 MR. REED: That's all the questions I have, Your
6 Honor.

7 THE COURT: Thank you.
8 Anything else on re-cross?

9 MR. NAUGHTON: Just briefly, Your Honor.

10 THE COURT: Go right ahead.

11 RECROSS-EXAMINATION

12 BY MR. NAUGHTON:

13 Q. Miss Loehrs, if you had reviewed the March 18th, 2014
14 report before, is that something you would have included in
15 your report or declaration?

16 A. Yes. I believe I did. I don't know if I included
17 the date. I think the date is what's throwing me off. I
18 don't know the difference between the November report and the
19 March report. If I could see both reports next to each
20 other, then I would know what I saw. I think that's part of
21 my problem.

22 Q. Would reviewing your report refresh your recollection
23 as to whether you, in fact, reviewed the March 18th report?

24 A. You mean, my declaration?

1 Q. Yes.

2 A. Do I put a date in there?

3 MR. NAUGHTON: May I approach, Your Honor?

4 THE COURT: You may.

5 BY MR. NAUGHTON:

6 Q. Miss Loehrs, do you recognize that document that I've
7 just handed you?

8 A. Yes. This is my declaration.

9 Q. If I could draw your attention specifically to
10 paragraph 5.

11 A. So, yes. I say, "A report narrative prepared by
12 Sergeant Dennis Carry on November 1st, 2013." But that March
13 report appears to be in the same report.

14 Q. If you had reviewed the March report, would that have
15 appeared in your declaration?

16 A. If that date had been on there, yes, it would have
17 been. So I think something happened with the pages that I
18 got. Because those -- again, to be clear, pages like from
19 page 3 to the end of the March report I recognize as what I
20 have as the November report.

21 Q. There was additional information in that March
22 report, based on your short review there, that did not appear
23 to be in that November report, however?

24 A. The first page, the cover page, and the second page,

1 I don't recognize.

2 Q. Thank you.

3 A. The rest of it appears to be the November report I
4 received.

5 Q. Thank you.

6 MR. NAUGHTON: I have no further questions, Your
7 Honor.

8 THE COURT: All right. Anything else, Mr. Reed?

9 MR. REED: Nothing, Your Honor.

10 THE COURT: Miss Loehrs, the Court thanks and excuses
11 you. You may step down.

12 And can we -- she's not here under subpoena. She's
13 here to be called by the petitioner. Is there any reason the
14 Court should ask her to remain?

15 The defense doesn't have a forensic digital expert in
16 this case, so, for this hearing's purpose, I think we can
17 excuse Ms. Loehrs to go about her business.

18 MR. REED: Let me just confer with her just for a
19 second.

20 THE COURT: Okay.

21 MR. REED: That's fine, Your Honor. She may watch
22 some of the testimony in the afternoon, but --

23 THE COURT: Well, are we invoking the rule of
24 exclusion here?

1 MR. NAUGHTON: Yes, Your Honor.

2 THE COURT: So if you plan to -- here are your
3 options. If you may call her again in rebuttal, then she's
4 going to have to wait outside. If you want to use her as a
5 resource to confer with during recesses or from time to time,
6 then she will not be testifying again, and she can remain in
7 the courtroom.

8 You don't have to make that decision now. You can
9 let us know when we resume here at approximately 10 minutes
10 after 1:00.

11 So the Court will be in recess.

12 I'm anticipating that Mr. Skinner will be testifying
13 after lunch; is that correct?

14 MR. REED: Yes.

15 THE COURT: All right. Now, Mr. Skinner, because of
16 your medical condition, you needn't attempt to come up here
17 at the witness stand to testify. The Court will allow you,
18 if you would, if it's acceptable to all counsel, to move your
19 wheelchair out a little bit closer in front of the -- where
20 the jury box is, and I'll allow your counsel to question you
21 from his area, and you can testify seated there. And then
22 I'll allow cross-examination the same way. If you
23 collaborate while I'm off the bench on a better approach, I'm
24 certainly willing to do whatever it is that works out best

1 for everybody.

2 So, with that, we'll be in recess until 1:10.

3 The rule of exclusion is in place. The petitioner
4 counsel will let the Court know whether their expert will be
5 in the courtroom to consult, or remain outside as somebody
6 possibly subject to be re-called on rebuttal, or otherwise
7 free to go.

8 The Court will be in recess for about an hour.

9 (Recess.)

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