IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANKIE ALAN WATTERS
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

CASE NO: 59703

FAST TRACK RESPONSE

1. Name of party filing this fast track response: The State of Nevada

2. Name, law firm, address, and telephone number of attorney submitting this fast track response:

Nancy A. Becker
Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2750

3. Name, law firm, address, and telephone number of appellate counsel if different from trial counsel:

Same as (2) above.

4. Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of which you are aware, which raise the same issues raised in this appeal: None

5. Procedural history.

On March 22, 2011, Frankie Allen Watters ("Appellant") was charged by way of Criminal Complaint and subsequently by way of Information. Appellant's Appendix ("AA") 1 AA 1-6. The Information charged Appellant with Possession of a Stolen Vehicle (as to a Chrysler Sebring) (Felony – NRS 205.273); Grand Larceny Auto (as to a Honda Civic) (Felony – NRS 205.228); and Stop Required

on Signal of Police Officer (Felony – NRS 484B.550). Id. Appellant was arraigned and pled not guilty on May 25, 2011. 1 AA 63. Appellant thereafter waived his preliminary hearing on the condition the District Attorney not revoke the offer extended to Appellant at that time. 1 AA 77. The Defendant thereafter rejected the District Attorney's offer. 1 AA 118. On August 8, 2011, Appellant brought a Motion to Remand his case to Justice Court for a preliminary hearing. 1 AA 70, 2 AA 115-117. Upon Appellant's representation that he rejected the offer, the Court denied the motion. Id.

A jury trial commenced on August 8, 2011. Id. The Jury returned a verdict of guilty on all three counts of the Information on August 9, 2011. 1 AA 53-54.

On October 10, 2011 Defendant was adjudged guilty and sentenced as follows: as to Count 1 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections; as to Count 2 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections, to run CONSECUTIVE to Count 1; as to Count 3 – a MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of THIRTEEN (13) MONTHS in the Nevada Department of Corrections, to run CONSECUTIVE to Count 2 and the Sentence in Case C273350; ZERO (0) Days credit for time served; and $4,870 in RESTITUTION. 1 AA 74. Judgment of Conviction was filed October 21, 2011. 1 AA 55-56.

Appellant filed a Notice of Appeal on November 15, 2011. 1 AA 57-59. He thereafter filed his Fast Track Statement on February 17, 2012. The State's Response follows.

6. Statement of Facts.

On March 18, 2011, Appellant led police on a high speed chase throughout the southeastern Las Vegas Valley culminating in Appellant's crashing a stolen

vehicle before his capture by police inside of a Wal-Mart store. 2 AA 334-344, 3 AA 423.

On March 18, 2011, Jamie Poyner was driving her vehicle with an attached motorcycle trailer near the intersection of Sun Valley Drive and Nellis Boulevard in Las Vegas. 3 AA 436. It was there that Appellant, while driving a white Chrysler Sebring, crashed into the motorcycle trailer attached to Ms. Poyner's vehicle. Id., 3 AA 444. The Sebring had been reported stolen one day earlier by its owner, Heather Reed. 2 AA 288. After Ms. Poyner's attempt to obtain Appellant's insurance information, he responded "I'm out of here," hopped back into the Sebring and sped away. 3 AA 438. Ms. Poyner immediately called 911, informed the operator what happened, and police dispatch alerted all officers in the area of the incident to search for the white Sebring. 2 AA 296, 3 AA 438. Sergeant Baker of the Las Vegas Metropolitan Police Department ("LVMPD") first spotted the Sebring in the area of Tropicana Avenue and Boulder Highway. 2 AA 296. She provided officers with a description of the driver of the Sebring- a Hispanic male with a shaved head, wearing a grey shirt. 2 AA 302. Sergeant Baker thereafter lost sight of the Sebring. 2 AA 289.

The Sebring was subsequently spotted by LVMPD Officer Bleak in the parking lot of the Eastside Cannery located on the corner of Harmon and Boulder Highway. 2 AA 324. LVMPD Officer Maas, who was en route to Ms. Poyner's location, was dispatched to the Eastside Cannery to make contact with Appellant in the Sebring along with Officer Bleak. Id. The Sebring was discovered parked within the parking area of the Eastside Cannery, but appellant was not inside of the vehicle. Id. Officers Bleak and Maas began searching for a person matching the description dispatched by Sergeant Baker. 2 AA 324-325.

Shortly thereafter, officers discovered Appellant, matching Sergeant Baker's description, hunched over inside of a green Honda two to three spaces away from the Sebring. 2 AA 325. Officers attempted to approach Appellant, but upon

initiating contact he sped away in the green Honda, escaping onto Boulder Highway. 2 AA 326-327.

Appellant crossed the median on Boulder Highway, traveling around 60 miles per hour and entered the southbound lanes traveling northbound. 3 AA 405. Appellant collided with another vehicle upon attempting to turn into the Wal-Mart parking lot located on Boulder Highway while maintaining a speed of around 60-65 miles per hour. Id. Appellant continued northbound on Boulder Highway in the southbound lanes. 3 AA 408. Appellant made his way to the area of Flamingo and the U.S. 95, traveling westbound in the eastbound lanes on Flamingo. 3 AA 413. LVMPD Air Support arrived to help track Appellant's attempted escape as Appellant entered the U.S. 95, heading southbound at speeds of 90-100 miles per hour. 2 AA 314; 3 AA 414.

Appellant exited the U.S. 95 at Tropicana, entering the eastbound lanes, immediately colliding with a landscaping truck. 3 AA 416. Appellant fled eastbound on Tropicana, eventually crossing the median and continued eastbound in the westbound lanes. 3 AA 418. Appellant then collided with David Granger, a deliveryman for Cheyenne Auto Parts who was driving westbound on Tropicana Avenue. 3 AA 358, 418. While driving westbound, Mr. Granger observed a green Honda traveling head of with him at a high rate of speed, and was unable to avoid the collision. 3 AA 358. Appellant continued to flee, turning northbound onto Nellis Boulevard. 3 AA 419.

In an attempt to terminate the chase, LVMPD Officers Harper and Pro successfully executed a "pinch" maneuver to stop Appellant's vehicle. 3 AA 420. Appellant then jumped through the passenger side window, and hopped a wall bordering a Wal-Mart store. 3 AA 422. Air support observed Appellant enter the Wal-Mart through a back entrance. 3 AA 422-423. Officers surrounded the Wal-Mart and Officer Harper entered the store with Rocco, his trained canine partner. 3 AA 395-396, 3 AA 423.

Officer Harper and Rocco made contact with a bloodied Appellant inside of the Wal-Mart and commanded the Appellant to get on the ground. 3 AA 423. Appellant responded, "Fuck you, I didn't do anything wrong." Id. After further commands from Officer Harper, Appellant, with hands in his pockets, began to walk toward Officer Harper at which time Officer Harper released Rocco who successfully subdued Appellant. Id.

7. Issue(s) on appeal.

(1) Whether the State's use of a PowerPoint of Defendant's face with the word "Guilty" superimposed thereon violated Appellant's constitutional rights;

(2) Whether Jury Instructions defining Possession of a Stolen Vehicle and flight were improper, and whether the court should have instructed the jury as to "unlawful taking" as a lesser related offense of Possession of a Stolen Vehicle;

(3) Whether denial of Appellant's Motion to Remand his case to Justice Court for a preliminary hearing was proper; and

(4) Whether the evidence presented at trial was sufficient to sustain the convictions.

8. Legal Argument, including authorities:

I. <u>The Court did Not Err in Allowing a PowerPoint Photograph of Defendant to Be Shown During Opening Argument with the Word "Guilty" Superimposed Thereon.</u>

At the commencement of trial, during housekeeping matters, the Court inquired as to whether the parties would make use of PowerPoint presentations in opening or closing arguments, and if so, whether the PowerPoints had been disclosed to the opposing side. 2 AA 112. Defense counsel stated that he had received a copy of the State's PowerPoint opening statement and objected to the use of a photograph of Appellant superimposed with the word "guilty." Id., 3 AA 492. Over Appellant's objection, the Court allowed the photograph along with the "pop up" of the phrase "guilty," reasoning it was tantamount to the State merely asking the jury to deliver a verdict of guilty, representative of evidence that the

jury would see, and that such PowerPoints had been permitted previously both in his Court and in other jurisdictions. 2 AA 113-114.

The purpose of an opening statement is to acquaint the jury and court with the nature of the case. Garner v. State, 78 Nev. 366, 371, 374 P.2d 525, 528 (1962). It is proper for a prosecutor to outline [her] theory of the case and to propose facts [she] intends to prove. State v. Olivieri, 49 Nev. 75, 236 P. 1100 (1925). To this end, parties may utilize demonstrative aides so long as the aides do not misrepresent the evidence introduced at trial. Allred v. State, 120 Nev. 410, 419, 92 P.3d 1246, 1252-53 (2004).

Courts have allowed computer generated exhibits with superimposed labels in order to track the prosecutor's opening statement where such labels were pertinent to issues the prosecution intended to prove up. State v. Sucharew, 205 Ariz. 16, 21, 66 P.3d 59, 64 (2003); see also Dolphy v. State, 288 Ga. 705, 708, 707 S.E.2d 56, 58 (2011) (finding that Prosecutor's PowerPoint slides superimposed with statements "Defendant's Story is a Lie" and "People Lie When They are Guilty" were likely proper since the slides and captions merely presented evidence proved up at trial).

In the present case, as recognized by the district court, the use of the word "guilty" superimposed over the defendant's picture was merely a demonstrative aide used to help the Jury understand what the State was asking the Jury to do. The Jury was instructed that, "[s]tatements, arguments and opinions of counsel are not evidence in this case" and that "[the jury was] to consider only the evidence in the case in reaching a verdict." 1 AA 45, 48. The PowerPoint slide was not evidence, and amounted to nothing more than tracking the prosecutor's opening statement. Furthermore, the State proved that Defendant was guilty of the crimes charged. Therefore, the PowerPoint slide using the word "guilty" did not undermine Appellant's presumption of innocence.

Appellant's reliance on Haywood v. State and Hightower v. State is misplaced. See Haywood, 107 Nev. 285, 809 P.2d 1272 (1991); Hightower, 123 Nev. 55, 154 P.3d 639 (2007). Both Haywood and Hightower reference the right of the accused to wear civilian clothing at trial because identifiable prison attire is a "constant reminder" of the accused's condition that may affect the jury's judgment. In fact, the entire basis and reasoning of Haywood and Hightower is the continual nature of the "constant reminder" of guilt that prison garb conveys. Though it cannot be determined from the record exactly how long the PowerPoint slide was in front of the jury, based on the totality of the record it would appear no longer than a few seconds. 2 AA 113, 282. The flash of the word "guilty" is akin to asking the jury to find a defendant guilty (a tactic commonly allowed) and therefore both Haywood and Hightower are inapposite.

Finally, Appellant's reliance on United States v. Fosher, 568 P.2d 207 (1st Cir. 1978) in arguing the use of Appellant's photograph was improper is inapplicable to the present case. Besides Fosher not being mandatory law upon this Court, Fosher is predicated upon a mugshot being entered into evidence. Here, the photograph was never presented as a "mugshot" to the jury, nor was the PowerPoint entered as evidence. Furthermore, looking at the photograph, it does not carry any indicia of a "mugshot," which might have potentially prejudiced the jury. 3 AA 492. Rather, it was a generic photo of Appellant's face, only presented during opening statements for a short period of time. Therefore, Fosher does not apply.

For the foregoing reasons, the Court should find that the use of the word "guilty" superimposed on a photograph of the Appellant was not outside the bounds of proper opening statement material.

However, even if the Court finds the PowerPoint slide impermissible, challenges to opening statements are reviewed for harmless error. Theriault v. State, 92 Nev. 185, 190, 547 P.2d 668, 671 (1976).

The PowerPoint and its caption were not admitted as evidence and the jury was instructed, prior to deliberations, to consider only the testimony of witnesses, exhibits, and facts admitted or agreed upon by counsel. 1 AA 45, 48. Moreover, Appellant was observed driving the stolen Sebring, stealing the Honda, and eluding police. 2 AA 288, 302, 325-327; 3 AA 358, 368-370, 405, 420-423, 444. In context, a momentary flash of "guilty," if error at all, was harmless in light of the overwhelming evidence of Appellant's guilt.

II. The Jury Instructions Delivered by the Court Were Proper

A. The District Court Properly Excluded "Intent to Permanently Deprive" as an Element of Instruction 4 - Possession of a Stolen Vehicle.

During finalization of jury instructions defense counsel objected to Instruction 4, arguing that under theories of common law "intent to permanently deprive" is a required element of Possession of a Stolen Vehicle. 1 AA 33; 3 AA 450-451. The court overruled the objection pursuant to Montes v. State, 95 Nev. 891, 894, 603 P.2d 1069, 1071-1072 (1979). 3 AA 451.

"Intent to permanently deprive" is not an element of Possession of Stolen Property in Nevada. Montes v. State, 95 Nev. at 894, 603 P.2d at 1071-1072. Furthermore, NRS 205.273 (the statute governing Possession of a Stolen Vehicle) does not mention or reference any "intent to permanently deprive." The absence of such an element has been confirmed by the Supreme Court as recently as 2008 in Lewis v. State, 124 Nev. 1488, 238 P.3d 833 (2008).

Whether a proffered instruction is a correct statement of the law presents a legal question which is subject to *de novo* review. Nay v. State, 123 Nev. 326, 330, 167 P.3d 430, 433 (2007).

Here, the Court properly instructed the jury that "any person who has in his possession any motor vehicle which he knows or has reason to believe has been stolen is guilty of Possession of Stolen Vehicle." 1 AA 33, 3 AA 451. Any instruction requiring an element of "intent to permanently deprive" would have

been contrary to Nevada statutes and precedent and therefore an incorrect statement of law. Jury Instruction 4 was proper and this Court need not re-visit Montes.

Appellant further argues that the district court erred in rejecting Appellant's proposed Instruction D-2, which would have defined the term "stolen" under NRS 205.273. 3 AA 493-494.

Trial courts have broad discretion in deciding whether terms within an instruction should be defined. Dawes v. State, 110 Nev. 1141, 1145, 881 P.2d 670, 673 (1994). "Words used in an instruction in their ordinary sense and which are commonly understood require no further defining instructions." Dawes, 110 Nev. at 1146, 881 P.2d at 673.

Jury instruction 4, states "[a]ny person who has in his possession any motor vehicle which he knows or has reason to believe is stolen is guilty of Possession of a Stolen Vehicle." 1 AA 33. Stolen, as used in this instruction, is not a term of art, but rather a common word which Jurors could apply through their own common understanding of the world. Jurors were free to determine under the evidence whether or not Appellant knew or had reason to believe the Sebring was stolen at the time he was driving it. Because "stolen" was used here in its ordinary sense, no further defining instructions were required.

B. The District Court Properly Excluded an Instruction on Unlawful Taking of a Motor Vehicle as a Lesser Related Offense of Possessing a Stolen Vehicle.

Again, during finalization of jury instructions, Appellant argued, and the district court rejected, the contention that Unlawful Taking was a lesser related offense of Possessing a Stolen Vehicle. 3 AA 450-451. Appellant concedes Unlawful Taking is not a lesser-included offense of Possessing a Stolen Vehicle and therefore this brief will focus on whether the Court was required to provide a lesser-related Offense Instruction.

Criminal defendants are not entitled to jury instructions on lesser-related offenses as it would undermine the fairness of a verdict for a crime that the State did not attempt to prove. Peck v. State, 116 Nev. 840, 845, 7 P.3d 470, 473 (2000) (*overruled on other grounds* by Rosas v. State, 122 Nev. 1258, 147 P.3d 1101 (2006)). A district court's refusal to give a jury instruction is reviewed for abuse of discretion. Nay v. State, 123 Nev. 326, 330, 167 P.3d 430, 433 (2007).

First, Appellant enjoyed no entitlement to a lesser-related offense instruction. Second, the State presented no evidence that Appellant actually took the Sebring and Appellant's requested lesser-related offense would be directly contrary to the reasoning of Peck. That is, it would allow for a lesser-included offense that the State did not even attempt to prove. Therefore, the district court did not abuse its discretion in refusing to give the lesser-related Offense Instruction for Possession of a Stolen Vehicle.

Appellant's reliance on both Johnson v. State and Honeycutt v. State is misplaced since both cases apply to a Defense Instruction based on a defendant's theory of his case, not a lesser-related Offense Instruction. See Johnson, 111 Nev. 1210, 902 P.2d 48 (1995); Honeycutt, 118 Nev. 660, 56 P.3d 362 (2002). Moreover, for such an instruction to apply a defendant must present "some evidence" to support the instruction. Id.

As discussed, neither the State nor the Appellant put forward evidence that Appellant actually took the Sebring. The Court, out of an abundance of caution, even held a brief Hernandez hearing on this issue, determining that Appellant was not conceding any part of the charged offenses (i.e., that he was the driver of the Sebring), and thus concluded a Defense Instruction as to unlawful taking was not necessary. 3 AA 452-454, See Hernandez v. State, 124 Nev. 978, 990-991, 194 P.3d 1235, 1243 (2008). Therefore, Appellant cannot make the showing of supporting evidence as required under both Johnson and Honeycutt.

C. The District Court Properly Allowed a Flight Instruction

Again, during finalization of jury instructions, Appellant objected to the State's proposed Flight Instruction on the grounds that "[it] over emphasiz[ed] flight, tend[ed] to shift the burden, and that it shouldn't be a factor that's set out in [the proposed] instruction. 3 AA 449. The district court overruled Appellant's objection since a factual basis existed to provide the instruction. 3 AA 450. See Weber v. State, 121 Nev. 554, 581-582, 119 P.3d 107, 126 (2005). Appellant now argues the Flight Instruction shifted the burden and suggested that jurors were to determine Appellant's guilt or innocence solely on the basis of the instruction.

The threshold question in determining whether a jury instruction relieves the State of its burden of proof, or shifts such a burden to a defendant, is a whether the instruction presents a "mandatory presumption" or a "permissive inference." Francis v. Franklin, 417 U.S. 307, 313-314, 105 S.Ct. 1965, 1971 (1985).

Generally, a permissive inference will not relieve the State of its burden of proof, unless the conclusion suggested from the instruction is supported by neither common sense nor reason. Id. The offending instruction must be reviewed in light of the entire record, to determine whether a reasonable juror would have understood the instruction to create an unconstitutional presumption. Id.

Jury Instruction 7 was a permissive inference, merely suggesting to the jury the possible conclusion that, Appellant's efforts to elude the police while driving both the Honda and the Sebring may have evidenced consciousness of guilt on the charged offenses. Such a conclusion is supported by the fact that the plain language of the instruction was not mandatory, nor did it allow for any presumption whatsoever. 1 AA 36. Instruction 7 used permissive language like, "may be considered" and concludes with, "Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation." Id. The foregoing language intends an inference only, which may be drawn only insomuch as the jury deems it

appropriate. Because Instruction 7 contains no mandatory language that would give rise to a presumption of any kind, let alone a mandatory one, the Court should find that Instruction 7 neither shifted the burden to Appellant, nor did it relieve the State of its own burden.

Moreover, taking Instruction 7 in context of the other instructions provided to the Jury, a reasonable juror could not have interpreted Instruction 7 to relieve or shift the burden. First, Jury Instruction 13 provided the specific elements for the charge of Stop Required on Signal of Police Officer, demonstrating to the jury that other specific facts were required to find the Appellant guilty based on his alleged flight. 1 AA 42. Further, Jury Instructions 15 and 18 instructed the Jury that Appellant maintained a presumption of innocence and could only be found guilty if each material element of the charges against Appellant were proved beyond a reasonable doubt. 1 AA 44, 47.

Based on the charges of Possession of a Stolen Vehicle, Grand Larceny Auto, Stop Required on Signal of Police Officer, the high-speed police chase, and several witnesses who identified Appellant as the driver of both the Honda and the Sebring, a Flight Instruction was supported by both common sense and reason.

Finally, Appellants reliance on Brackeen v. State is misplaced, since the instruction in Brackeen specifically directed the jury as to a mandatory presumption which alleviated the State's burden. Brackeen, 104 Nev. 547, 552, 763 P.2d 59, 62 (1988). Since it has been demonstrated in the instant case that Instruction 7 was merely a permissive inference, Brackeen is inapplicable.

Based on the foregoing, Instruction 7 was not a violation of Appellant's constitutional rights as it did not shift or relieve the burden of proof from the State, as viewed by a reasonable juror.

Finally, to the extent the court finds any of the jury instructions were improper, any perceived error was harmless given the overwhelming evidence of Appellant's guilt, as presented at trial. See *Supra* Argument I.

III. Appellant Waived his Right to a Preliminary Hearing and Therefore Denial of Appellant's Motion to Remand to Justice Court Does Not Warrant Reversal

On the first day of trial, just over four months after waiving his preliminary hearing, Appellant brought an oral motion before the Court that his case be remanded for a preliminary hearing insomuch as his waiver of preliminary hearing was "conditional." 1 AA 77, 1 AA 115. Upon review of the justice court transcripts, the district court determined the waiver was unconditional and denied Appellant's motion. 1 AA 116-117.

NRS 171.196 allows a defendant to waive his preliminary examination and be immediately bound over to district court. NRS 171.208 prohibits remand from the district court to the justice court for a defendant who has unconditionally waived his preliminary examination.

Defendant unconditionally waived his preliminary examination before the justice court. 1 AA 76-78. The justice court specifically asked defendant whether he understood that his waiver was unconditional and that such a waiver would prohibit him from coming back to the justice court for a preliminary examination. 1 AA 77. The sole caveat on the waiver was the very limited case where the district attorney's office unfairly revoked the plea bargain extended to Appellant. Id. Appellant admitted to the district court that he was the one who rejected the offer and therefore the district attorney's office kept its end of the bargain. 2 AA 117. Insomuch as the Appellant's waiver of his preliminary examination was unconditional the district court properly denied the oral Motion to Remand pursuant to NRS 171.208.

To the extent the Court finds the district court committed error it must be noted that reversal of a district court's ruling is not warranted where an appellant cannot show actual prejudice. Lisle v. State, 114 Nev. at 224-225, 954 P.2d at 756 (1998). A showing of prejudice based on the denial of a preliminary hearing

cannot be made where an appellant has been convicted after a trial beyond a reasonable doubt, since "probable cause undoubtedly existed" to bind appellant over. Id.

Appellant was found guilty beyond a reasonable doubt on all counts of the Information after a trial. 1 AA 52-55. Therefore, having been found guilty beyond a reasonable doubt, probable cause "undoubtedly existed" to bind Appellant over and the district court's decision should not be reversed.

IV. The Evidence Presented at Trial was Sufficient to Support the Appellant's Conviction

In determining if a verdict "[is] based on sufficient evidence to meet due process requirements, [the] Court will inquire whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Mitchell v. State, 192 P.3d 721, 727 (Nev. 2008). The Court should not "reweigh the evidence or evaluate the credibility of witnesses" as such is the jury's responsibility. Id. (*citing* McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992)).

Though Appellant raises the broad issue of insufficient evidence to prove "the crimes charged," his analysis is limited to the sole issue of identification of the Appellant. Therefore, this brief will focus on whether the State sufficiently proved beyond a reasonable doubt that Appellant was indeed the one who committed the underlying offenses.

The issue of weight and credibility of identifying eyewitness testimony at trial is solely within the province of the jury. Steese v. State, 114 Nev. 479, 498, 960 P.2d 321, 333 (1998). Questions of identification of a defendant go to weight and credibility of the evidence, not the sufficiency thereof. See Henderson v. State, 95 Nev. 324, 326, 594 P.2d 712, 713 (1979) (defendant's sufficiency argument meritless since uncorroborated witness identification went to weight and credibility of the evidence).

Appellant was identified as the perpetrator of the underlying crimes several times throughout the trial by several witnesses. The state provided testimony from both LVMPD Sergeant Baker and Jamie Poyner identifying Appellant at trial as the driver of Heather Reed's missing Chrysler Sebring. 2 AA 287, 293, 297; 3 AA 436-437, 444. Appellant was further identified at trial as the driver of the 2000 Honda Civic belonging to Yosvany Otano and as the person who actually took the vehicle from the Eastside Cannery Parking lot as observed by LVMPD Officers Maas and Harper. 2 AA 325, 345; 3 AA 402. Finally, several LVMPD Officers testified at trial that Appellant was the same person who failed to stop for them after signaling Appellant from their patrol vehicles by way of their lights and sirens. 2 AA 297, 329, 329; 3 AA 361, 387, 390, 422-423.

Whether the Appellant was the driver of the Sebring and the Honda, and whether he was the same who fled from police into Wal-Mart were questions of weight and credibility to be determined by the jury. Given the abundance of uncontested evidence as to Appellant's identity, a rational trier of fact could have found that Appellant was indeed the one who committed the charged offenses.

9. Preservation of the Issue.

Appellant properly preserved these issues for appeal pursuant to NRAP 4(b) and NRAP 3C. 1 AA 36; 2 AA 113, 114; 3 AA 449-451, 464-471, 493-494.

VERIFICATION

1. I hereby certify that this fast track response complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this fast track response has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point and Times New Roman style.
2. I further certify that this fast track response complies with the page or type-volume limitations of NRAP 3C(h)(2) because it is proportionately spaced, has a typeface of 14 points or more and contains no more than 4,667 words or does not exceed 10 pages.
3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information and belief.

Dated this 27th day of March, 2012.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Nancy A. Becker*

NANCY A. BECKER
Deputy District Attorney
Nevada Bar #000145
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
P O Box 552212
Las Vegas, NV 89155-2212
(702) 671-2750

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on March 27, 2012. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO
Nevada Attprney General

AUDREY M. CONWAY
Deputy Public Defender

NANCY A. BECKER
Deputy District Attorney

BY */s/ eileen davis*
Employee,
Clark County District Attorney's Office

NAB/Robert Sweetin/ed