

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL J. SCHOFIELD,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Case No. 65193

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Tracie K. Lindeman
Clerk of Supreme Court

RESPONDENT'S APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 20, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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BY /s/ E.Davis
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CLERK OF THE COURT

0014
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DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Application of,)	
)	CASE NO. C-13-287009-1
)	
)	DEPT. NO. XXI
Michael John Schofield,)	
for a Writ of Habeas Corpus.)	DATE: March 28, 2013
)	TIME: 9:30 a.m.

PETITION FOR WRIT OF HABEAS CORPUS

TO: The Honorable Judge of the Eighth Judicial District Court of
The State of Nevada, in and for the County of Clark

The Petition of Michael John Schofield submitted by DANIEL R. JENKINS, Deputy
Public Defender, as attorney for the above-captioned individual, respectfully affirms:

1. That he/she is a duly qualified, practicing and licensed attorney in the City of
Las Vegas, County of Clark, State of Nevada.

2. That Petitioner makes application for a Writ of Habeas Corpus; that the place
where the Petitioner is imprisoned actually or constructively imprisoned and restrained of his liberty
is the Clark County Detention Center; that the officer by whom he is imprisoned and restrained is
Doug Gillespie, Sheriff.

3. That the imprisonment and restraint of said Petitioner is unlawful in that: there
was insufficient evidence adduced at preliminary hearing to support the charge of kidnapping in the
first degree.

4. That Petitioner waives his right to be brought to trial within 60 days.

5. That Petitioner consents that if Petition is not decided within 15 days before
the date set for trial, the Court may, without notice of hearing, continue the trial indefinitely to a date
designated by the Court.

RA 000001

1 6. That Petitioner personally authorized his aforementioned attorney to
2 commence this action.

3 WHEREFORE, Petitioner prays that this Honorable Court make an order directing
4 the County of Clark to issue a Writ of Habeas Corpus directed to the said Doug Gillespie, Sheriff,
5 commanding him to bring the Petitioner before your Honor, and return the cause of his
6 imprisonment.

7 DATED this 7th of March, 2013.

8 PHILIP J. KOHN
9 CLARK COUNTY PUBLIC DEFENDER

10 /s/ Daniel R. Jenkins
11 By: DANIEL R. JENKINS, #10375
12 Deputy Public Defender
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DECLARATION

DANIEL R. JENKINS makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

2. That I am the attorney of record for Petitioner in the above matter; that I have read the foregoing Petition, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true; that Petitioner, MICHAEL JOHN SCHOFIELD, personally authorizes me to commence this Writ of Habeas Corpus action.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 7th day of March, 2013.

/s/ Daniel R. Jenkins

DANIEL R. JENKINS

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

3 COMES NOW the Petitioner, MICHAEL JOHN SCHOFIELD, by and through his
4 counsel, DANIEL R. JENKINS, the Clark County Public Defender's Office, and submits the
5 following Points and Authorities in Support of Defendant's Petition for a pre-trial Writ of Habeas
6 Corpus.

7 **STATEMENT OF FACTS**

8
9 Michael John Schofield is the father of his 14 year-old son, Michael Joshua Schofield. Mr.
10 Schofield's son is usually referred to as "Little Michael" by his family, including his two current
11 legal guardians, his grandparents. (Preliminary Hearing Transcript "PHT" p. 6, 24-25). Although
12 Little Michael has been under the guardianship of his grandparents since 2001, SCHOFIELD has
13 had regular contact with his son (PHT p. 23, 12-14). Nevertheless, the family reports discipline
14 issues with Little Michael (PHT p. 28, 5-7). Both SCHOFIELD and his son enjoy football and share
15 this interest together routinely by watching games on television and playing catch (PHT p. 48, 9-11).
16

17 On January 6, 2013, SCHOFIELD's father-in-law, Norman Duplissie, went over to
18 SCHOFIELD's residence to bring to his step-son some medication consisting of aspirins and
19 nighttime alka-seltzer for ailments including a headache and a cold (PHT p. 7, 14-21). Later that
20 football Sunday, SCHOFIELD arrived at Duplissie's residence to spend time with his son despite
21 feeling under the weather (PHT p. 10, 1-12). Duplissie stated that he opened the door and
22 SCHOFIELD immediately spoke with his son (PHT p. 10, 10) Duplissie overheard Little Michael
23 and his father talking about going outside to play catch, then witnessed the pair exit the home (PHT
24 p. 10, 11-23). Duplissie states he returned to the kitchen at this time with his wife, leaving
25 SCHOFIELD with his son. (PHT p. 11, 1-2).
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1 After some time, the front door opens and SCHOFIELD and Little Michael are back inside
2 the house (PHT p. 11, 16-22). At this time Duplissie's wife confronts SCHOFIELD under the belief
3 that SCHOFIELD might have been intoxicated (PHT p. 12, 11-13). Due to this belief, she was
4 attempting to prevent SCHOFIELD from taking Little Michael on an errand (PHT p. 10, 11). These
5 conflicting interests trigger a frustrated back-and-forth that ensues between SCHOFIELD, Little
6 Michael and Little Michael's grandmother (PHT p. 12, 18-19). SCHOFIELD, extremely irate at this
7 point, pursued Little Michael and finally put his arm around his son in an effort to exert fatherly
8 dominion and control over the situation (PHT p. 14, 1-2). Little Michael testified that at first he told
9 his father he was attempting to favor the will of his grandmother and resist leaving with his father,
10 but after the physical struggle Little Michael apologized to his father and stated he would
11 accompany him on the errand (PHT p. 46, 5-7). Still holding Michael, SCHOFIELD then moves
12 outside the house followed by Duplissie and his wife, though Duplissie first took some time to place
13 his dog within a cage (PHT p. 17, 15-17).

16 Arriving outside, Duplissie sees Little Michael within the passenger seat of SCHOFIELD's
17 van, which was still parked on the driveway of the residence (PHT p. 18, 3-6). Hearing all the
18 commotion, two neighbors who are detectives here in Las Vegas exit their homes and attempt to
19 subjugate a now obviously unruly and heated SCHOFIELD. (PHT p. 18, 19-20, p. 19, 1). The
20 altercation had caused Duplissie's wife, Little Michael's grandmother, to call 9-1-1 and a nearby
21 police cruiser was called in and the officer joined the situation (PHT, p. 18, 25, p. 19, 1). At this
22 point, SCHOFIELD is up near the front of the vehicle, verbally arguing with Duplissie over Little
23 Michael, and Little Michael had gotten out of the van and did not return inside. (PHT, p. 19, 3-10,
24 22-23).

Following the incident, the responding police officers took pictures of the effect of SCHOFIELD's hold upon his son, indicating only small scratches on the child's neck (PHT, p. 20, 12-21).

ARGUMENT

I. There was insufficient evidence presented at the Preliminary Hearing to support the First Degree Kidnapping with use of a deadly weapon charge.

NRS 200.310 provides the following description of kidnapping in the first degree:

1. A person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for ransom, or reward, or for the purpose of committing sexual assault, extortion or robbery upon or from the person, or for the purpose of killing the person or inflicting substantial bodily harm upon the person, or to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnapped person, **and a person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine the minor from his or her parents, guardians, or any other person having lawful custody of the minor**, or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act is guilty of kidnapping in the first degree which is a category A felony. (Emphasis Added).

The charge of kidnapping can hold when the person is willfully taken without any legal authority NRS 200.310(2). That is, a noncustodial parent attempting to remove a minor will be found guilty of kidnapping where it is clear he removed the minor from his or her custodial parents with the intent to keep or imprison such minor from the lawful custodial parents. This charge thus requires an inquiry into the specific intent of the defendant as well as the surrounding circumstances

1 of the removal of the minor. At the time of the preliminary hearing the state had the burden to show
2 that Defendant had the specific intent to confine the minor from his grandmother and step-
3 grandfather, who had legal custody.

4 The day of the altercation did not deviate from habitual contact between Defendant and his
5 son and as such there is no clear indication that Defendant arrived or left with the intent to confine
6 Little Michael from his legal guardians beyond what was typical for the relationship.

7
8 Duplissie and Little Michael make clear from their testimony that Defendant has had regular
9 contact with his son and that a visit on such a Sunday was not abnormal or odd (PHT p. 48, 8-11; p.
10 21, 15-20; p. 23, 12-17). Moreover, the scene did not become tension-filled until Little Michael was
11 caught in indecision between two parental figures. Duplissie did not express concern with
12 Defendant's initial arrival or interaction with Little Michael, as both he and his wife remained in the
13 kitchen for some period of time without supervision of situation. As Duplissie describes the initial
14 arrival of Defendant on January 6, he states: "I didn't pay that much attention, I was in the kitchen"
15 (PHT p. 10, 10-11). This lax approach by the Duplissie's suggests an ongoing habitual interaction
16 with SCHOFIELD that had not raised concern over his connection with Little Michael. Thus the
17 reason for the conflict did not arise under the pretense Defendant might engage in any bad faith
18 attempt to remove Little Michael for purposes of imprisoning the minor or keeping him from his
19 custodial parents. Instead, the habitual interaction between the parties suggests more of an in-the-
20 moment passionate argument that had more to do with fleeting, rising emotions than a purposeful
21 intent on behalf of SCHOFIELD to deprive the Duplissie's of their care of Little Michael.
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24 This approach is supported by the fact that despite the Duplissie's custody stretching back to
25 2001, Little Michael had indeed stayed for extended periods of time with his father when
26 SCHOFIELD was employed (PHT p. 21, 18-20), and had in fact stayed with his father only a few
27 days before the incident (PHT p. 25, 16-17). It is clear that Duplissie often gave deference and
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1 distance to interactions between SCHOFIELD and Little Michael, not expressly making overt
2 whether or not SCHOFIELD may take his son for their common interactions.

3 **II. Defendant never left the property with Little Michael, nor was Little Michael ever**
4 **away from the presence of his legal guardians, therefore the proper charge should**
5 **be amended to an attempt kidnapping in the first degree.**

6 Should the court find the requisite intent for the charge of kidnapping, the charge should
7 nevertheless be amended to an attempt. NRS 193.330 states that an act done with intent to commit a
8 crime, where the crime fails and is not accomplished, should be considered an attempt.

9 The testimony from the preliminary hearing is clear. Defendant told Little Michael that he
10 wanted him to go on an errand with him and spend the Sunday together, as was their habit. Little
11 Michael refused. An altercation ensued and Defendant took hold of Little Michael. Little Michael
12 agreed to accompany him on the errand. Defendant put him in the van, but didn't close the door.

13 Defendant's mother was concerned that Defendant was intoxicated. She took Little Michael out
14 of the van and the police were called.

15 Even if Defendant had the intent to carry Little Michael away or confine him away from his
16 legal guardians, the crime failed and was not accomplished. As such the count should be amended to
17 a charge of attempt kidnapping in the first degree.

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22 DATED this 7th of March, 2013.

23 PHILIP J. KOHN
24 CLARK COUNTY PUBLIC DEFENDER

25 /s/ Daniel R. Jenkins
26 By: DANIEL R. JENKINS, #10375
27 Deputy Public Defender
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1 **NOTICE**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the foregoing PETITION FOR WRIT OF
4 HABEAS CORPUS will be heard on 28th day of March, 2013, at 9:30 a.m. in Department No. XXI
5 Las Vegas Justice Court.

6 DATED this 7th day of March, 2013.

7 PHILIP J. KOHN
8 CLARK COUNTY PUBLIC DEFENDER

9 /s/ Daniel R. Jenkins
10 By: _____
11 DANIEL R. JENKINS, #10375
12 Deputy Public Defender
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18 **RECEIPT OF COPY**

19 I hereby certify that service of the above and foregoing PETITION FOR WRIT OF
20 HABEAS CORPUS was made via e-filing to PDMotions@ccdancv.com to the Clark County District
21 Attorney's Office this 7th day of March, 2013.
22

23 /s/ Daniel R. Jenkins
24 By: _____
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