

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 MELVIN LEROY GONZALEZ,)
4 Appellant,)
5 vs.)
6 THE STATE OF NEVADA,)
7 Respondent.)
8 _____/

Electronically Filed
Jul 10 2014 11:10 a.m.
Tracie K. Lindeman
No. 65768
Clerk of Supreme Court

9 FAST TRACK STATEMENT

10 1. Name of party filing this fast track statement:

11 Melvin Leroy Gonzalez

12
13 2. Name, law firm, address, and telephone number of attorney
14 submitting this fast track statement:

15 Steven W. Cochran

16 Pershing County Public Defender

17 P.O. Box 941

18 Lovelock, NV 89419

19 (775) 273-4300
20
21

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

24 Appellate counsel is the same as trial counsel.
25
26
27
28

1 4. Judicial district, county, and district court docket number of lower
2 court proceedings:

3 Sixth Judicial District Court - Humboldt County

4 Case number: CR 13-6257

5 5. Name of judge issuing decision, judgment, or order appealed
6 from:

7 Hon. Judge Michael R. Montero

8 6. Length of trial. If this action proceeded to trial in the district court,
9 how many days did the trial last?

10 Not Applicable

11 7. Conviction(s) appealed from:

12 Three counts of Aggravated Stalking, Category B felonies, in
13 violation of NRS 200.575(2).
14

15 8. Sentence for each count:

16 With regard to Count I, Mr. Gonzalez was sentenced to a
17 minimum term of sixty-two (62) months and a maximum
18 term of one hundred fifty-six (156) months in the Nevada
19 Department of Corrections, with a credit for time served
20 of 453 days. For Count II, Mr. Gonzalez was sentenced
21 to a minimum term of sixty-two (62) months and a
22 maximum term of one hundred fifty-six (156) months in
23 the Nevada Department of Corrections, to run
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1 consecutive to the sentence imposed in Count I. For
2 Count III, Mr. Gonzalez was ordered to serve a minimum
3 term of sixty-two (62) months and a maximum term of
4 one hundred fifty-six (156) months in the Nevada
5 Department of Corrections, to run consecutive to the
6 sentences imposed in Counts I and II. Bail, if any, was
7 exonerated. An administrative assessment fee in the
8 amount of \$25, a DNA assessment fee in the amount of
9 \$3 and a public defender fee in the amount of \$1,500 is to
10 be paid by the Defendant.
11
12
13

- 14 9. Date district court announced decision, sentence, or order appealed
15 from:

16 April 15, 2014
17

- 18 10. Date of entry of written judgment or order appealed from:
19 a. If no written judgment or order was filed in the district
20 court, explain
the basis for seeking appellate review:

21 April 22, 2014
22

- 23 11. If this appeal is from an order granting or denying a petition for a
24 writ of habeas corpus, indicate the date written notice of entry of
25 judgment or order was served by the court:
(a) Specify whether service was by delivery or by mail:

26 Not Applicable.
27
28

1 12. If the time for filing the notice of appeal was tolled by a post-
2 judgment motion,

3 (a) specify the type of motion, and the date of filing of the
4 motion

5 (b) date of entry of written order resolving motion:

6 Not Applicable.

7 13. Date notice of appeal filed:

8 May 21, 2014

9 14. Specify statute or rule governing the time limit for filing the notice
10 of appeal,

11 *e.g.*, N.R.A.P. 4(b), NRS 34.560, NRS 34.575, NRS 177.015, or other:

12 NRS 177.015

13 15. Specify statute, rule or other authority, which grants this court
14 jurisdiction to review the judgment or order appealed from:

15 NRS 177.015 and NRS 174.035.

16 16. Specify the nature of disposition below, *e.g.*, judgment after
17 bench trial, judgment after jury verdict, judgment upon guilty plea,
18 etc.:

19 Judgment upon guilty plea.

20 17. Pending and prior proceedings in this court. List the case name
21 and docket number of all appeals or original proceedings presently
22 or previously pending before this court which are related to this
23 appeal (*e.g.*, separate appeals by co-defendants, appeal after post-
24 conviction proceedings):

25 Supreme Court Case No. 65768

26 Melvin Leroy Gonzalez vs. The State of Nevada
27
28

1 18. Pending and prior proceedings in other courts. List the case name,
2 number and court of all pending and prior proceedings in other
3 courts, which are related to this appeal (e.g., habeas corpus
4 proceedings in state or federal court, bifurcated proceedings
5 against co-defendants):

6 None.

7 19. Proceedings raising same issues. List the case name and docket
8 number of all appeals or original proceedings presently pending
9 before this court, of which you are aware, which raise the same
10 issues you intend to raise in this appeal:

11 Supreme Court Case No. 65768

12 Melvin Leroy Gonzalez vs. The State of Nevada

13 20. Procedural history. Briefly describe the procedural history of the
14 case (provide citations for every assertion of fact to the appendix,
15 if any, or to the rough draft transcript):

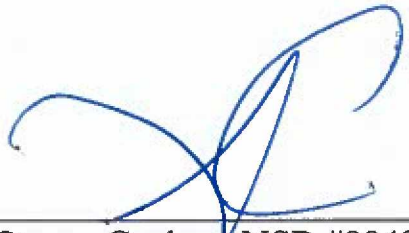
16 On January 24, 2013, a Felony Complaint was filed
17 alleging Ct. I- Burglary, a category B felony, as defined
18 by NRS 205.060, Ct. II- Receiving, Possessing or
19 Withholding Stolen Property, a category C felony, as
20 defined by NRS 193.130 and NRS 205.275, Count III-
21 Possession of a Controlled Substance, a category E
22 felony, as defined by NRS 453.336 and Count IV-
23 Aggravated Stalking, a category B felony, as defined by
24 NRS 200.575(2)(a). An Amended Felony Complaint was
25 filed adding three additional counts of Aggravated
26
27
28

1 Stalking, category B felonies, as defined by NRS
2 200.575(2)(a). On September 12, 2013, our office was
3 appointed to represent Mr. Gonzalez. On October 4, 2013
4 an Unconditional Waiver of Preliminary Hearing was
5 filed and this case was bound over to the Sixth Judicial
6 District Court. An Information was filed on October 10,
7 2013 charging Mr. Gonzalez with three counts of
8 Aggravated Stalking, category B felonies, as defined by
9 NRS 200.575(2)(a). He was formally arraigned on
10 January 7, 2014 and pleaded guilty, pursuant to the guilty
11 plea agreement, also filed on this date. Sentencing was
12 held on April 15, 2014. This direct appeal follows.

17 21. Issues of First Impression:

18 Whether or not the multiple convictions of appellant
19 constitute redundant convictions.
20

21 Dated this 9th day of July, 2014

22 
23 _____
24 Steven Cochran NSB #9949
25 Pershing County Public Defender
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27 Lovelock, NV 89419
28 P: (775) 273-4300/ F: (775) 273-4305

1 ISSUES PRESENTED

2 Do the multiple convictions of appellant constitute redundant convictions?

3
4 I.

5 STATEMENT OF THE CASE

6
7 Appellant pleaded guilty to three counts of aggravated stalking. All three
8 convictions were based on the same course of conduct to his wife and her
9 family. Either the sentences should have been run concurrent, or only one
10 conviction should stand.
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14 II.

15 LEGAL ARGUMENT

16 *Only one conviction should stand, not three*

17
18 Review is generally de novo in regards to statutory construction,
19 constitutional issues and redundancy challenges to multiple convictions for an
20 asserted single offense.¹ The Double Jeopardy Clause of the Fifth Amendment
21

22
23 ¹Firestone v. State, 120 Nev. 13, 16, 83 P.3d 279, 281 (2004)(whether leaving
24 three victims at the scene of an accident constituted one offense or three
25 presented a statutory question that receives de novo review), Davidson v. State,
26 124 Nev. 892, 896, 192 P.3d 1185, 1189 (2008)(“A claim that a conviction
27 violates the Double Jeopardy Clause generally is subject to de novo review on
28 appeal.”). See Ebeling v. State, 120 Nev. 401, 404, 91 P.3d 599, 601
(2004)(receiving de novo a redundancy challenge to multiple convictions for an
assertedly single offense).

1 to the United States Constitution provides that no person shall “be subject for
2 the same offence to twice put in jeopardy of life or limb.” This protection
3 applies to Nevada citizens through the Fourteenth Amendment to the United
4 States Constitution.² The Double Jeopardy Clause protects against three abuses:
5 (1) a second prosecution for the same offense after acquittal, (2) a second
6 prosecution for the same offense after conviction, and (3) multiple punishments
7 for the same offense.³

10 NRS 200.575 codifies the crime of stalking in Nevada. Subsection 2
11 involves aggravated stalking. Subsection 3 involves using various means of
12 electronic messaging. Appellant was convicted of three counts of aggravated
13 stalking pursuant to a guilty plea.

16 “[A] court should normally presume that a legislature did not intend multiple
17 punishments for the same offense absent a clear expression of legislative intent
18 to the contrary.”⁴ Criminal statutes must be “strictly construed and resolved in
19 favor of the defendant.”⁵

21 Similar to NRS 484.219 as discussed in Firestone, NRS 200.575 does not

24 ²Benton v. Maryland, 395 U.S. 784, 794 (1969).

25 ³Jackson v. State, Nev. Adv. Op. 55, p. 6 (2012).

26 ⁴Talancon v. State, 102 Nev. 294, 300, 721 P.2d 764, 768 (1986).

27 ⁵Anderson v. State, 95 Nev. 625, 639, 600 P.2d 241, 243 (1979); *see also* City
28 Council of Reno v. Reno Newspapers, 105 Nev. 886, 894, 784 P.2d 974, 979
(1989).

1 depend on the number of victims. Specifically, NRS 200.575(6)(a) defines a
2 "course of conduct" as a pattern of conduct which consists of a series of acts
3 over time that evidences a continuity of purpose directed at a specific person."
4

5 In the instant matter, that course of conduct was directed towards the
6 defendant's wife's family. His course of conduct caused the family to fear for
7 their lives. This is one violation of the statute, not one for every family member.
8

9 When reviewing the district court's canvass of the defendant during
10 arraignment, it becomes easier to see how this was one violation of the statute,
11 not three:
12

13 The Court: Are you entering these guilty pleas because in truth and
14 fact you are guilty of these crimes?

15 Defendant: Yes

16 The Court: I need to ensure that there's a factual basis for these pleas.
17 As to Count I, it's indicated in the guilty plea agreement that on or
18 about January 10th, 2013, to January 17, 2013, in Humboldt County,
19 excuse me State of Nevada, you did knowingly, willfully, and
20 unlawfully and feloniously threatened your estranged wife, Connie
21 Ramirez, by saying that you would slit her throat, the throats of her
22 children and/or her parents and/or made other threats of death to
23 Connie Ramirez and/or her children. Are those facts correct?

24 The Defendant: Yes

25 The Court: That did happen?

26 The Defendant: Yes, it did.

27 The Court: As to Count II, for purposes of a factual basis, the guilty
28 plea indicates that on or between January 10th, 2013, and January 17,

1 2013, in Humboldt County, State of Nevada, you did knowingly,
2 willfully, unlawfully and feloniously threaten Osafae Pallett with
3 death. I may have mispronounced the name, but otherwise are those
4 facts correct?

5 The Defendant: Yes

6 The Court: That did happen?

7 The Defendant: Yes

8 The Court: And as to Count III it indicates, in the guilty plea
9 agreement, that at – that on or between January 10th, 2013 and January
10 17th, 2013, in Humboldt County, Nevada, you did knowingly,
11 willfully, and unlawfully and feloniously threaten Richard Pallett with
12 death. Are those facts accurate?

13 The Defendant: Yes, sir.

14 The Court: That did happen?

15 The Defendant: Yes.

16 The Court: The Court finds that there's a factual basis for Counts I, II
17 and III.⁶

18 This case can be viewed as a "unit of prosecution" type of case. Other
19 examples of unit of prosecution cases include Wilson v. State,⁷ Ebeling⁸ and
20
21
22

23 ⁶Rough Draft Transcript, January 7, 2014, continued arraignment, State v.
24 Gonzalez, Case No. CR-13-6257, p.11-12. (See Appellant's Appendix p. 45-46)

25 ⁷121 Nev. 345, 356-57, 114 P.3d 285, 293 (2005)(construing NRS 200.710(2) to
26 authorize one conviction for the use of a minor in a sexual performance, not
27 multiple, per-photograph convictions);

28 ⁸Ebeling, at 404-405 (2004)(NRS 201.220(1) criminalizes the act of exposing
oneself and is not a per-witness offense).

1 Bedard v. State.⁹ While sometimes using “redundancy” language, these cases
2 recognize that determining the appropriate unit of prosecution presents an issue
3 “of statutory interpretation” and substantive law.¹⁰
4

5 Even if multiple convictions for the same act are permitted under the
6 Blockburger¹¹ test, redundant convictions will be reversed that do not comport
7 with legislative intent.¹² Convictions are redundant if “the material or
8 significant part of each charge is the same even if the offenses are not the same.
9 Thus, where a defendant is convicted of two offenses that, as charged, punish
10 the identical illegal act, the convictions are redundant.”¹³ Here, all three
11 convictions arise from and punish the same illegal act, which should result in a
12 finding of redundancy.
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19 ⁹118 Nev. 410, 414, 48 P.3d 46, 48 (2002)(the Legislature has authorized
20 multiple burglary convictions where several separately leased offices are broken
21 into within a single building).

22 ¹⁰See Firestone, 120 Nev. at 16, 83 P.3d at 281; accord Sanabria v. United
23 States, 437 U.S. 54, 70 n.24 (1978); Akhil Reed Amar, Double Jeopardy Law
24 Made Simple, 106 Yale L.J. 1807, 1817-18 (1997).

25 ¹¹Blockburger v. United States, 284 U.S. 299, 304 (1932).

26 ¹²Salazar v. State, 119 Nev. 224, 227, 70 P.3d 749, 751 (2003)(citing Williams
27 v. State, 118 Nev. 536, 548, 50 P.3d 1116, 1124 (2002)).

28 ¹³State of Nevada v. Dist. Ct., 116 Nev. 127, 136 n.7, 994 P.2d 692, 697 n.7
(2000)(noting that the Blockburger “same offense analysis” is distinct from the
“redundant convictions analysis” first utilized in Albitre v. State, 103 Nev. 281,
738 P.2d 1307 (1987)).

1 *The violation was of NRS 200.575(3), not subsection (2)*

2 Subsection 3 of NRS 200.575 indicates that those who commit the crime of
3 stalking by use of text message is guilty of a category C felony, punishable by
4 imprisonment in the state prison for a minimum term of 1 year and a maximum
5 term of not more than 5 years. The crime of aggravated stalking, which is a
6 category B felony, is punishable by 2-15 years. Appellant contends his
7 conviction(s) should only be for the category B felony, because his threats were
8 communicated via text message.
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13 *Jurisdiction*

14 Appellant contends his messages were sent from Washoe County. Simply
15 put, the jurisdiction to prosecute the appellant lied with Washoe County, not
16 Humboldt County, where the victim(s) resides.
17
18

19 A challenge to subject matter jurisdiction of a district court is not waivable
20 and “can be raised for the first time on appeal.”¹⁴ There is no indication in NRS
21 200.575 as to whether the situs of the crime is that county from which the threat
22 is sent, or that in which it is received. As previously referenced, criminal
23 statutes are to be construed in favor of the defendant. It has long been held that
24 it is not “incumbent upon the state to prove further than that the offenses was
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28 ¹⁴See Colwell v. State, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002).

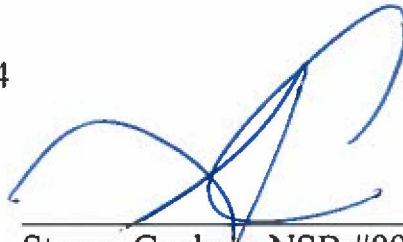
1 committed within the county.”¹⁵ Nonetheless, it is still required that the offense
2 actually was committed *within* the county.
3
4

5 III.

6 CONCLUSION

7 The three convictions and their consecutive sentences constitute
8 redundancy. Jurisdiction was not established in the plea canvass. Additionally,
9 the threats were not communicated in person, but rather, via text message,
10 thereby making the applied subsection of the statute, inapplicable.
11
12

13
14 Dated this 9th day of July, 2014
15



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26 ¹⁵ State v. Buckaroo Jack, 30 Nev. 325, 334, 96 P. 497, 497 (1908).
27
28

VERIFICATION

1
2 1. I hereby certify that this fast track statement complies with the
3 formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP
4 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

5 ☒ [X] This fast track statement has been prepared in a proportionally spaced
6 typeface using Microsoft Word 2010 in font size 14 Times New Roman; or

7 ☐ [] This fast track statement has been prepared in a monospaced typeface
8 using *[state name and version of word-processing program]* with *[state number*
9 *of characters per inch and name of type style]*.

10 2. I further certify that this fast track statement complies with the page
11 limitations of NRAP 3C(h)(2) because it is either:

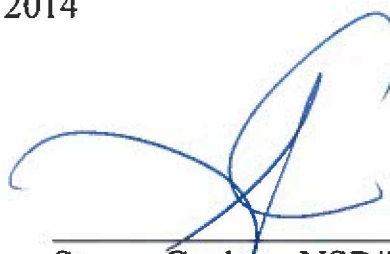
12 ☐ [] Proportionately spaced, has a typeface of 14 points or more, and
13 contains _____ words; or

14 ☐ [] Monospaced, has 10.5 or fewer characters per inch, and contains _____
15 words or _____ lines of text; or

16 ☒ [X] Does not exceed 14 pages.

17 3. Finally, I recognize that pursuant to NRAP 3C I am responsible for
18 filing a timely fast track statement and that the Supreme Court of Nevada may
19 sanction an attorney for failing to file a timely fast track statement, or failing to
20 raise material issues or arguments in the fast track statement, or failing to
21 cooperate fully with appellate counsel during the course of an appeal. I therefore
22 certify that the information provided in this fast track statement is true and
23 complete to the best of my knowledge, information and belief.

24 DATED this 9th day of July, 2014

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26
27
28


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