

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5

Respondent.

## FAST TRACK RESPONSE

- Docket 65768 Document 2014-24960

1 only if dissatisfied with the history set forth in the fast track statement: The State  
2 adopts Appellant's procedural history

3  
4 6. Statement of facts. Briefly set forth the facts material to the issues on  
5 appeal only if dissatisfied with the statement set forth in the fast track statement  
6 (provide citations for every assertion of fact to the appendix, if any, or to the rough  
7 draft transcript): The State adopts Appellant's statement of facts, except for legal  
8 conclusion contained therein.

9  
10 7. Issues on appeal. State concisely your response to the principal  
11 issue(s) in this appeal:

12 I. The multiple convictions of appellant for violations of NRS 200.575(2)  
13 do not constitute redundant convictions; NRS 200.575(2) was the proper  
14 code section charged; and that jurisdiction was proper in Humboldt  
15 County, Nevada under NRS 200.581.

16  
17 8. Legal argument, including authorities:

18 This court has noted previously that the Legislature, within  
19 constitutional limits, is empowered to define crimes and determine punishments, and  
20 the courts are not to encroach upon that domain lightly. *Sheriff, Clark County v.*  
21 *Willimas*, 96 Nev. 22, 24, 604 P.2d 800, 801 (1980). In the present case for the crime  
22 of stalking under NRS 200.575(1) and NRS 200.575(2), the Legislature has defined a  
23 course of conduct under NRS 200.575(6)(a) as a "pattern of conduct which constitute  
24 a series of acts over time that evidences a continuity of purpose directed at a specific  
25

1 person." (*Emphasis Added*). The information filed in this case by the State names three  
2 specific victims for each of the three violations of NRS 200.575(2) that the Appellant  
3 plead guilty to, which are respectively, in Count 1: the Appellant's estranged wife  
4 Connie Ramirez; in Count 2: Osafae Pallet; and in Count 3: Richard Pallett. *Appellant's*  
5 *Appendix*, Pgs. 12-13. Appellant asserts here that the three counts of NRS 200.575(2)  
6 that he plead guilty to are redundant since they arose from and punish the same act.  
7 In the *State of Nevada v. District Court* 16 Nev. 127, 994 P.2<sup>nd</sup> 692 (2000), this court held  
8 that the question [for redundancy] is whether the material or significant part of each  
9 charge is the same even if the offenses are not the same. Thus, [this court noted]  
10 where a defendant is convicted of two offenses that, as charged, punish the same  
11 illegal act, the convictions are redundant *Id.* at 994 P.2d 698. *See also Salazar v. State*,  
12 119 Nev. 224, 70 P.3<sup>rd</sup> 749 (2003).

13  
14  
15  
16 The gravamen of the NRS 200.575(2), as clearly specified by the  
17 Legislature, is that the perpetrator threatens a "specific person" with the intent to  
18 cause that "specific person" to be placed in reasonable fear of death or substantial  
19 bodily harm. *See* NRS 200.575 (6)(a) and *Rossana v. State*, 113 Nev. 375, 934 P.2d 1045  
20 (1977). In the present case, there are three distinct "specific persons" that the  
21 Appellant intended to place in reasonable fear of death or substantial bodily harm by  
22 his actions, thus making each individual threat against the three victims here distinct  
23 and separate violations of NRS 200.575(2). If the Legislature intended a "unit of  
24 prosecution" reading in the definition of a "course of conduct" in NRS 200.575(6)(a)  
25

1 as Appellant asserts, it would not have used such narrow language in its legislative  
2 scheme by defining stalking acts against specific persons rather than whole groups of  
3 individuals.  
4

5 Second, Appellant was properly charged and pled guilty to the crimes of  
6 aggravated stalking in violation of NRS 200.575 (2), a category B felony, instead of the  
7 crime of stalking with the use of the Internet in violation of NRS 200.575(3), a  
8 category C felony). *Appellant's Appendix*, Pg. 44, lines 14-25. There is nothing in the  
9 legislative scheme of NRS 200.575 et. seq. that prevents the state from charging  
10 aggravated stalking that involves the use of the Internet under NRS 200.575(2),  
11 instead of being limited solely to charging only a violation of NRS 200.575(3) when  
12 the Internet is used in the commission of a crime of stalking. The main difference  
13 between a stalking violation in NRS 200.575(2), versus a contrasting violation of NRS  
14 200.575(3), is the aggravated nature of the stalking alleged, where the former requires  
15 that the perpetrator threaten the victim with the intent to cause them to be placed in  
16 reasonable fear of death or substantial bodily harm, notwithstanding the actual  
17 method used to commit the crime of stalking. *See Rossana v. State*, 113 Nev. 375, 934  
18 P.2d 1045 (1977). NRS 200.575(3) has no such similar criminal element. In the  
19 present case the factual basis for the crimes charged, and which was plead to at the  
20 Appellant's arraignment, clearly support three individual violations of NRS 200.575(2)  
21 by showing that the Appellant threatened his victims with the intent to cause them to  
22  
23  
24  
25

1 be placed in reasonable fear of death or substantial bodily harm. *Appellant's Appendix,*  
2 *Pg. 45, lines 4-Pg. 12, line 12.*

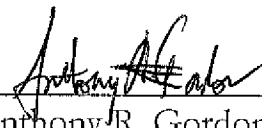
3  
4 Third, NRS 200.581 specifies that the crime of aggravated stalking is  
5 deemed to have been committed where the conduct occurred *or where the person affected*  
6 *by the conduct was located at the time that the conduct occurred,* (emphasis added). In the present  
7 case, the factual basis for the crimes charged and plead to at the Appellant's  
8 arraignment, support the jurisdictional basis that the aggravated stalking violations  
9 occurred in Humboldt County, Nevada, where the victims resided at the time that  
10 Appellant's conduct occurred. *Appellant's Appendix, Pg. 45, lines 4-Pg. 12, line 12.*

11  
12 Based on the arguments above, the State of Nevada respectfully asks this  
13 Court to affirm the sentence imposed in this case.  
14

15 9. Preservation of issues. State concisely your response to appellant's  
16 position concerning the preservation of issues on appeal: Not Applicable

17 Dated this 30<sup>th</sup> day of July, 2014.

18  
19 MICHAEL MACDONALD  
Humboldt County District Attorney

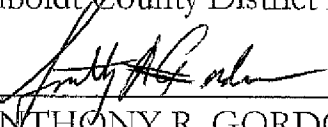
20  
21 By   
22 Anthony R. Gordon  
23 Deputy District Attorney  
24 P.O. Box 909  
25 Winnemucca, Nevada 89446  
(775) 623-6360

**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 2010 in size 14 Garamond font.
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 proportionally spaced, has a typeface of 14 points or more, and contains 1386 words.
3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response, or for failing to cooperate fully with this 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 the 30<sup>th</sup> day of July, 2014.

MICHAEL MACDONALD  
Humboldt County District Attorney

By   
ANTHONY R. GORDON  
Deputy District Attorney  
P.O. Box 909  
Winnemucca, Nevada 89446  
(775) 623-6360

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) I certify that I am an employee of the Humboldt  
County District Attorney's Office, and that on the 30 day of July, 2014, I  
mailed/delivered a copy of the FAST TRACK RESPONSE to:

Steve Cochran  
Post Office Box 941  
Lovelock, Nevada 89419

Attorney General  
100 N. Carson Street  
Carson City, Nevada 89701

  
\_\_\_\_\_