

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC PAUL SCHACHTER,)		Electronically Filed Jun 29 2015 09:39 a.m. Tracie K. Lindeman Clerk of Supreme Court
)		
Appellant,)	Case No. 67673	
)		
vs.)		
)		
THE STATE OF NEVADA,)		
)		
Respondent.)		
_____)		

FAST TRACK STATEMENT

1. Name of party filing this fast track statement: Appellant Marc Schachter (hereafter "Mr. Schachter").

2. Name, law firm, address and telephone number of attorney submitting this fast track statement: Jarrod T. Hickman, Deputy, Washoe County Alternate Public Defender's Office, 350 S. Center Street, 6th Floor, Reno, Nevada, 89501, (775) 328-3964.

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

4. Judicial district, county and district court docket number of lower court proceedings: Second Judicial District Court, Washoe County, Department No. 4, Case Number CR14-1044.

5. Name of judge issuing decision, judgment or order appealed from:
The Honorable Connie Steinheimer, District Court Judge.

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

7. Conviction(s) appealed from: Count one, attempted robbery, in violation of NRS 193.330 and NRS 200.380, and count three,¹ being a habitual criminal, as defined in NRS 207.010.

8. Sentence for each count: For count one, imprisonment in the Nevada Department of Corrections for twelve (12) to forty-eight (48) months. For count three, imprisonment in the Nevada Department of Corrections for five (5) to twenty (20) years to be served concurrently with count one. Appellant's Appendix (hereinafter "AA") 777-78. The court further imposed attorney's fees in the amount of \$1,000.00, a \$3.00 administrative assessment for genetic marker analysis, and a \$25.00 administrative assessment to the Clerk of the Second Judicial District Court. *Id.*

9. Date district court announced decision, sentence or order appealed from: Judgment of Conviction was rendered and filed on March 5, 2015.

10. Date of entry of written judgment or order appealed from: March 5, 2015.

¹ Count two of the Amended Information was dismissed pursuant to a motion from the State on the first day of trial. AA 380.

11. If this appeal is from an order granting or denying a petition for a writ of habeas corpus, indicate the date written notice of entry of judgment or order was served by the court: Not applicable.

12. If the time for filing the notice of appeal was tolled by a post-judgment motion: Not applicable.

13. Date notice of appeal was filed: March 26, 2015. AA 779.

14. Specify statute or rule governing the time limit for filing the notice of appeal: NRAP 4(b).

15. Specify statute, rule or other authority which grants this court jurisdiction to review the judgment or order appealed from: NRS 177.015(3).

16. Specify the nature of disposition below: Judgment of conviction entered pursuant to jury verdict.

17. Pending and prior proceedings in this court: None.

18. Pending and prior proceedings in other courts: None.

19. Proceedings raising same issues: None that counsel is aware.

20. Routing Statement: Appellant requests that this matter be heard by Supreme Court, pursuant to NRAP 17(b)(1). The rule removes direct appeals from a judgement of conviction based upon a jury verdict involving convictions for category B felonies from those cases that are presumptively assigned to the Court of Appeals.

21. Procedural history and statement of facts:

On June 9, 2015, Mr. Schachter was arrested for suspicion of attempted robbery, which stemmed from an altercation with Wal-Mart loss prevention employees. AA 7. Alejandro Monroy, a Wal-Mart loss prevention employee, alleged that he watched Mr. Schachter take a backpack from a shelf, place merchandise inside, then leave through the Garden Center exit without paying for either the backpack or items inside. AA 268-72, 277, 325, 413, 426. Mr. Monroy claimed that he attempted to identify himself and asked that Mr. Schachter return to the store. AA 430-34. Mr. Schachter attempted to walk away, Mr. Monroy blocked his path and a struggle ensued. *Id.* Ultimately, Mr. Monroy gained possession of the backpack and Mr. Schachter was arrested by the Reno Police Department *Id.* In an Amended Criminal Complaint² filed July 1, 2015, the State charged Mr. Schachter with attempted robbery and burglary. AA 14-15.

The alleged attempted robbery was investigated by police officer Terry West. Upon his arrival to the scene, Mr. Schachter was seated upon the curb and subsequently taken into custody. AA 590-91. Following Mr. Monroy into the store, the officer collected an itemized receipt demonstrating the value of the items taken from Mr. Schachter. AA 593. Mr. Monroy and Wal-Mart employee Anna Young emptied the backpack and photographed it and its contents. AA 544-45.

² The original criminal complaint, filed June 13, 2014, alleged a single count of attempted robbery. AA 11-12.

The officer did not collect the items as evidence. AA 592-93. Rather, all of the items were left in the store's possession for resale. *Id.* Throughout the proceedings, Mr. Schachter's defense was that he entered the store with a customized backpack already in his possession. AA 133-37, 148-151, 154, 159, 161-66, 209-211, 330.

Early in the proceedings, Mr. Schachter clearly expressed his desire to represent himself and complained about a lack of discovery materials from the State. After his initial appearance in Justice Court and filing of the Criminal Complaint, Mr. Schachter appeared before a Justice of the Peace on June 23, 2014. At that time he requested self-representation. AA 18. The Justice Court briefly canvassed Mr. Schachter as to age, education, occupation, and mental and physical ability. AA 18-22. After learning of his eligibility for a habitual criminal adjudication if convicted, the Justice Court denied Mr. Schachter's request for self-representation and appointed counsel over his objection. AA 23-25. Per his request, the Justice Court set a preliminary hearing within 15 days of Mr. Schachter's first appearance. AA 25-26.

Mr. Schachter requested an order from the court requiring the State to produce discovery arguing that until the issue of self-representation was decided, he could not obtain discovery. AA 26-27. The Justice Court denied, stating that appointed counsel would provide discovery to him. AA 27.

On July 1, 2014, Mr. Schachter appeared for a preliminary hearing. A transcript of this hearing was not produced because of an equipment malfunction. AA 32-36. The Justice Court minutes indicate that Mr. Schachter was permitted to represent himself and was bound over for trial. AA 4.

At his first District Court arraignment, Mr. Schachter again protested the delay in the provision of discovery and the inability to obtain investigative services to seek potentially exculpatory evidence. Upon the State's filing of an Amended Information³ charging attempted robbery, burglary, and habitual criminality, Mr. Schachter appeared in Department 10 of the Second Judicial District for arraignment. AA 37-41, 47-53. Acknowledging that Mr. Schachter was previously canvassed with respect to *Faretta*⁴ in Justice Court, the District Court Judge Satler noted that the case was assigned to District Court Judge Steinheimer, who would want to conduct her own *Faretta* canvass and stated his intention to continue the arraignment. AA 49-50. Mr. Schachter objected to the continuance, arguing that

The continual mother-henning of the courts to make sure my rights are preserved is prejudicing my case where I can't get a timely – exculpatory evidence that could eventually be material to my case.

THE COURT: In what way?

³ The State filed the original Information July 10, 2014. AA 42-46. The Amended Information alleged a prior conviction for grand larceny, a felony, with respect to Count II. AA 38.

⁴ *Faretta v. United States*, 422 U.S. 806, 819-20 (1975).

THE DEFENDANT: In that I have videotape that could potentially be lost, and the continual delay, delay, delay, especially without – I have received minimal discovery, no witness statements, four or five pages of actual police reports that deal with the instant offense.

AA 50-51. The arraignment was continued over Mr. Schachter's objection to July 24, 2014 in Department Four. AA 51-52.

At the second arraignment, Mr. Schachter renewed his request to obtain potentially exculpatory evidence and again requested the services of an investigator. AA 75-76, 77. District Court Judge Steinheimer thoroughly canvassed Mr. Schachter in accordance with *Faretta* and SCR 253 and found Mr. Schachter understood the nature of the proceedings and voluntarily sought to represent himself. AA 55-73. The Court further appointed the Washoe County Public Defender's Office as standby counsel as a result of Mr. Schachter's indigence and the lack of legal resources within the Washoe County Jail. AA 73. Mr. Schachter thereafter filed an ex parte motion and declaration seeking investigative services. AA 77.

With respect to Mr. Schachter's request for an investigator, the District Court stated its belief that investigative services would be provided through standby counsel. AA 77-78. Standby counsel stated its uncertainty as to whether his office could provide an investigator to a self-represented defendant. AA 77.

The District Court concluded the issue by stating it would research Mr. Schachter's request for an investigator. AA 78.

With respect to discovery, Mr. Schachter explained that he had only two pages relating to the instant offenses and 50 pages of criminal history relevant to count three, being a habitual criminal. AA 75. The District Court ordered discovery to be personally served upon Mr. Schachter at the Washoe County Jail no later than Monday, July 28, 2014. AA 76. To allow Mr. Schachter an opportunity to review discovery prior to setting a trial, the District Court continued the hearing until July 31, 2014. AA 79.

At the motion to set trial, Mr. Schachter complained, again, that discovery and investigative issues were still outstanding. AA 83. Although the State indicated it complied with the order to serve discovery to Mr. Schachter at the jail, Mr. Schachter informed the District Court that the jail would not provide the materials to him without a court order. AA 87. The District Court noted that such an order was prepared and signed and that Mr. Schachter should be able to see his discovery. AA 87-88. An Order of Self-Representation and Appointment of Standby Counsel was filed July 31, 2014, noting service to Mr. Schachter at the Washoe County Jail. AA 92-94.

The District Court informed Mr. Schachter that it did not have any "news" regarding the provision of an investigator. AA 84. Standby counsel indicated he

would accept investigation requests but was still researching whether the Washoe County Public Defender's Office was obligated to provide investigative services to self-represented defendants. AA 88-89. Standby counsel further asked that Mr. Schachter provide a written request for investigative services. *Id.* Although its contents were not discussed on the record at the hearing, Mr. Schachter handed standby counsel a two-page handwritten document in response to standby counsel's directive. AA 89. Mr. Schachter invoked his right to a trial within 60 days of arraignment and a jury trial was scheduled for September 22, 2014. AA 85.

Like the prior hearings before the District Court, Mr. Schachter's pre-trial motions also conveyed continued requests for discovery and investigative services. In his Demand for Legal Material and Legal Supplies, and an accompanying Addendum, Mr. Schachter alleged that standby counsel "appeared unable or unwilling to provide the defendant with the necessary legal material and legal supplies."⁵ AA 125. Mr. Schachter specifically requested copies of statutes, local court rules, specific cases, jury instructions, and a method to file subpoenas among

⁵ In the transcript of the August 21, 2014 Status Hearing, standby counsel made a record of receiving the Demand. AA 100-101. He indicated that the materials Mr. Schachter requested were either provided or in the process of being provided to Mr. Schachter. AA 101. In response to Mr. Schachter's request for a typewriter and pens, standby counsel indicated those items were not provided. *Id.*

other items. AA 129-30. The Demand further indicated that Mr. Schachter was not notified about the status of investigative services. AA 126.

Similar requests for discovery and investigative services were made in Mr. Schachter's other motions. In two motions,⁶ Mr. Schachter argued for production of the items he allegedly stole from Wal-Mart for the purpose of demonstrating that the backpack was "customized" by Mr. Schachter prior to entering the store on June 9, 2014. In two motions,⁷ Mr. Schachter requested that the State produce video footage of him entering the store for the purpose of demonstrating that the backpack allegedly taken from Wal-Mart was in his possession upon entrance. In another motion,⁸ Mr. Schachter sought transcripts of a 911 call and asked they be provided to him. Finally, Mr. Schachter requested production of the single, original disk of video footage obtained by the Reno Police Department to compare it to the two disks of footage he received in discovery.⁹

⁶ See Defendant's *Motion To Dismiss Case On The Grounds That The State Has Lost and/or Destroyed Material Exculpatory Evidence and Motion for the Production of "Replacement" and/or "Substitute" Lost/Destroyed Evidence* filed August 21, 2014. AA 133-37, 153-54.

⁷ See Defendant's *Motion To Dismiss Case On The Grounds That The State Has Lost and/or Destroyed Material Exculpatory Evidence and Motion and Order to Obtain Material and Exculpatory Video Recording* filed August 21, 2014. AA 133-37, 148-51.

⁸ See Defendant's *Motion to Compel the State to Provide Exculpatory Material ("Brady") in its Possession* filed August 21, 2015. AA 145-46.

⁹ See Defendant's *Motion in Limine RE: Surveillance Video Evidence* filed August 21, 2015. AA 156-59.

Ultimately, the record indicates standby counsel provided some investigative services to Mr. Schachter. AA 187-201. The record does not establish when, exactly, standby counsel determined it would perform the investigation. Subpoenas for Wal-Mart and the Regional Transportation Commission of Washoe County (hereinafter “RTC”) surveillance video were not produced until August 20 or 21, 2014, 72 or 73 days after the date of offense¹⁰ and approximately one month before the scheduled trial. AA 190-201.

Mr. Schachter additionally filed a *Motion to Dismiss Case for Prejudicial Delay Causing Loss of Exculpatory Material Evidence*. AA 161-66. Mr. Schachter argued that the Justice Court and District Court’s delays in granting his requests to represent himself and the concomitant failure to timely appoint an investigator resulted in the loss of potentially exculpatory video evidence from Wal-Mart, the Fourth and Lake Street RTC station, and RTC bus number four. AA 163-66.

During the motions hearing and at trial, testimony reflected that video is digitally retrieved from Wal-Mart’s hard drive by an employee selecting the desired content and saving it into an investigation file. AA 227-29, 268. Any video not selected and saved into an investigation file is deleted after 60 days. AA

¹⁰ The subpoenas from standby counsel’s file are dated August 21, 2014. AA 190-201. However, three subpoenas issued to various persons with the Reno Police Department are certified as being served on August 20, 2014. 187-89.

273. Alejandro Monroy testified that he looked for video of Mr. Schachter entering the Wal-Mart, but did not recall if it was within 60 days of June 9, 2014. AA 273. Anna Young offered conflicting testimony, indicating that she looked for video of Mr. Schachter entering the Wal-Mart three to five days after June 9, 2014, but was unable to find any footage. AA 550-51. On the morning of trial, the District Court denied the motion and found that any delay was attributable to Mr. Schachter's request for self-representation. AA 382.

Mr. Schachter was convicted of count one, attempted robbery, after a three day jury trial. AA 681. At sentencing, the District Court found Mr. Schachter to be a habitual criminal based on two prior felony convictions. AA 768, 771. With respect to count one, attempted robbery, the District Court sentenced Mr. Schachter to a term of twelve (12) to forty-eight (48) months in the Department of Corrections. AA 768. With respect to count three, the habitual criminal allegation, the District Court sentenced Mr. Schachter to a term of five (5) to twenty (20) years in the Department of Corrections to run concurrent to the sentence imposed for count one. AA 773.

22. Issues on appeal:

I. Whether the District Court erred by imposing a second, separate sentence for the finding of habitual criminality?

II. Whether Mr. Schachter was denied the due process right of an adequate defense where the Justice and District Courts delayed in granting self-representation and his access to reasonable investigative services ?

III. Whether the District Court erred by finding the State's failure to collect the alleged stolen backpack was mere negligence?

23. Legal Argument:

I. The District Court erred in by imposing a separate sentence for the habitual criminal charge.

Generally, this Court reviews sentencing decisions for abuse of discretion. *Silks v. State*, 92 Nev. 91, 545 P.2d 1149 (1976); *Renard v. State*, 94 Nev. 368, 580 P.2d 470 (1978); *Parish v. State*, 116 Nev. 982, 12 P.3d 953 (2000). Under this standard of review, this Court will not interfere with a district court's imposition of sentence in the absence of reliance upon impalpable or highly suspect evidence. *Silks*, 92 Nev. At 94, 545 P.2d at 1161. Although the District Court did not rely on "impalpable or highly suspect evidence" at sentencing, the actual structure of the sentence does not comport with existing law.

The District Court erred by failing to attach the habitual criminal sentence to any specific, charged offense. The district court imposed separate sentences for both the underlying substantive offense and the habitual criminal allegation. AA 768, 773, 777-778. "This was error; the purpose of the habitual criminal statute is

not to charge a separate substantive crime, but to allege a fact which may enhance the punishment.” *Cohen v. State*, 97 Nev. 166, 169, 625 P.2d 1170, 1171 (1981); *see also Lisby v. State*, 82 Nev. 345, 353, 418 P.2d 802, 807 (1966). “[T]here can be only one sentence.” *Lisby*, 82 Nev. at 189, 414 P.2d at 596. “The trial court must sentence on the substantive crime charged . . . and then invoke the recidivist statute to determine the penalty.” *Hollander v. State*, 82 Nev. 345, 353, 418 P.2d 802, 807 (1966).

Here, the District Court did not attach the habitual criminal sentence to a charged count. Rather, it imposed a sentence for the sole substantive offense and then imposed a separate sentence for the habitual criminal allegation, but ordered the two (2) sentences to be served concurrently. Accordingly, this matter should be remanded to correct the proper imposition of the habitual criminal sentence.

II. Mr. Schachter was denied the due process right of an adequate defense by the Justice and District Court delays in granting self-representation and access to reasonable investigative services.

The denial of access to resources necessary for a self-represented defendant to prepare a meaningful defense is reviewed for abuse of discretion. *United States v. Robinson*, 913 F.2d 712, 718 (9th Cir. 1990).

The cumulative effect of the lower courts’ delays in allowing Mr. Schachter the ability to represent himself and delays in ensuring access to investigative

services resulted in the denial of Mr. Schachter's Sixth Amendment right to represent himself and his Fifth and Fourteenth Amendments right to due process. The right to counsel guaranteed by both the federal and state constitutions includes the right to effective counsel and reasonably necessary defense services. *See Widdis v. Dist. Ct.*, 114 Nev. 1224, 968 P.2d 1165 (1998) (finding that the Sixth Amendment right to effective assistance of counsel provided authority for criminal defendant retaining private counsel is entitled to reasonable defense services at public expense); *State v. Dist. Ct.*, 85 Nev. 241, 453 P.2d 241 (1969) (holding that the constitutional rights of the accused require court appointed counsel to be reimbursed for expenses in representing defendant); *see also* NRS 7.135 (statute authorizing payment for services reasonably necessary for an adequate defense at public expense). It follows that the right to reasonably necessary defense services likewise applies to those defendants who forego appointed counsel and choose to represent themselves. *See People v. Fixel*, 91 Cal.App.3d 327, 330-331 (1979).

The Ninth Circuit has recognized that depriving a self-represented defendant of all means of presenting a defense violates the Sixth Amendment right of self-representation. *Milton v. Morris*, 767 F.2d 1443 (9th Cir. 1985).

The right guaranteed by the Fourteenth and Sixth Amendments to reject a lawyer and represent oneself is premised upon the right of the defendant to make a defense[.]

[. . .].

Faretta holds that the rights guaranteed by the Sixth Amendment are personal to the accused. The rights to notice, confrontation, and

compulsory process mean, at a minimum, that the time to prepare and some access to materials and witnesses are fundamental to a meaningful right of representation. An incarcerated defendant may not meaningfully exercise his right to represent himself without access to law books, witnesses, or other tools to prepare a defense.

Milton v. Morris, 767 F.2d at 1446.

Similarly, other jurisdictions have held that “a defendant who is representing himself or herself may not be placed in the position of presenting a defense without access to a telephone, law library, runner, investigator, advisory counsel, or any other means of developing a defense.” *People v. Jenkins*, 22 Cal.4th 900, 1040 (2000). In California, “The Sixth Amendment requires only that a self-represented defendant’s access to resources necessary to present a defense be reasonable under all the circumstances.” *Id.* at 1040-41; *see also People v. Blair*, 36 Cal.4th 686, 733 (2005).

Here, the court system’s repeated delay in granting Mr. Schachter the ability to represent himself and failure to timely rule on his request for investigative services operated to deny him the means of developing and presenting an adequate defense. First, the repeated delay in granting self-representation hampered Mr. Schachter’s ability to assess his case and request necessary investigative services. The Justice Court’s initial denial of Mr. Schachter’s timely request for self-representation impeded his ability to assess his case and identify necessary investigative services. At that early stage, Mr. Schachter advised the court that he

did not have discovery to prepare for a preliminary hearing scheduled eight days later. Even if he had seen the reports and knew where to direct investigation at that time, the court's denial of his request to proceed in proper person took away his control over the ability to request and direct an investigator and left him subject to the discretion of appointed counsel, over Mr. Schachter's objection.

Similarly, the District Court's decision to continue the first arraignment over Mr. Schachter's objection contributed to the denial of defense tools. In fact, Schachter advised the court that video evidence could potentially be destroyed by any further delay in the proceedings

Moreover, the District Court's failure to rule on Mr. Schachter's reasonable request for an investigator resulted in the loss of likely exculpatory evidence. In the ex parte request for investigative services and declaration filed July 24, 2014, Mr. Schachter outlined the reasons for the request: his belief that "time sensitive video evidence from both private and governmental sources" existed and needed to be collected for his defense. Nevertheless, the District Court did not issue a decision on that request that day. Rather, it deferred any decision upon a belief standby counsel would assume responsibility for investigative duties, even though there was an expressed uncertainty as to any obligation to render investigative services.

Seven (7) days later, the court still had not issued a decision on the request for an investigator and indicated that it had “no news” with respect to an investigator. Although standby counsel indicated it would accept investigative requests, it further indicated that the decision as to whether it would perform such requests had not been made. Although standby counsel ultimately issued some subpoenas, they were not produced until August 20th or 21st, 12-13 days after any video obtained by Wal-Mart was destroyed and almost a month after Mr. Schachter’s request for an investigator.

In accordance with NRS 7.135 and *Widdis*, Mr. Schachter requested reasonable defense tools in the form of investigative services. The District Court issued no order with respect to this request. It is not clear when stand by counsel decided to provide investigative services, but it is clear that the subpoenas were not produced until after the video Mr. Schachter sought was destroyed. The courts delays operated to deny Mr. Schachter the ability to present an adequate defense and the conviction should be reversed.

III. The District Court erred in finding that the State’s failure to collect the allegedly stolen backpack was the result of mere negligence.

The District Court erred by finding that the State’s failure to gather material evidence was the result of mere negligence rather than gross negligence. In *Daniels v. State*, 114 Nev. 261, 956 P.2d 111 (1998) the Nevada Supreme Court

recognized the “injustices [that] could arise from the State’s failure to gather evidence under certain circumstances” and adopted the standard articulated in *State v. Ware*, 118 N.M. 319, 881 P.2d 679 (1994):

The first part requires the defense to show that the evidence was “material,” meaning that there is a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different. If the evidence was material, the court must determine whether the failure to gather evidence was the result of mere negligence, gross negligence, or a bad faith attempt to prejudice the defendant’s case. When mere negligence is involved, no sanctions are imposed, but the defendant can still examine the prosecution’s witnesses about the investigative deficiencies. When gross negligence is involved, the defense is entitled to a presumption that the evidence would have been unfavorable to the State. In cases of bad faith, we conclude that dismissal of charges may be an available remedy based upon an evaluation of the case as a whole.

Daniels, 114 Nev. at 267, 956 P.2d at 115 (internal citations omitted).

Although the Court did not articulate definitions of negligence or gross negligence, the *Ware* opinion provides some guidance. *See Ware*, 118 N.M. at 325-26, 881 P.2d at 685-86 (finding that an example of gross negligence is “acting directly contrary to standard police procedure” and mere negligence equates with failing to gather evidence as “an oversight, or done in good faith”); *see also Batt v. State*, 111 Nev. 1127, 1132, 901 P.2d 664, 667 n.5 (1995) (“Gross negligence is manifested by the absence of even slight diligence or want of even scant care, or a heedless and palpable violation of legal duty respecting the rights of others.”).

Here, the District Court found that the State failed to gather material evidence by failing to collect the backpack that Mr. Schachter was alleged to have taken from Wal-Mart.¹¹ AA 336. However, the District Court summarily, and incorrectly, found that the State's failure to collect a material piece of evidence was the result of mere negligence. AA 367. NRS 205.295 imposes a duty upon investigative officers to "use reasonable diligence to secure the property alleged to have been stolen" upon the arrest of "any person charged as principal . . . in any robbery. . . ." The record reflects that although the responding officer took a photograph of the backpack after Mr. Schachter's arrest, he made no effort to collect and store the evidence pending trial contrary to statutory mandate. AA 596-97. Rather, the items were left with the store to be restocked for future sale, or otherwise disposed of. AA 593. Because state statute imposes a duty on officers to collect the evidence alleged to have been stolen in connection with a robbery investigation, the State was grossly negligent in its failure to collect material evidence. The State thus violated Mr. Schachter's "right to due process by failing to provide evidence which is within, or potentially within, the State's purview." *Ware*, 118 N.M. at 322, 881 P.2d at 682. The conviction should be reversed.

24. Preservation of issues:

¹¹ In its order, the District Court found that "Schachter argues the backpack itself would prove the backpack was customized and as a result it could have not been stolen on the day in question. [. . .]. The Court finds that Schachter has met his burden of proving these items of evidence are material." AA 366.

Issue I: Counsel did not object.

Issue II: Mr. Schachter filed a motion seeking dismissal of the Amended Information based upon prejudicial delays in granting self-representation and the provision of defense services. The District Court held a hearing and made a ruling upon the motion. *See Lizotte v. State*, 102 Nev. 238, 239-40, 720 P.2d 1212, 1214 (1986).

Issue III: Mr. Schachter filed a Motion seeking dismissal of the Amended Information based upon the State's failure to collect material evidence. The District Court held a hearing and issued a written ruling. *Id.*

25. Issues of first impression or of public interest: None known.

VERIFICATION

1. I hereby certify that this fast track statement 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 statement is prepared in a proportionally spaced typeface using Microsoft Word 2003 version in 14 point Times New Roman.

2. I further certify that this fast track statement complies with the page or type-volume limitations of NRAP 3C(h)(2), because the fast track statement contains 4,732 words.

3. Finally, I recognize that, pursuant to NRAP 3C, I am responsible for filing a timely fast track statement and the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track statement, or failing to raise material issues or arguments in the fast track statement, 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 statement is true and complete to the best of my knowledge, information and belief.

DATED this 29th day of June, 2015.

/s/ Jarrod Hickman

/s/ Marc Picker

JARROD HICKMAN

Nevada Bar No. 12772

MARC PICKER

Nevada Bar No. 3566

Deputy Alternate Public Defenders

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CERTIFICATE OF SERVICE

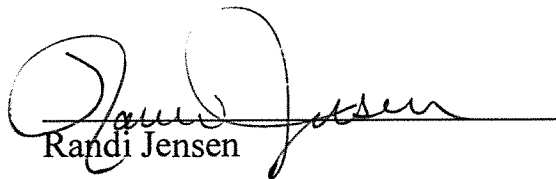
I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office and that on this date I served a copy of the **FAST TRACK STATEMENT** to the following:

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C/O NNCC
P.O. BOX 7000
CARSON CITY, NEVADA 89701
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CHRIS HICKS
WASHOE COUNTY DISTRICT ATTORNEY
Attn: Appellate Department
Via Electronic Filing

DATED this 24 day of June, 2015.


Randi Jensen