

1 IN THE SECOND JUDICIAL DISTRICT COURT
2 STATE OF NEVADA, COUNTY OF WASHOE
3 THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE
4

5 THE STATE OF NEVADA,
6 Plaintiff,
7 vs.
8 MARC PAUL SCHACHTER,
9 Defendant.

CERTIFIED COPY

Case No. CR14-1044

Dept. No. 4

10
11 TRANSCRIPT OF PROCEEDINGS

12 SENTENCING

13 FEBRUARY 26, 2015
14

15 APPEARANCES:

16 For the Plaintiff: ZELALEM BOGALE, ESQ.
17 Deputy District Attorney
18 One South Sierra St., 4th Floor
Reno, Nevada

19 For the Defendant: MARC PICKER, ESQ.
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22
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1 RENO, NEVADA, THURSDAY, FEBRUARY 26, 2015, 1:45 P.M.

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3
4 THE COURT: Please be seated. Good afternoon.
5 Mr. Picker, you're here for Mr. Hickman?

6 MR. PICKER: I am, your Honor.

7 THE COURT: And Mr. Schachter, you're okay with
8 that?

9 THE DEFENDANT: I am fine with that.

10 THE COURT: This is the time set for sentencing.
11 We are ready to proceed; is that correct?

12 MR. PICKER: We are, your Honor.

13 MR. BOGALE: Yes, we are.

14 THE COURT: I'm in receipt of the Amended
15 Supplemental to Presentence Investigation Report, filed
16 February 23rd, 2015.

17 Mr. Picker, have you had an opportunity to
18 review this document with your client?

19 MR. PICKER: Yes, your Honor.

20 THE COURT: Are there any more factual
21 corrections to make to the report?

22 MR. PICKER: Yes, your Honor. We've provided
23 what's been marked as Exhibit 24 to your clerk. What the
24 document is is a set of emails, the emails that Mr.

1 Hickman sent to Parole & Probation with the additional
2 corrections that were sought and their response thereto.
3 They adopted some and did not adopt others. The ones they
4 adopted, obviously, are in the Amended Supplemental. The
5 ones they did not are in their e-mail, and I'm going to
6 ask that that be introduced as -- that they be admitted as
7 an exhibit for the purposes of just evidencing that we
8 followed the local rules as to seeking changes to the PSI.

9 THE COURT: And, then, are you going to verbally
10 talk about the ones that they did not change?

11 MR. PICKER: I can do that, your Honor, and
12 those are brief.

13 THE COURT: Okay. That would help me, rather
14 than try to look at your exhibit and go back and forth
15 about which ones were changed.

16 MR. PICKER: That's fine, your Honor. Do you
17 want me to do that now?

18 THE COURT: Yes.

19 And Mr. Bogale, did you get a chance to see that
20 exhibit?

21 MR. BOGALE: Yes, I have a copy right here.

22 THE COURT: So I'm going to admit it for the
23 purpose of showing that the local rules were satisfied and
24 then we'll talk about each of the ones that Mr. Schachter

1 still believes have not been corrected.

2 MR. PICKER: Thank you, your Honor.

3 The first one that we address was on page two of
4 the Amended Supplemental to Presentence Investigation
5 Report. Under dates of birth, it lists two additional
6 dates of birth. One of those is December 11th, 1961. We
7 note for you, your Honor, in the previous supplemental
8 PSI, in the aliases just above that was listed the name
9 Jennifer Diane Schaffer, and what we attempted to show is
10 that that date of birth was associated with that name.
11 That was a person who actually was booked in the jail on
12 the same day as Mr. Schachter was. You can see Ms.
13 Schaffer and Mr. Schachter's names are fairly similar. He
14 has never used that birth date. That is a birth date
15 associated with Ms. Schaffer and that's what she was
16 booked into the Washoe County Jail under. So we ask that
17 that birth date be stricken.

18 THE COURT: Division?

19 MS. BROWN: Your Honor, due to the fact that
20 it's on the rap sheet, the defendant's FBI and Nevada
21 criminal history rap sheet, we have no way to know if he,
22 in fact, used that date of birth or if it was an error on
23 another police agency's part. Therefore, anything we see
24 on the rap sheet will go onto the PSI and we have no way

1 to confirm whether he used that date of birth or if it was
2 an error somewhere earlier down the tracks.

3 THE COURT: So, basically, what you're telling
4 me is that that date is found somewhere in a record, but
5 you have no idea if it was used or not.

6 MS. BROWN: Correct. But it ended up on his rap
7 sheet as an additional date of birth. Therefore, we
8 assume, without any other information, that he must've
9 used it somewhere along the way.

10 THE COURT: Did you previously have a Jennifer
11 Diane Schaffer as an alias?

12 MS. BROWN: It is not marked in the presentence
13 investigation report. I see on --

14 MR. PICKER: It's actually on the NCIC, your
15 Honor.

16 MS. BROWN: It is on his NCI record as an alias.

17 THE COURT: But you did take that off.

18 MS. BROWN: No. I don't think it ever went on
19 the PSI. For some reason, it got missed going on. It
20 should've been added as an AKA, the Jennifer Diane
21 Schaffer.

22 THE COURT: Okay. I'm going to strike that.
23 I'm going to order that you strike it. If we can't
24 substantiate it belongs to the defendant, it shouldn't be

1 on his PSI. So we'll strike it.

2 MR. PICKER: Second, your Honor, is on page five
3 of the Amended Supplemental. Under the case dated May
4 1996, in the -- well, actually, let me start before that.
5 On page three, it lists -- at the bottom of page three, it
6 lists five paroles, five revoked. If your Honor looks at
7 the criminal history, the only place where Mr. Schachter
8 was ever paroled, which is on page five of the
9 supplemental PSI, is in 1996, on one case. Apparently,
10 the Division determines it as five different paroles, but
11 as you can see, if you look under the disposition on page
12 five, it's one case. He was reinstated on parole, and
13 it's a difference in terminology. In Nevada -- first of
14 all, in Nevada, he wouldn't be reinstated five times. I
15 think we could probably all stipulate to that, but in
16 California, he gets reinstated. It doesn't become a new
17 parole term; it's a return to parole, because what they
18 do is they don't actually do a full revocation. They'll
19 put Mr. Schachter and did put him in prison for a month,
20 put him back out, and it's similar to what our Specialty
21 Court does of putting somebody in for a couple days to see
22 if it changes their behavior.

23 So it's a question for us of whether he actually
24 has five parole revocations or he has one parole that he

1 repeatedly violated. We're not arguing that the
2 violations aren't correct, according to the PSI. It's
3 just calling them five different revocations makes it look
4 much worse than it actually is, because it's one case.

5 THE COURT: Well, first, I don't use the count
6 that they give in the first place, just so you knew. I
7 look at the criminal history and decide how important it
8 is, for myself. But even if I were to use that, I would
9 look at this criminal history and say he got five chances
10 on parole and blew it every time. That's what I see as a
11 revoked parole.

12 MR. PICKER: And I think Mr. Schachter would
13 agree with you that that's a fair statement. It's the
14 question of -- because, in Nevada, a revocation of parole
15 is a much more formal process than it is in California.
16 NDOC would read it as five revocations, and that's our
17 concern on Mr. Schachter's behalf.

18 THE COURT: I can't take judicial notice of what
19 they do in California or not.

20 Division, why do you call it "revoked"?

21 MS. BROWN: When we call California Department
22 of Corrections, they basically tell us that's when he was
23 returned to prison. So he was arrested on a parole
24 violation -- or he was paroled and then he was revoked.

1 THE COURT: Do they use the language "revoked"?

2 MS. BROWN: I believe they do.

3 THE COURT: So that's what you're repeating. So
4 you just put in what they tell you.

5 MS. BROWN: Yes, ma'am. And when the case is
6 finally done in the parole system, they either tell us he
7 expired prison, he expired parole, or they get that new
8 post-conviction. So we report what California is telling
9 us.

10 THE COURT: So I can't really change it, but
11 just so you know, whether that has some implication
12 somewhere down the road, without more evidence, I can't
13 change it. I'm going to go with what the Parole &
14 Probation say they've been told. But the way I look at
15 it, it doesn't matter. Whether it was five different
16 cases that you got parole on and you blew it every time or
17 the same case, you still blew it.

18 MR. PICKER: I understand that, your Honor. And
19 with that, I think that Mr. Schachter's a little more
20 comfortable with knowing how you're viewing it.

21 THE DEFENDANT: The only thing that I would add
22 to that is, it's one term of parole.

23 MR. PICKER: It is one term of parole, and
24 that's the only thing we were -- and I understand what

1 your Honor's saying, and I think Mr. Schachter does too,
2 but it shows as all one case. So --

3 THE COURT: And that's the way I read it.

4 MR. PICKER: So the third one was the one that
5 was done by Parole & Probation. So we have no further
6 issue with that. I believe the fourth one was completed
7 as well, and that would be all the changes that we did
8 with our objections, your Honor.

9 For the record, Mr. Schachter, prior to our
10 appointment, did file his own objection to presentence
11 report on November 20th of 2014. I think your Honor has
12 already reviewed with him previously those that were
13 changed and those that were not granted, but we just
14 wanted to make sure the record was clear that he had not
15 waived those objections raised in November of last year,
16 that our objections were in addition to his.

17 THE COURT: There was a presentence report that
18 the Court was working off of at that time, which had
19 been --

20 MR. PICKER: And there was a supplemental that
21 was filed December 31st that reflected, at least in part,
22 those changes -- or some of those changes. And I don't
23 know how your Honor actually dealt with the remainder of
24 those objections, if you did so on the record.

1 THE COURT: I don't think I did, Mr. Picker. I
2 think I assumed that his objections were either in
3 Mr. Hickman's pleading or they'd been abandoned.

4 MR. PICKER: So in that objection, Mr. Schachter
5 was objecting to the -- or what was written as his
6 statement, especially the paragraph that's at the top of
7 page eight. Your Honor knows that Mr. Schachter went to
8 trial and he contested and continues to contest his guilt.
9 So your Honor would realize that that paragraph doesn't
10 reflect either the position he took at trial or the one
11 that he's continued to espouse since day one of this case.

12 THE COURT: The paragraph at the top of page
13 eight?

14 MR. PICKER: Yes.

15 THE COURT: Okay. He says he objects to
16 defendant's statement, to the whole thing, because it's
17 either a misrepresentation of what has been stated or the
18 facts as presented in the interview at Washoe County Jail
19 on October 26th, 2014.

20 MR. PICKER: Right. And the actual objection,
21 really, to that paragraph at the top of page eight is that
22 it is an inaccurate representation of what he said.

23 THE COURT: So where the line says, "During the
24 interview, the defendant's version of the instant offense

1 was written down by the undersigned. It was read back to
2 him verbatim and he agreed with the statement," he's
3 denying that?

4 MR. PICKER: Correct.

5 THE COURT: I'll note the PSI, and that'll be up
6 to a discussion between him and the report writer.

7 MR. PICKER: Thank you, your Honor.

8 THE COURT: And then I guess he was objecting to
9 the fact that it said "Plea negotiations were not
10 applicable."

11 MR. PICKER: Correct, your Honor. Because as
12 your Honor knows in this case, and I believe you were
13 informed, there had been plea negotiations. And in fact,
14 it had to be pursuant to the U.S. Supreme Court decision
15 that those were placed on the record at some point. I
16 don't have it in front of me, but there were plea
17 negotiations. They were unsuccessful, but there were plea
18 negotiations, and I think that's his objection, is it
19 appears that there was no attempt to negotiate, and I
20 believe everybody agrees there was.

21 THE COURT: And I don't think that's what that
22 section says. It's just saying that they're not going to
23 tell me the plea negotiations, because he went to trial.

24 And then the \$500 he was objecting to in

1 attorney's fees --

2 MR. PICKER: I think he was doing that because
3 Mr. Leslie was serving as standby counsel, as opposed to
4 counsel.

5 THE COURT: But now it's gone up to a thousand.

6 MR. PICKER: Yeah. And I'm not sure how they --
7 because I don't think the statute allows -- I'm not sure
8 that the statute allows for stacking of the \$500
9 attorney's fees just because it switches from the PD's
10 office to the APD's office.

11 MS. BROWN: Your Honor, when the first
12 presentence investigation came down, it was \$500 because
13 of the use of stand-in counsel, and we felt that if the
14 Public Defender's Office or the Alternate Public
15 Defender's Office was involved in this case, then they
16 should be compensated for their time.

17 When Mr. Schachter put in his disagreement with
18 the presentence investigation, we realized that he had
19 actually taken it to trial, and because he still had the
20 use of the county's defenders, jury trials are a thousand
21 dollars, and, therefore, it was an error on the Division's
22 part in the very first PSI and it should've been a
23 thousand at that time.

24 THE COURT: And statutorily, the Court can order

1 any amount of attorney's fees, but that's by practice in
2 Washoe County, that if it's a gross misdemeanor, we
3 usually go 250; a felony is 500, and jury trial's a
4 thousand.

5 MS. BROWN: Correct. Those were the numbers
6 that we had been using, and as we're aware -- it escapes
7 me which judge used to do this, but one judge always gave
8 a \$250 fee, whether it was a felony, gross, jury trial, or
9 whatever. And our attorney fees is under the section
10 "Recommendation" and we just advise the Court that that's
11 what we think.

12 THE COURT: Okay. So have we gone through both
13 lists and resolved all the possible issues?

14 MR. PICKER: Yes, we have, your Honor. Those
15 are all of the issues that were raised.

16 THE COURT: All right. So now that we have the
17 Amended Supplemental to Presentence Investigation, we will
18 proceed with that document that was filed with the one
19 change I've now made, and it was filed in February 23rd,
20 2015, and that'll be the controlling document. Right?

21 MR. BOGALE: May the State offer just one --

22 THE COURT: Yes, absolutely.

23 MR. BOGALE: -- small correction to the PSI? My
24 name's actually spelled wrong. So on the first page,

1 under prosecutor, the first A in the first name should be
2 an E.

3 MR. PICKER: And your Honor, probably it should
4 no longer say "pro per," because Mr. Schachter's no longer
5 pro per.

6 THE COURT: Okay. So Mr. Hickman, the alternate
7 public defender, with Mr. Picker standing in today.

8 MR. PICKER: However you want to do it, your
9 Honor.

10 THE COURT: I don't think I'll make those
11 changes, but I will note that he's not pro per. So that
12 correction is made.

13 Anything else?

14 Okay. Then let's proceed with this document.

15 MR. BOGALE: Not from the State.

16 THE COURT: Argument, Mr. Picker.

17 MR. PICKER: Thank you, your Honor.

18 I'm not sure how you want to proceed, because we
19 have challenged in our trial statement each of the five
20 prior convictions which the State is attempting to offer
21 as enhancement. So, at this point, I will request
22 direction from the Court on how you want to proceed.

23 THE COURT: We can talk about those prior -- I
24 think it is probably a good idea to make a determination

1 as to the validity of the prior convictions before we make
2 a determination of whether or not there are prior
3 convictions that will support a finding of habitual
4 criminal, and then argue whether there are those
5 convictions or not and whether or not habitual criminal
6 should apply.

7 So we have some exhibits marked?

8 THE CLERK: Correct. Exhibit 284 and 5 were
9 previously marked, which are prior convictions. Mr.
10 Bogale marked Exhibit 23 today, which is also another
11 prior conviction.

12 MR. PICKER: We have copies of each of those,
13 your Honor.

14 THE COURT: Then let's talk about the
15 admissibility for purposes of habitual criminal.

16 MR. PICKER: Thank you, your Honor.

17 We can start with Exhibit 4, that being the
18 Santa Clara County Municipal Court documents. As we've
19 outlined in the sentencing -- and I don't want to revisit
20 the sentencing memo, because I assume that you've had a
21 chance to read it. So I don't want to do that. Our main
22 concern with Exhibit 4 has to do with the fact that the
23 documentation, especially the felony minutes, commitment
24 and certification is a form with a series of checkboxes.

1 Unfortunately, what it doesn't do is, other than say Mr.
2 Schachter waived his rights -- and for the record as well,
3 his last name is misspelled on that document -- but in
4 addition to that, it just says "waived rights" and gives
5 no further information. Although it does -- and as we
6 pointed out in our memorandum, it does then refer the case
7 to the higher court, because the Municipal Court in
8 California is unable to actually complete a felony
9 conviction. It has to go to the Superior Court, and that
10 was the next document that would apply.

11 Again, there's no advisement of what specific
12 rights they were. As we quoted from Boykin versus
13 Alabama, there's some specific needs as to which rights
14 are being waived and there has to be some record of that.
15 And the State of Nevada has, of course, acknowledged
16 Boykin versus Alabama and the importance of a totality of
17 the record, which we quoted in the sentencing memorandum,
18 and our concern is, there is no real record of what
19 Mr. Schachter was asked to waive, other than somebody
20 checked -- the judge checked the box "Waived rights." We
21 don't know which rights were explained to him, how they
22 were explained or any of that. And we have no record, no
23 transcript of how that was done either.

24 In addition, it does not show a notice of the

1 charges, in that there is no statement or record that
2 Mr. Schachter was arraigned or otherwise provided formal
3 notice of the charges and the elements against him, either
4 in a written canvass or oral canvass. There's no
5 indication of that in the documentation.

6 So based on that, looking at the case law that
7 we have cited, we believe that, on its face, this
8 attempted conviction is insufficient to meet the standards
9 under which it can be used for habitual criminal
10 enhancement purposes.

11 THE COURT: Okay. Mr. Bogale, why don't you
12 address this argument and then we'll go to the next one.

13 MR. BOGALE: Thank you, your Honor.

14 AS to Exhibit 4, which is the 1992 Santa Clara
15 County prior for driving or taking a vehicle, the State
16 would argue that it is constitutional, and pursuant to
17 Fornier versus State, which is found at 95 Nevada 591 --
18 it's a 1979 case -- there are two essential ways to have a
19 valid prior conviction. One is to have the presence of
20 counsel. Two is, if you don't have counsel, that you
21 validly waived counsel. Now, that's not the only right
22 that you have to waive. You have to waive your right
23 against self-incrimination, your right to a trial, your
24 right to cross-examine the witnesses, but the presence of

1 counsel, if found, is sufficient to make a prior valid.

2 And then I cite another Nevada Supreme Court
3 case, Daymon versus State, D-A-Y-M-O-N, which is found at
4 94 Nevada 370; it's a 1978 case. In that exhibit, in the
5 felony minutes of arraignment of April 1st, 1992, it lists
6 Frank Mayo as the defendant's attorney. It says the
7 defendant and his attorney, Frank Mayo. It also, on the
8 same page, lists the waived rights. It checks the box
9 "Waives rights." It also checks the box that says, "The
10 plea was knowing and intelligent and voluntary." And in
11 the sentencing minutes later on in the prior conviction of
12 July 13th, 1992, it also again lists Frank Mayo as the
13 defendant's attorney. Having an attorney creates a
14 presumption that rights were intelligently waived and that
15 a plea was voluntarily and intelligently entered. That's
16 the whole point of counsel.

17 In fact, the reason why this court, I believe,
18 took so much care to insure that Mr. Schachter had counsel
19 here in this sentencing is because, for example, you can't
20 raise objections to the validity of a prior conviction for
21 the first time on appeal. So if he decides to appeal and
22 he didn't know that and he was pro per, he wouldn't have
23 had those objections. What we have today is the presence
24 of counsel, who's presented objections to the prior

1 conviction. That's an example of the benefit of counsel.
2 That's the concept that makes a prior valid, if the
3 defendant was represented by counsel. He was, the State
4 argues, in the 1992 case, and for that reason, the State
5 thinks, by a preponderance of the evidence, it has shown
6 that it is a valid prior conviction.

7 THE COURT: Anything further, Mr. Picker?

8 MR. PICKER: The only other thing, your Honor,
9 is that -- as we said, the language of the Supreme Court's
10 decision in Boykin and the cases they've utilized in
11 Nevada talk about specificity. They do talk about the
12 totality of the circumstances, but they also, especially
13 when it comes to waiver of rights, are worried about
14 specificity. Because if the record is bare, then this
15 court has to reach some conjecture about whether those
16 rights were -- whether Mr. Schachter was appropriately
17 advised of those rights and he appropriately waived them.
18 That is our concern, your Honor, is that the record is
19 bare. I also note -- well, just based on that, your
20 Honor, we believe that this conviction is insufficient and
21 unconstitutional.

22 THE COURT: well, the Nevada Supreme Court has
23 spoken on the issue of prior convictions and has
24 previously found that, for enhancement purposes, a prior

1 conviction where the defendant was represented by counsel
2 would be presumptive and valid. In this instance, we do
3 have a judge saying that the rights were given and that it
4 happened in open court, voir-dired in open court -- in
5 other words, questioned in open court -- and the Court
6 made a specific finding that the plea was knowingly,
7 intelligently, and voluntarily entered. So the judge says
8 that he was advised, in open court through the voir dire,
9 of those rights and that he waived them. The presence of
10 the attorney is presumptive, but the rights that were
11 provided were, in fact, his rights. His rights were
12 protected when he entered his plea and he knowingly and
13 voluntarily entered it. The same attorney appeared later
14 with the defendant when he was sentenced, and it appears
15 he made actually both of the other appearances with Mr.
16 Schachter. So he was represented throughout by an
17 attorney, and for that reason, the Court is going to find
18 that the certified copy is sufficient to support
19 enhancement.

20 Motion to strike is denied.

21 MR. BOGALE: So the State formally moves for the
22 admission of Exhibit 4, your Honor.

23 THE COURT: We'll do that after --

24 MR. BOGALE: We'll do it afterwards, okay.

1 THE COURT: Go ahead, Mr. Picker.

2 MR. PICKER: Thank you, your Honor.

3 As to Exhibit 5, for the very reasons that you
4 just denied our objection on 4, that is the reasons why 5
5 should be stricken and not allowed in. In Exhibit 5,
6 there is absolutely no evidence of any waiver of rights at
7 any point in Exhibit 5, which is the Suffolk County, New
8 York case. There is no waiver. There's no advisement,
9 there's no check mark, there's nothing for the purposes of
10 knowing what rights were reviewed, if any, with Mr.
11 Schachter in this case. The only advisement of rights is
12 as to the right to appeal in 30 days. That's the only
13 language used anywhere within this document.

14 So understanding your Honor's ruling as to
15 Exhibit 4, Exhibit 5 doesn't meet any of the criteria that
16 you just used to refuse to strike Exhibit 4. Based on
17 that, your Honor, as a side argument, should your Honor
18 decide that it is appropriate to use Exhibit 5, which we
19 would object to, there is an allegation that there are two
20 convictions here. As your Honor knows, if two charges are
21 within the same conviction, they can only be used as one
22 conviction for the purposes of habitual criminal
23 enhancement.

24 THE COURT: I absolutely agree with you,

1 Mr. Picker, with regard to the ability to use more than
2 one charge as more than one conviction for purposes of
3 habitual criminal enhancement. It can't be done.

4 MR. PICKER: Thank you, your Honor.

5 THE COURT: Do you want to address the issue of
6 inadmissibility?

7 MR. BOGALE: Yes, your Honor, just briefly.

8 So Exhibit 5 is a 1970 conviction out of Suffolk
9 County, New York. The charges are attempted burglary and
10 forgery. The State would make the argument that it is
11 constitutionally valid. On the statement of plea page,
12 page four, it asks, "Have you discussed the case with your
13 lawyer?"

14 "Yes," writes Mr. Schachter.

15 "Did your lawyer offer, basically, a plea to
16 this case?"

17 "Yes."

18 "Did your lawyer or the district attorney
19 promise anything to induce your plea?"

20 "No."

21 "Are you pleading freely and voluntarily?"

22 "Yes."

23 And on the bottom of the page, the defendant
24 signs his name, the defendant's attorney signs his name on

1 a line that says "Defendant's Attorney," as a witness to
2 his signature, I guess. And then on the first page of the
3 certified copy of the prior conviction, page one, it lists
4 Lawrence Mullin, Esq., as the defendant's attorney on the
5 right there, and Kevin Koenig is the assistant prosecutor.

6 So there are two instances in this prior that
7 show the defendant was represented by counsel or had
8 counsel present during the proceedings. One is the first
9 page, showing Lawrence Mullin's name. The next is on page
10 four, which the State will presume is Lawrence Mullin's
11 signature. I can't read it, but it is the signature of an
12 attorney for the defendant. It doesn't matter who it is.
13 So the State would make the argument that because the
14 defendant was represented by counsel, as the State made in
15 the last prior, that it is constitutionally valid and we
16 can presume that the defendant was advised of his rights
17 and knowingly waived those rights. That's the whole
18 purpose of having counsel.

19 THE COURT: But we have a little problem. The
20 statement of plea talks about some of the rights, but not
21 all the rights.

22 MR. BOGALE: It doesn't talk about all the
23 rights, that's right.

24 THE COURT: And where else does it say that he

1 was advised of his rights?

2 MR. BOGALE: I don't believe there's anywhere
3 else in that prior conviction, your Honor, that states
4 that he was advised of all of his constitutional rights.
5 Again, the State points your Honor to Fornier versus
6 State, which I'll read from it: "This court has held that
7 when the State seeks by introduction of prior convictions
8 to invoke the habitual offender enhancement statute, there
9 must be an affirmative showing that the defendant was
10 represented by counsel or that he validly waived his right
11 to counsel in the prior felony proceeding."

12 The State has made the argument that he was
13 represented by counsel and the State believes that's
14 enough. The standard here in terms of the burden of proof
15 is only preponderance of the evidence, because the initial
16 burden is on the State to show a certified copy of the
17 prior conviction. That's prima facial evidence of a valid
18 prior. Once that has happened, the defendant may raise
19 some points of constitutional infirmity, but those are
20 pointed out and the State must prove by a preponderance of
21 the evidence, or some evidence, that the prior conviction
22 is valid.

23 I believe the fact that Lawrence Mullin is
24 listed as his attorney and there's a signature under the

1 the "Defendant's attorney" on the statement of plea, that
2 that suffices, your Honor. Thank you.

3 MR. PICKER: Your Honor, there is a rebuttal
4 presumption and that is what we've raised today. Just to
5 read the most important part of Boykin versus Alabama, in
6 talking about the federal constitutional rights which are
7 involved in a waiver, the U.S. Supreme Court stated, "We
8 cannot presume a waiver of these three important criminal
9 rights from a silent record." You have before you a
10 silent record. While there is a presumption that if there
11 was an attorney present, then it was a constitutionally
12 valid conviction, that does not overcome once a question
13 has been raised about whether any rights were waived
14 within the document.

15 Here, the State provides absolutely no evidence
16 that any constitutional rights were given to Mr. Schachter
17 and that he knowingly and consciously waived those. So
18 given that, your Honor, given the language that the State
19 relies upon in this Statement on Plea -- again, there's
20 also nothing as to the elements of the crime. So if this
21 is the document that is the plea agreement, there's no
22 elements, there's no waiver of rights, there's no notice
23 of elements. So if this is the document the State is
24 relying upon, it is constitutionally insufficient.

1 THE COURT: Boykin versus Alabama was decided in
2 1969. The Nevada Supreme Court decided -- Fortner?

3 MR. BOGALE: Fornier. I have a copy of the
4 case, if you'd like.

5 THE COURT: -- after that and specifically
6 addressed the issues that were being raised in prior
7 convictions being utilized. Of course, the difficulty
8 is how things change over the course of time and how
9 documentation has changed. So when I look at this and I
10 say, okay, he knew he had a right to a jury trial, because
11 he had one scheduled. He was changing his plea. The
12 document shows that he wanted to change his plea from not
13 guilty to one of guilty, and he had a trial set.

14 The second concern is whether or not he had a
15 right against self-incrimination, and he's represented by
16 counsel. That's such a fundamental right. He clearly was
17 not promised anything in the statement of plea. And then
18 the last one from Boykin is the right to confront one's
19 accusers, and I think, based on the Nevada case law, with
20 an attorney present, the Nevada Supreme Court has said
21 that a statement of plea in this format can be used. It's
22 not my favorite. I don't think this is a strong certified
23 copy. I'm not exactly sure what was going on with the
24 defendant, except that he was represented by counsel.

1 So the motion to strike it, I think needs to be
2 denied, because they have met their burden, the State has
3 met their burden, but it's not particularly compelling to
4 me, this particular conviction. So as you argue the case,
5 you may need to know that, both of you.

6 And then we have 23?

7 MR. PICKER: That's correct, your Honor.

8 In Exhibit 23, there is no guilty plea memo,
9 there's no plea canvass, there's no Information, there's
10 no preliminary hearing transcript, there's no judgment of
11 conviction. It is woefully deficient on many levels. It
12 is silent as to advisement of the waiver of privilege and
13 rights. They note the appointment of attorney and
14 presence of counsel during a preliminary hearing, but the
15 record is silent as to whether Mr. Schachter entered a
16 plea of guilty with counsel. That's not within the
17 document itself.

18 So it's interesting that we keep getting further
19 and further from what Boykin anticipated, and we would ask
20 you not to allow this one, because all of those
21 deficiencies are present and there's some significant
22 issues with all of those things. It doesn't even -- we
23 don't believe -- it doesn't even meet what I think you
24 just termed to be a weak conviction, a weak set of prior

1 documents that was in the Suffolk County one. So we'd ask
2 that you strike it.

3 THE COURT: Mr. Bogale, your response to the
4 defendant's motion?

5 MR. BOGALE: The prior conviction, your Honor,
6 marked as Exhibit 23, from Los Angeles County in 1991 does
7 show that the defendant was appointed an attorney. It
8 shows that there was the presence of counsel in a
9 preliminary hearing. Those have nothing to do with the
10 actual plea. So the State would argue that because
11 there's no showing that the defendant removed counsel or
12 got rid of counsel -- he was already appointed an
13 attorney -- I think that allows the Court to presume that
14 he continued using an attorney throughout the proceedings
15 in that case.

16 For that reason, your Honor, the State would
17 urge the Court not to strike it.

18 THE COURT: I don't even know what it is. All
19 I have is that he pled guilty to Count 1.

20 MR. BOGALE: The State's not disagreeing with
21 your Honor's assessment that it's a weak prior conviction.

22 THE COURT: It's so weak, we're not going to
23 accept it. Motion granted. It's absolutely not going to
24 be considered.

1 So we can proceed with sentencing?

2 MR. PICKER: I believe so, your Honor.

3 THE COURT: And the State has a conviction for
4 the attempted robbery, but is asking for a finding of
5 adjudication as a habitual criminal. So we can address
6 those together.

7 MR. PICKER: Your Honor -- actually, I'll do the
8 second one first. Mr. Schachter's criminal history is
9 problematic. There's no denying the fact he has not had a
10 great history. The majority of his criminal behavior is
11 well back in the '90s, but there is a continuation and we
12 cannot argue that there is not. As your Honor heard from
13 Mr. Schachter at trial, he presented his situation very
14 well and he continues to contest that guilt and protests
15 it even today. And while he's been in jail, he has not
16 sat on his hands. He has done those things necessary to
17 make use of the facilities there. He does have an
18 acceptance from the Salvation Army. So he has made
19 efforts to address a very lengthy substance abuse issue,
20 among other things.

21 Your Honor -- now going to where we are with the
22 habitual criminal -- even as recent as last year, in the
23 2014 decision of LaChance, L-A-C-H-A-N-C-E, versus State,
24 which is at 130 Nevada, Advanced Opinion 29, the Nevada

1 Supreme Court looked at the nature of a habitual criminal
2 enhancement and stated that the adjudication of a
3 defendant as a habitual criminal is subject to the
4 broadest kind of judicial discretion. This is probably a
5 situation where your Honor is presented with the most
6 difficult set of questions. It is not only what is a just
7 and proper sentence, given the finding of guilt, but also
8 whether to punish Mr. Schachter based on his past and his
9 record. Those are difficult questions and we appreciate
10 that, and we bring those to your attention because -- and
11 I brought up his trial in this case because your Honor
12 got to see Mr. Schachter's personality better than you
13 probably see any defendant ever, because he took part in
14 the trial. And the idea of punishing somebody as a
15 habitual criminal really has to do with a number of
16 factors. It has to do with the idea that it is designed
17 to punish recidivists, in part, where the Court sees
18 little or no future chance of either rehabilitation or
19 change in behavior to comply with society's norms. And
20 while it is not the rule of law in the State of Nevada,
21 the federal statutes have a phrase when they refer to
22 sentencing, and it is that a sentence should be sufficient
23 but not greater than what is appropriate, given the
24 circumstances of the crime, the circumstances of the

1 defendant, and the circumstances of the situation we all
2 find ourselves in in a case.

3 It's a very interesting formula to look at,
4 because, here, we have a crime that is not the most
5 heinous of crimes that he could be facing. It is theft
6 from Wal-Mart. Now, that's not to diminish theft from
7 Wal-Mart, but it is also not the most violent of crimes.
8 Now, there is the allegation of his -- or there was
9 allegations regarding his behavior with the person who
10 stopped him, the security officer. By analogy, we look at
11 cases in other states where people pick up a third strike
12 and get life in prison for shoplifting. This is not that
13 case, but that is part of the public outcry regarding
14 imprisoning, incarcerating people for very long lengths of
15 time for their past, but now this one is, by comparison,
16 a relatively lesser crime. It's hard to say that some
17 crimes are greater than others, and I understand that as
18 well. Mr. Schachter understands that as well.

19 So what we're asking you to do in this case is
20 not impose an enhancement for habitual criminal status and
21 that you sentence Mr. Schachter for the conviction at
22 trial. We will not recommend a sentence, because he is
23 continuing to maintain his innocence in this case. And so
24 with that in mind, we'd ask that you consider all of those

1 things and the totality of the circumstances to determine
2 a sentence that is sufficient but not greater than what is
3 required.

4 Thank you.

5 THE COURT: Mr. Bogale.

6 MR. BOGALE: Thank you, your Honor.

7 Defense counsel is correct, that the purpose of
8 the habitual criminal statute is to punish recidivist
9 offenders and discourage repeat offenders. A quick look
10 at the defendant's criminal history shows that he is a
11 repeat offender, he is a recidivist. He's been offending
12 all over the country, from New York to California, with
13 three, now, felony convictions, or two felony convictions
14 and a felony jury trial verdict here.

15 The State is not arguing that all of the
16 defendant's prior convictions and prior criminal activity
17 were extremely violent. They were not extremely violent.
18 The State has no indication they were extremely violent.
19 The State does have some indication, however, as in this
20 case -- as your Honor heard during the trial -- there was
21 violence in this case. This was basically a robbery. The
22 State pursued it as an attempted robbery because he didn't
23 get away with the goods, as he was caught, but he used
24 force against Alejandro Monroy. He almost broke his

1 stomach; he twisted his stomach. He put his hand up to
2 his neck. These are the facts you heard at the trial.

3 So this was a violent crime, but the habitual
4 criminal statute doesn't require a defendant adjudicated
5 as a habitual criminal to be a violent person. The
6 statute only requires that the State shows that the
7 defendant has two or three prior convictions, or more,
8 that would've been felonies in the State of Nevada or
9 felonies at the situs of the offense and the Court -- it
10 says "shall," but we all know from the case law that it's
11 not automatic -- the Court can adjudicate a defendant a
12 habitual criminal.

13 The State thinks the defendant should be
14 adjudicated a habitual criminal in this case. He's had
15 numerous chances to rehabilitate, to change his life, but
16 from 1986 to 2014, as indicated in the amended PSI, the
17 defendant sustained nine felony convictions and thirteen
18 misdemeanors. Now, he has a lot of theft-related crimes,
19 but after a while, your Honor, it doesn't matter what the
20 crimes are. He has nine felony convictions, four of
21 which, the State will submit, are valid prior convictions
22 for enhancement purposes, and that's the end of the hunt
23 for him. He has had a career, basically, of crime since
24 he was 18. He might have a drug addiction, he might have

1 other conditions in his life that have led to these
2 results, but what we're left with here, your Honor, is a
3 career criminal, a habitual criminal.

4 The State has not heard any objections to
5 Exhibit 2 and Exhibit 3, which are prior convictions
6 submitted by the State. Exhibit 2 is a prior conviction
7 in this jurisdiction in 2009 for grand larceny. Exhibit 3
8 is a 2006 conviction out of the Ninth Judicial District
9 Court, State of Nevada, for grand larceny as well. With
10 those two prior convictions, which the State presumes the
11 defendant isn't objecting to, because he didn't include
12 them in the sentencing memorandum, and presumes those are
13 valid priors, as well as Exhibit 4 and Exhibit 5, what we
14 have here are four prior convictions. Four prior
15 convictions, pursuant to NRS 207.010, Subsection 1E,
16 allows for adjudication as a habitual criminal, Category A
17 offense, which the Court has a panoply of options, the
18 most significant of which is life without the possibility
19 of parole, a life sentence with parole after 10 years, or
20 a definite term of 25 years, with parole eligibility after
21 10 years. The State in this case, after going through the
22 jury trial, understanding this case from beginning to end,
23 is going to ask for a definite term of 25 years with
24 parole eligibility after 10 for the habitual criminal,

1 Category A. This wasn't the most violent of offenses, but
2 it was violent. This wasn't the most serious of offenses,
3 but it was attempted robbery. That's the State's position
4 on the habitual criminal. As to the underlying offense of
5 attempted robbery, the State is asking for 4 to
6 10 years -- that's the maximum sentence on that --
7 consecutive to his habitual criminal adjudication.

8 And the State will just make a couple more
9 remarks about the habitual criminal status. The Court has
10 broad discretion to adjudicate a defendant a habitual
11 criminal, and pursuant to case law -- I think the most
12 articulate case from the Nevada Supreme Court is Hughes
13 versus State, 916 Nevada 327. It's a 2000 case. It
14 essentially says the district court should state on the
15 record that it is exercising its broad and individualized
16 discretion if it adjudicates a defendant a habitual
17 criminal, that the Court should weigh appropriate factors
18 in the case for and against a finding of habitual criminal
19 that is just and proper to do so in this particular case,
20 and that the prior convictions upon which the Court is
21 relying are not too remote, trivial, or stale, and that
22 the finding of a habitual criminal adjudication will serve
23 the purpose of the statute and the interest of justice in
24 this case.

1 The State, I believe, has addressed all of those
2 issues. The interest of justice and the purpose of the
3 statute would be served if the Court found a habitual
4 criminal adjudication in this case, because the defendant
5 is a recidivist criminal. There's no way around it. The
6 State asked for all nine prior felony convictions through
7 certified copy. We didn't get all nine, but we did ask
8 for them, and simply because we only have four that we can
9 rely on, the State encourages the Court to incorporate the
10 fact that he has nine into its analysis. Exhibit 2 and
11 Exhibit 3 are both within the last 10 years -- again,
12 Exhibit 2 from 2009 and Exhibit 3 from 2006. The two
13 other convictions are old, but they show that the
14 defendant has a long arc of criminal activity. This isn't
15 just a blip on the radar, this is a career of crime.

16 So the State encourages the Court to adjudicate
17 the defendant a habitual criminal and to sentence him to a
18 definite term of 25 years, with parole eligibility after
19 10. Thank you, your Honor.

20 THE COURT: Mr. Picker?

21 MR. PICKER: Thank you, your Honor.

22 Two things, and I brought this up a little bit
23 earlier. I mentioned the fact that there were plea
24 negotiations in this case previously. I would just note

1 that the State felt it was just and proper to offer Mr.
2 Schachter a much different sentence prior to trial, and
3 now that he has exercised his constitutional right to have
4 the State prove the elements of the crime against him
5 beyond a reasonable doubt, they're seeking 10 to 25 years
6 incarceration.

7 In LaChance -- well, let me address one other
8 thing first. At trial, Mr. Monroy admitted that he did
9 not identify himself prior to attempting to halt Mr.
10 Schachter. He also claimed but the PSI doesn't claim the
11 injuries on Mr. Monroy's behalf. So that argument must be
12 taken with some consideration. The State read you
13 language out of a case, but they don't address the 2014
14 decision that we just told you about in LaChance. Not
15 only is the adjudication of a defendant as a habitual
16 criminal subject to the broadest of judicial discretion,
17 but the Court should consider whether the prior offenses
18 are stale or trivial, or in other circumstances where an
19 adjudication of habitual criminality would not serve the
20 purposes of either the statute or the interest of justice.
21 The State has already admitted that the 1991 Santa Clara
22 Municipal Court conviction is old. It is 24 years old.
23 The 1986 conviction is not quite 30 years old, but as your
24 Honor noted in saying that you would consider it, you also

1 noted it was weak for the purposes of habitual criminal
2 status. So what we have is two fairly recent convictions,
3 if you want to call 10 years recent -- I'll give the State
4 that -- you have the current conviction, and then you have
5 the only other two convictions the State can prove up.
6 Because they can ask you to consider the nine other
7 convictions, but for the purpose of a habitual criminal
8 status, you can only use the ones that are proven. So
9 what we really have is the current conviction and these
10 other two from Nevada, and then we have very stale and
11 possibly even unconstitutional convictions for them to get
12 to where they want to be for a habitual criminal status.

13 Given that, your Honor, given the totality of
14 circumstances and the broad discretion that this court
15 has, we believe that it is inappropriate and we'd ask you
16 not to impose an enhancement of habitual criminal status.
17 Thank you.

18 THE COURT: Division?

19 MS. BROWN: Your Honor, we are standing by our
20 recommendation. And the credit for time served is
21 262 days.

22 THE COURT: Mr. Schachter, the law affords you
23 an opportunity to be heard. Do you have something you'd
24 like to say?

1 THE DEFENDANT: Yes, your Honor. I'm a little
2 conflicted, because while I believe the evidence of my
3 criminal history, I can't deny that it's recidivism. I've
4 been a criminal for a long time. So I can't really deny
5 that aspect towards the habitual, but I can say, with all
6 honesty, your Honor, that I'm not guilty of the attempted
7 robbery. And that is why I went to trial. So if I'm
8 gonna be punished for the recidivist part, I can
9 understand that, but not to the attempted robbery. I
10 would've never done this. If there's anything my record
11 shows, your Honor, is that I know how to plead guilty, if
12 I was guilty.

13 The fact that I didn't do this crime is what led
14 me to self-represent. If you remember back on the waiver,
15 when we did the Faretta waiver, I said that -- when you
16 asked me the reason why I wanted to self-represent, I said
17 it's gonna be the easiest way for me to show my innocence,
18 is by me confronting Mr. Monroy directly rather than
19 through a third person, and I can show that he was lying
20 easier with myself than with the help of an attorney. And
21 you cautioned me against representing myself, and I said I
22 didn't think that it was even gonna go to trial, because I
23 thought the video would show up and it would all be
24 dismissed. Unfortunately, the video stuff didn't

1 materialize, for a bunch of different reasons.

2 Everything else, I don't know how to -- the
3 offer that was made at the beginning of the trial, if
4 that's what they thought this case was worth, if I had
5 just pled out to it -- I don't understand how they can now
6 say that I'm some sort of monster based on the priors.
7 They knew about the priors. If I had just pled out, one
8 to four was what they had asked for, and free to argue for
9 probation, your Honor, and I couldn't do it. I seen you
10 stop a dozen pleas here, because the defendant wasn't sure
11 that they committed the crime and you wouldn't let them
12 plead guilty. So there's no way -- even if I could have,
13 I couldn't have pled guilty like that. I know you
14 wouldn't have let me just say I was guilty to something I
15 wasn't guilty of.

16 And so that's what we have. So while I believe
17 that my criminal history deserves the recidivist part -- I
18 can't deny any of that -- the primary offense, I'm not
19 guilty of.

20 THE COURT: I'm sorry, Mr. Schachter. I don't
21 remember at this moment what you thought you were guilty
22 of. Were you guilty of anything? So you're denying the
23 whole shoplifting, everything?

24 THE DEFENDANT: Yes.

1 THE COURT: Okay. I just wanted to make sure.

2 THE DEFENDANT: He actually took the property
3 from me. That's what caused the confrontation. That's
4 what caused me and him to -- any violence that occurred
5 between me and Mr. Monroy, that pushing and shoving and
6 grabbing -- because that was my backpack -- that's what
7 the thing was. And I never denied that that happened.
8 Everything that -- the focus on the investigation for the
9 police was through the confrontation. That part was not
10 denied. I never stole anything. That's what the issue
11 was and that's why I can't plead guilty. That's why I
12 can't accept any guilt in this. The part I can accept the
13 guilt for is because of my past. I can understand that, I
14 can accept that. Anybody can run my rap sheet and there's
15 a rush to judgment as to returning the property and maybe
16 not dotting all the I's and crossing all the T's in the
17 investigation, but I still didn't do it.

18 So I don't know how the Court deals with that.
19 As I was thinking about everything that I've learned as a
20 part of this experience, all the individual -- being able
21 to do stuff outside my comfort zone in the course of the
22 trial and managing my own affairs and all that, the one
23 thing I never thought about this last couple, three days
24 was, at least when I turned down the last plea

1 negotiation, I was secure in the idea that I'm not guilty.
2 So I have that to move forward. Whatever your decision
3 is, I'll be able to appeal it and move forward. Sometimes
4 the jury don't get it right, and there's a lot of reasons
5 I see why the jury didn't get it right. And some of it's
6 my fault; there's blame to go around, but what I never
7 thought about was that while I have had to stand on my
8 innocence, it would be worse, your position right now, to
9 have to make a sentence and then later find out that the
10 person was innocent. That's the part that's not ever
11 discussed in the Faretta waiver or when we see cases come
12 back on appeal or whatever.

13 out of everything else that happens in this
14 case -- I believe in the system as a whole, that's why I
15 went forward. If I didn't believe that the jury system
16 and everything else was appropriate, was working -- when I
17 was younger, I was way more cynical and way more defiant,
18 but in the process of being a career criminal, for lack of
19 a better word, I know the system does work. I've seen it
20 work. We just saw two trials and the DNA finally came
21 back and other cases out there in Elko. So I know the
22 system does work, and I have faith in that system. So as
23 I made the individual connections by going pro per, I lost
24 some of that disconnect that I had, seeing everybody else

1 in the room as sort of the enemy or the opposite side.
2 Now that I know all the effort and all the work that goes
3 into the everyday running of the court and the trial and
4 the attorneys and all of that, it has at least made me a
5 better person, no matter what happens here. I at least
6 have some sort of empathy and respect for the DA and all
7 of the other court personnel. Not that I never had, but
8 just less so. And so I hope that the disconnect went both
9 ways. Everybody was very nice to me and I appreciate
10 that. And as me and Mr. Bogale sort of stumbled through
11 the trial and all the proceedings together, I don't look
12 at him as an enemy, I don't look at him as some mean
13 person. You would not believe the things that people say
14 at the jail as far as attorneys and the DAs and the
15 judges.

16 So as people come and ask me, at least within
17 the unit, I can at least share it's not always over the
18 top, like you think. Mr. Bigler is not over there cutting
19 a deal with the DA to get you a life sentence. There's a
20 lot of people that believe in it. There's a huge
21 disconnect between the defendants and the Court, and when
22 I'm allowed to go pro per and you make it more individual,
23 then it certainly helps. It helped me. I know it's a big
24 pain in the neck for everybody else in court, but it at

1 least helped me. whatever else happens to me, I know that
2 I've learned to be a better person. No matter what else
3 happens, I've learned to be a better person. And with
4 this experience, it's easier for me to operate outside my
5 comfort zone than it was before. If you were to give me a
6 lower sentence, I would at least right now know that at
7 some point in the future when I was on the street and I
8 needed to make a life decision about whether to commit a
9 crime or not, I would be more willing to come here or to
10 call Mr. Bogale and ask for advice than any other time in
11 my life.

12 I don't know if I can say that if you give me a
13 long sentence, because I can't deny that there'll be some
14 bitterness and some resentment if it's 10 years. I'd like
15 to say that I have as much faith as I do right now today,
16 but I can't say that for sure. Being in custody and being
17 around the people somehow wears you down. It makes you
18 more cynical and more bitter, and as each individual
19 denial or level of appeal gets shot down or whatever, I
20 can't imagine I wouldn't become a little more cynical in
21 that situation.

22 As far as stopping any recidivism, I think that
23 right now is the best opportunity for me to do that. I
24 don't know -- that's an argument coming from me. I don't

1 know that I could make you understand that if you were to
2 at least show that you had some belief that I was not
3 guilty, then that would do more to stop me from committing
4 another crime than any amount of sentence, any amount of
5 years you could give me, 'cause the belief itself, the
6 encouragement rather than the punishment would allow me to
7 come here or call Mr. Bogale before I made that bad
8 decision, to at least take into account that there's
9 somewhere to go, someplace that understands or is willing
10 to help, as opposed to just being -- I don't want to go
11 back to court. When you see people that don't show up to
12 court or are scared to go to court, it's because of that.
13 If more defendants realized that the Court is here to help
14 and not just to punish, you would see more -- I mean, I
15 don't know if you want a bunch of people running in your
16 courtroom here asking for your advice, but it's certainly
17 better than the alternative.

18 Again, I just want to thank all the court
19 personnel, the ones here and not here. They were very
20 nice. So whatever else happens, your Honor, I would ask
21 that you just keep that in mind. I don't want to become
22 bitter and cynical, sitting in the law library for the
23 next 10 years. I've been accepted into Salvation Army.
24 whatever you want to do with this, I just hope that you

1 believe me. Thank you.

2 THE COURT: Any legal reason why judgment should
3 not be entered at this time?

4 THE DEFENDANT: No.

5 THE COURT: First, you're right. I don't take a
6 plea if a person doesn't tell me they're guilty, unless
7 they tell me that they want to take the plea because they
8 want to avoid a more serious decision and they've
9 discussed it and they want to do it. So you're sort of
10 right on what you observed, but you missed the other
11 piece.

12 Your position with regard to your innocence is
13 absolutely your right and you can carry that forever. It
14 was not for me to determine, it was the jury, and so the
15 jury decided. They made that decision, and so it's not
16 for me to say, "well, you're really not guilty or you
17 really are guilty." It's for me to decide what your
18 punishment should be, based on the jury's decision. I
19 still don't think you should've represented yourself. I
20 don't think that was a good idea. I tried to convince you
21 not to do it on more than one occasion, but everyone has
22 the right to do that and I respect that right. I'm not
23 going to punish you because you asserted that right. I'm
24 not going to punish you because you went to trial. That's

1 not why you're being sentenced today. You're being
2 sentenced because the jury found you guilty. Because you
3 turned down those negotiations for the habitual criminal
4 not to be considered, you are faced with that today and
5 you are faced with that issue, and I do have to make a
6 decision with regard to that, as well as the proper
7 punishment for what the jury found you guilty of doing.

8 with regard to the punishment for what the jury
9 found you guilty of, the case made it clear to me that it
10 wasn't the most violent offense that I've ever seen. I'm
11 not sure exactly what everyone's motivation was, but I do
12 know the jury found enough evidence to convict you beyond
13 a reasonable doubt of attempted robbery, and, therefore,
14 I will sentence you to that, but it is not the worst
15 attempted robbery I've ever seen.

16 So with regard to Count 1, you will be sentenced
17 to 48 months in the Nevada Department of Corrections, with
18 minimum parole eligibility of 12 months. Now, I know
19 there's a request for me to give you probation on that and
20 there's also a request for me not to give you probation
21 and, in fact, adjudicate you a habitual criminal. Whether
22 I had a request to adjudicate you a habitual criminal or
23 not, I would deny your request for probation, and that's
24 because you expired your '96 case in '05. By '06, you had

1 a new burg. You expired that case in '08. By '09, you
2 had a new grand larceny. You expired that case in '12,
3 and by '14, you have this new charge. So, clearly, if we
4 just start with the '05 expiration to this conviction,
5 you've been on a roll and that does not support me giving
6 you probation. So I just want you to understand why I
7 would not do that, nor will I do it.

8 I am going to order also a thousand dollars in
9 attorney's fees, and that's not by way of punishment.
10 It's just that your lawyers have worked really hard for
11 you and they've spent a lot of hours. It doesn't really
12 have to do with the fact you had a jury trial. It's just
13 all the time that was spent. And the \$25 administrative
14 assessment fee and a \$3 GMA fee.

15 Now, with regard to the habitual criminal, it's
16 incumbent upon the Court to consider your criminal
17 history, and as I consider that criminal history, I must
18 look at all possible mitigation, as well as aggravation,
19 and how many chances you've had, how many prior lectures
20 you've had, and determine whether or not adjudicating you
21 as a habitual criminal will have a deterrent effect on you
22 and that you are, in fact, a repeat offender. I don't
23 know what happened in a lot of your convictions, because I
24 don't have enough of a certified copy, I don't have a

1 transcript, I don't know how many lectures you were given.
2 I don't know exactly all of that. But the Court is
3 convinced that -- Exhibit 2, which was when I sentenced
4 you -- that I told you that you didn't have a very good
5 criminal history and that I considered your criminal
6 history and I sentenced you accordingly, and you got
7 prison time. And you knew, I'm sure, from my demeanor and
8 from what I said that this was a short trip for you. You
9 really were at the end of your road. And then after that,
10 you were in front of Judge Gamble -- or before that?

11 THE DEFENDANT: Before that.

12 THE COURT: Before that, you were with Judge
13 Gamble, and Judge Gamble sent you to prison before me, and
14 I'm sure the penalty that you received in that case was
15 for a felony. You knew that you couldn't commit a new
16 felony; then you came here and committed a new felony and
17 I sentenced you to prison. I don't think I gave you the
18 maximum, but I certainly told you that you needed to not
19 do what you were doing. And so, here you are again.

20 When I look at mitigation, the only mitigation
21 I'm really hearing is -- well, one, you can be pleasant,
22 which you are, and two, that you're a drug addict, which
23 is pretty obvious. So that's a significant mitigation,
24 but is it enough to really take care of all of your prior

1 criminal history? I don't think I'm convinced that it is,
2 but I am convinced that 207.010(A) is not appropriate
3 today. So I'm not going to be adjudicating you pursuant
4 to 207.010(A), but I am going to be adjudicating you a
5 habitual criminal pursuant to NRS 207.010(B), which
6 carries the maximum penalty of 20 years, with minimum
7 parole eligibility at five years, based upon two prior
8 criminal convictions, felony convictions. Those are
9 Exhibits 2 and 3 that I'm utilizing to support this
10 enhancement. I am not utilizing the current conviction,
11 the one that you just got. It's the two priors and then
12 getting a third. So I'm just giving you Sub B, and I'm
13 finding that it is appropriate because there isn't
14 sufficient mitigation here to find that I shouldn't find
15 you a habitual criminal. You said it yourself, you have
16 been a habitual criminal.

17 I have considered carefully your case. We've
18 had lots of people try to represent themselves over the
19 years and they're not always pleasant. You have been.
20 You have been respectful when you're here in the court.
21 Those are positives, but I have to consider the other
22 aspects of your history and your criminal history, and an
23 aspect of that includes that you've been given chances
24 before. Your parole history in the '96 case; five

1 different times, in jail, in prison, out. You fouled up.
2 Okay, we'll give you a few days, weeks, months, whatever
3 it was. Another chance and you did it again. And the
4 prior chances you've been given in those circumstances and
5 the fact that you haven't utilized those chances in the
6 past tells me that I am making the right decision to
7 adjudicate you as a habitual criminal. I think it will
8 serve the purpose of discouraging future behavior, as much
9 as the fact that you're going to get more time, but it's
10 going to give you an opportunity to stay clean and sober
11 longer, and when you're clean and sober, I think you're a
12 smart person and maybe you can get some insight into your
13 drug addiction while you're in custody.

14 Mr. Picker said the decision by the Court to
15 exercise my discretion to find you a habitual criminal is
16 a serious decision, and he's right. It is one of the most
17 difficult decisions that the district court judge has to
18 make. Because, for the same reasons you didn't want me to
19 do it, you wanted me to give you that assurance that
20 everything you had done wasn't awful and that there was a
21 future for you. By finding you a habitual criminal, I
22 have to, in some respect, say that nothing we've done in
23 the past has worked, and I think your criminal history
24 shows that. So when I consider all of those factors and

1 the circumstances of your current offense, as it was
2 presented in the jury verdict, I am finding that the
3 appropriate and the right thing for me to do is to
4 exercise my discretion and find you a habitual criminal.

5 Are there any other findings that you would
6 request, Mr. Bogale, with regard to the finding of
7 habitual criminality?

8 MR. BOGALE: I believe you've covered most of
9 it, your Honor. The case law says you don't have to utter
10 a specific phrase, but "just and proper" seems to appear
11 in all the cases.

12 THE COURT: I don't know if I said that, but I
13 certainly believe that it is the just and proper decision.

14 So as to Count 2, the defendant is adjudicated
15 pursuant to NRS 207.010(B) as a habitual criminal. I will
16 be sentencing the defendant to 20 years in the Nevada
17 Department of Corrections, with minimum parole eligibility
18 at five years. And I think it's discretionary whether it
19 runs concurrent or consecutive to the robbery in Count 1.
20 So I'm going to exercise my discretion to run it
21 concurrent to the robbery in Count 1.

22 Now, Mr. Schachter, what you do with this is
23 going to be your decision, where you go, how you do in
24 prison and how you do when you get out, but this

1 conviction is strong. The lecture I've given you is
2 strong. The two that I've used to support this are
3 strong. If you get out and you commit more offenses, I
4 don't think there's a judge in the adjacent states,
5 anyway, that wouldn't follow through with a request from
6 the DA to find you a habitual criminal and you'll spend
7 the rest of your life in prison. I hope that you are able
8 to get on the other side of your criminal history.

9 Anything further for today?

10 MR. BOGALE: The State would just add, your
11 Honor -- I believe the subsection the Court is referring
12 to is Subsection A. That's the two priors, 5 to 20.

13 THE COURT: I'm sorry, did I flip it?

14 MR. BOGALE: I think so.

15 THE COURT: Yes, I want it to be A. I'm sorry,
16 it's the one based on two prior felony convictions.

17 MR. BOGALE: And do those priors need to be
18 admitted formally, your Honor?

19 THE COURT: They do, and I'm admitting formally
20 Exhibit 2 and 3. The others will be part of the court
21 record, however.

22 MR. BOGALE: Thank you.

23 THE COURT: Mr. Picker, anything further?

24 MR. PICKER: No. Thank you, your Honor.

1 THE COURT: We have some issues with regard to
2 the judgment of conviction sometimes in habitual
3 criminals. So I'm going to ask the clerk to provide the
4 form of judgment to counsel, Mr. Picker and Mr. Bogale,
5 before she provides it to me for signature. And then if
6 you have any objections, please make a record of that
7 before we enter the judgment.

8 THE DEFENDANT: Absolutely, your Honor.

9 THE COURT: Thank you.

10 Court's in recess.

11 (End of proceedings.)

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STATE OF NEVADA)
COUNTY OF WASHOE) ss.

I, ROMONA MALNERICH, official reporter of the
Second Judicial District Court of the State of Nevada,
in and for the County of Washoe, do hereby certify:

That as such reporter, I was present in Department No. 6 of the above court on Thursday, February 26, 2015, at the hour of 1:45 p.m. of said day, and I then and there took verbatim stenotype notes of the proceedings had and testimony given therein upon the Sentencing in the case of THE STATE OF NEVADA, Plaintiff, versus MARC PAUL SCHACHTER, Defendant, Case No. CR14-1044.

That the foregoing transcript, consisting of pages numbered 1 to 54, both inclusive, is a full, true and correct transcript of my said stenotype notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings had and testimony given upon the Sentencing in the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada, this 16th day of April,
2015.

Romona Malnerich

ROMONA MALNERICH, CCR #269

1 **CODE 1850**

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5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

Case No. CR14-1044

11 **vs.**

Dept. No. 4

12 **MARC PAUL SCHACHTER,**

13 **Defendant.**

14 **JUDGMENT**

15 The Defendant, having been found Guilty by a Jury of Attempted Robbery, a
16 violation of NRS 193.330, being an attempt to violate NRS 200.380, a felony, as charged
17 in Count I of the Amended Information, and no sufficient cause being shown by Defendant
18 as to why judgment should not be pronounced against him, the Court renders judgment as
19 follows:
20

21 That Marc Paul Schachter is guilty of the crime of Attempted Robbery, a
22 violation of NRS 193.330, being an attempt to violate NRS 200.380, a felony, as charged
23 in Count I of the Amended Information.

24 The State further filed a charge of Being A Habitual Criminal, as defined in
25 NRS 207.010, as charged in Count III of the Amended Information. The matter was heard
26 and the Court finds that the Defendant suffered constitutionally valid previous convictions
27 to support the adjudication of habitual criminal. In addition, after considering all factors in
28 mitigation, the prior lectures he has received, the prior chances from the State through

1 negotiations as well as his prior chances on parole, this Court finds that it is just and
2 proper that the Defendant deserves to be declared a habitual criminal. Based upon those
3 findings, this Court finds the Defendant to be a habitual criminal. The Defendant shall be
4 sentenced as a Habitual Criminal, as defined in NRS 207.010(a).

5 The Defendant shall be punished by imprisonment in the Nevada
6 Department of Corrections for the term of forty-eight (48) months with minimum parole
7 eligibility of twelve (12) months with credit for two hundred sixty-three (263) days time
8 served, for Count I; by imprisonment in the Nevada Department of Corrections for the
9 maximum term of twenty (20) years with the minimum parole eligibility of five (5) years,
10 with credit for two hundred sixty-three (263) days time served, for Count III, to be served
11 concurrently with sentence imposed in Count I; and by payment of attorney's fees in the
12 amount of One Thousand Dollars (\$1,000.00) for reimbursement of legal expenses.
13 Defendant is further ordered to pay a Three Dollar (\$3.00) administrative assessment for
14 obtaining a biological specimen and conducting a genetic marker analysis and a Twenty-
15 Five Dollar (\$25.00) administrative assessment fee to the Clerk of the Second Judicial
16 District Court.

17 The fees are subject to removal from the Defendant's books at the Nevada
18 Department of Corrections.

19 Dated this 5 day of March, 2015.
20 NUNC PRO TUNC to February 26, 2015.

21
22 Connie J. Steinheimer
23 DISTRICT JUDGE
24
25
26
27
28

1 CODE 2515
2 JENNIFER LUNT, BAR #3057
3 ALTERNATE PUBLIC DEFENDER'S OFFICE
4 JARROD T. HICKMAN, BAR #12772
5 P.O. BOX 11130
6 RENO, NV 89520-0027
7 (775) 328-3955

Electronically Filed
Mar 31 2015 09:22 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Attorney for Defendant

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9
10 IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,

12 Plaintiff,

13 v.

Case No. CR14-1044

14 MARC PAUL SCHACHTER,

Dept. No. 4

15 Defendant.

16 NOTICE OF APPEAL

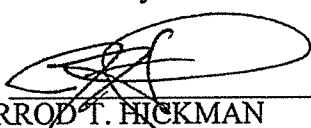
17 NOTICE IS HEREBY GIVEN that Defendant, MARC PAUL SCHACHTER, hereby
18 appeals to the Supreme Court of Nevada from the judgment of conviction entered in this case
19 on March 5, 2015. This is a fast track appeal. NRAP 3C.

20 AFFIRMATION PURSUANT TO NRS 239B.030

21 The undersigned hereby affirms that the preceding document does not contain the social
22 security number of any person.

23 DATED this 24 day of March, 2015.

24 JENNIFER J. LUNT
Washoe County Alternate Public Defender

25 By: 
26 JARROD T. HICKMAN
Deputy Alternate Public Defender

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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 **NOTICE OF APPEAL** to the following:

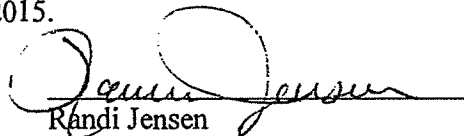
TRACIE LINDEMAN, CLERK
OFFICE OF THE CLERK
SUPREME COURT OF NEVADA
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702
Via U.S. Mail

MARC PAUL SCHACHTER #91445
C/O NNCC
P.O. BOX 7000
CARSON CITY, NEVADA 89701
Via U.S. Mail

CATHERINE CORTEZ MASTO
ATTORNEY GENERAL STATE OF NEVADA
100 N. CARSON STREET
CARSON CITY, NEVADA 89701
Via U.S. Mail

And served a copy by inter-office mail to:
CHRIS HICKS
WASHOE COUNTY DISTRICT ATTORNEY
Attn: Appellate Department

DATED this 26 day of March, 2015.


Randi Jensen

CERTIFICATE OF SERVICE

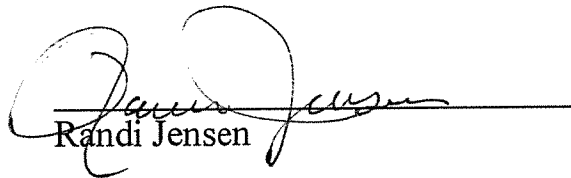
I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office and that on this date I served a copy of the **JOINT APPENDIX – VOLUME IV** to the following:

MARC PAUL SCHACHTER #91445
C/O NNCC
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100 N. CARSON STREET
CARSON CITY, NEVADA 89701
Via Electronic Filing

CHRIS HICKS
WASHOE COUNTY DISTRICT ATTORNEY
Attn: Appellate Department
Via Electronic Filing

DATED this 29 day of June, 2015.


Randi Jensen

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 29 2015 10:05 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

MARC PAUL SCHACHTER,)	
)	
Appellant,)	Case No. 67673
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
_____)	

Appeal from Judgment of Conviction
Second Judicial District Court of the State of Nevada
The Honorable Elliott Sattler

JOINT APPENDIX – VOLUME IV

JENNIFER J. LUNT
Washoe County Alternate Public Defender

CHRIS HICKS
Washoe County District Attorney

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ATTORNEYS FOR RESPONDENT

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1 A I don't know. I don't remember taking photos, but if I
2 did they would have been booked into evidence under the Tiburon.

3 Q And is that normal procedure, if you're not going to
4 keep the items, to take photos, not to take photos?

5 A The photos, it's completely dependent upon the officer.
6 So in this case it's not a unique item, it's nothing that by
7 showing you a picture of it, it's going to stay it's different
8 than the next item on the shelf.

9 Q So you never got permission either from a supervisor or
10 from the district attorney, anything as to releasing the property
11 that was alleged to be stolen?

12 A I didn't release the property. They'd already
13 recovered it. That's where I think you're having trouble
14 differentiating. Because if we recover the property then we
15 release it. But if the property is recovered by somebody else
16 and it's their property, we don't release it to them, because
17 they have custody of it.

18 Q That's what I was asking you, if it ever was in your
19 custody while you were looking through the bag?

20 A If it was never in my custody I never held the
21 backpack, because that's -- I mean, in my custody I take in my
22 custody as nobody else has any permission to touch it --

23 Q Okay.

24 A -- until I say so. Held it in my hand, yes.

1 Q Are you familiar with NRS 205295?

2 MR. BOGALE: Objection, Your Honor. Falls outside the
3 scope of my examination of the witness. And he's leading the
4 witness into a legal conclusion, which invades the province of
5 the jury.

6 THE COURT: That's a complicated objection. Where are
7 you going with this?

8 MR. SCHACHTER: I just wanted to know exactly why he
9 never took possession of the property as required under the NRS.

10 THE COURT: Well, that's your argument. So as to that
11 objection I'll sustain it. Not appropriate to ask this witness
12 that.

13 MR. SCHACHTER: Okay.

14 THE COURT: But you can ask him why he didn't take it.
15 I thought he answered that, but if you want to ask him again I'll
16 allow it.

17 MR. SCHACHTER: No.

18 BY MR. SCHACHTER:

19 Q Did you see -- going back to the videos, any video of
20 me stealing any of the items that were recovered?

21 A Stealing them or concealing them?

22 Q Either one.

23 A The video shows you in the different departments, shows
24 you opening packaging. Like I said I haven't seen the video in

1 however many months now. So I can't go exactly what was in the
2 video.

3 Q More than one package, one package? Tell us what you
4 do remember as far as the theft end of it?

5 A During the video or after?

6 Q From the video.

7 A Okay. I don't remember how many packages. I don't --
8 I know that -- I just remember you being in the aisles, selecting
9 items from the shelves, opening items up, I can't say, because
10 like I said, I haven't seen the video in a couple months, where
11 exactly the items were placed in the backpack, when or how.

12 Q But more than one item?

13 A In the backpack?

14 Q Opening, opening the items.

15 A I don't remember without seeing the video again.

16 Q And so were the items in new, when you looked at the
17 items in loss prevention office were the items in new condition
18 or were they open?

19 A They were open. Some of the packaging was torn, but
20 they weren't -- the item itself was in new condition, the
21 packaging had been torn and there was a couple of pieces of
22 packaging in the backpack.

23 MR. SCHACHTER: Nothing further.

24 THE COURT: Anything further?

1 MR. BOGALE: Just a couple questions, Your Honor.

2 BY MR. BOGALE:

3 Q Do you recall writing a report in this case?

4 A I do.

5 Q Okay.

6 THE CLERK: Exhibit 21 marked.

7 BY MR. BOGALE:

8 Q You mentioned earlier on cross-examination that you
9 don't recall whether you took photos or not, whether they were up
10 in the VeriPic system.

11 If I showed you a copy of your report, would it refresh
12 your recollection on that point?

13 A It would.

14 Q Okay.

15 MR. BOGALE: Your Honor, may I approach the witness?

16 THE COURT: You may.

17 BY MR. BOGALE:

18 Q I'm going to show you what's been marked as Exhibit 21.
19 And just read it to yourself. It's not very long.

20 A Okay.

21 Q Tell me when you're done.

22 A Okay.

23 Q Have you had a chance to review that?

24 A Yep.

1 Q Get that back from you. Do you now remember?

2 A There's nothing noted in there about pictures. So
3 there's no pictures taken of the property.

4 Q So you never took any photos?

5 A No.

6 Q Okay. But you were able to identify the items in
7 another way; is that right?

8 A With the receipt, correct.

9 MR. BOGALE: No further questions, Your Honor.

10 THE COURT: Anything further, Mr. Schachter?

11 BY MR. SCHACHTER:

12 Q Who gave you the receipt that we just --

13 A It would have been either Alex or Anna.

14 Q You don't remember?

15 A No.

16 MR. SCHACHTER: Nothing further.

17 THE COURT: May this witness be excused?

18 MR. BOGALE: He may, Your Honor.

19 MR. SCHACHTER: Subject to recall.

20 THE COURT: Okay. You may step down. You're not
21 excused.

22 Ladies and gentlemen of the jury, I think that this is
23 good time for you to take your lunch. I'm going to have you come
24 back at 1:15. And so we'll see you back then.

1 During this break do not discuss the case amongst
2 yourselves or with anyone else. Do notice form or express any
3 opinion about the outcome of this matter. Do not allow anyone to
4 speak of the case to you or in any manner try to influence you
5 with regard to it. Do not make any independent investigation or
6 inquiry into any of the facts and circumstances surrounding this
7 case. Should any person make and attempt to influence you,
8 please notify the bailiff immediately.

9 You may go into the jury room we'll see you back at
10 1:15. Thank you.

11 Jury excused.)

12 THE COURT: Okay. Counsel, before I let you all go to
13 lunch, and Mr. Schachter, do you have another witness this
14 afternoon?

15 MR. BOGALE: Yes, just one more, Your Honor.

16 THE COURT: Okay. And who is that?

17 MR. BOGALE: Keisha Ellis.

18 THE COURT: So Mr. Schachter, you had indicated that
19 you were going to call some witnesses. I think you should have
20 them here by 1:30 at the very latest.

21 MR. HYLIN: He's already here.

22 THE COURT: Okay. And that witness is standing by and
23 ready to go.

24 MR. HYLIN: Yes. Scott Yoder. He's the store manager,

1 Your Honor.

2 THE COURT: Then Mr. Schachter, have you made a
3 decision about your right to testify or not?

4 MR. SCHACHTER: I haven't made an affirmative decision,
5 but it is more likely than not that I will not testify.

6 THE COURT: Okay. That's fine. It's up to you.
7 Remember that if you rest your case without calling yourself as a
8 witness, then you've waived the right to testify.

9 MR. SCHACHTER: Right. I understand.

10 THE COURT: Okay. You understand that?

11 MR. SCHACHTER: Um-hum.

12 THE COURT: Then it looks to me like this afternoon we
13 could be sending the jury home by 3:00 o'clock. 2:30,
14 3:00 o'clock. And then we can settle instructions on the record
15 at that point. And then you can come back in the morning and do
16 your opening -- opening and closing arguments, and I can read the
17 instructions to the jury, if that sounds okay to everybody.

18 It's possible you could with a 1:15 start, actually be
19 finished by 2:30. But we have not settled the instructions, but
20 it would mean that we would go to the jury at 3 or 3:30 you have
21 to tell me what your preference is.

22 MR. BOGALE: The State is interested in moving along as
23 rapidly as possible. I tried to put on a quick case this
24 morning. And if we can get the case to the jury today that would

1 be the State's preference, but if it's not possible.

2 MR. SCHACHTER: I would actually prefer tomorrow
3 morning. Give me -- just for me to be able to prepare for the
4 closing and get everything.

5 THE COURT: Okay. All right.

6 MR. SCHACHTER: I did have one issue that I'm not sure.
7 Mr. Hylin was trying to explain it to me. But as far as matters
8 of law with the police office, I just, in reference to the Court
9 order denying the motion that you were going to allow cross as to
10 the investigative deficiencies, but nothing further -- I mean, I
11 can't -- I can't ask him about specific NRS.

12 THE COURT: Correct. And that's what. In fact I let
13 you -- you did the ask some questions with regard to what their
14 policy was, why hadn't you done this. But to the conclusion and
15 the argument that you violated that particular statute, that was
16 improper in front of the jury.

17 MR. SCHACHTER: All right. Thank you, Your Honor.

18 THE COURT: All of that being said, we'll see you back
19 at 1:15.

20 MR. HYLIN: Thank you, Your Honor.

21 THE COURT: All right. Court's in recess.

22 (Lunch recess taken)

23 --o0o--

24

1 AFTERNOON SESSION

2 --o0o--

3
4 THE COURT: Do we have anything outside the presence of
5 the jury?

6 No. We can bring the jury back in?

7 MR. BOGALE: Yes.

8 THE COURT: Okay. Is the jury all here?

9 THE BAILIFF: Yes, they are, Your Honor.

10 THE COURT: Okay. You can bring them back in.
11 Counsel, Mr. Schachter will you stipulate to the
12 presence of the jury?

13 MR. BOGALE: Yes, Your Honor.

14 MR. SCHACHTER: Yes, Your Honor.

15 THE COURT: Thank you. Please be seated. Call your
16 next witness.

17 MR. BOGALE: State calls Keisha Ellis, Your Honor. ..

18 MR. SCHACHTER: Your Honor, this is not somebody on the
19 witness list.

20 THE COURT: She's on my witness list.

21 MR. SCHACHTER: Oh.

22 THE COURT: Okay. Ma'am. Please come forward.

23 MR. SCHACHTER: My apologies.

24 (Witness Sworn)

1 THE CLERK: Thank you. Please be seated at the witness
2 stand.

3 BY MR. BOGALE:

4 Q Once you get comfortable there, please state your name
5 and spell your last name for the court reporter.

6 A Deputy Keisha Ellis. E-L-L-I-S.

7 Q Good afternoon, Ms. Ellis?

8 A Good afternoon.

9 Q Where are you employed?

10 A At the Washoe County detention facility.

11 Q And what do you do there?

12 A I am a deputy there. That means I work in detention.
13 I work different areas, such as intake, the housing units, but
14 primarily I work in intake.

15 Q Okay. What is intake, could you describe to the jury
16 the duties of deputies who work in intake?

17 A Primarily, deputies in intake, we receive the inmates
18 when they are brought into the facility by the arresting officer.
19 Once they come through the doors, they are shown to a chair where
20 they are searched. We take most of their personal items, such as
21 jewelry, money, anything that would be considered a weapon, but
22 all that stuff is taken from them. It's placed into a bin.

23 Once they are photographed they are taken inside. If
24 they are not intoxicated or under the influence of something,

1 they are seated in the lobby. And whatever is in that bin is
2 inventoried. It's written on a sheet. And if that person is
3 seated in our lobby, that is gone over with them. It's shown;
4 you came in with these personal effects, if you agree with it you
5 sign it. And it's placed into a secured depository area.

6 Q What do you do if an individual being booked at the
7 detention facility has cash?

8 A If there is money on the person when they came in that
9 also goes into the bin with their personal effects. That is
10 inventoried. We have a cash machine where we insert that money.
11 And it spits out a receipt to us of what is inserted in there.

12 Q And do you include if an individual comes into the
13 facility with cash, is that included on the property receipt that
14 you just talked about?

15 A Yes.

16 THE CLERK: Exhibit 22 marked.

17 (Exhibit 22 was marked for identification.)

18 MR. BOGALE: Your Honor, may I approach the witness,
19 please.

20 THE COURT: You may.

21 MR. BOGALE: Thank you.

22 BY MR. BOGALE:

23 Q I'm going to show you what's been marked here as
24 exhibit 22 in this case.

1 A Thank you.

2 Q Tell me when you've had a chance to review that.

3 A Okay.

4 Q Okay. What is that?

5 A This is the top copy of the property inventory sheet.

6 It comes in triplicates, but this is the top portion that you

7 see. On it at the top you have Mr. Schachter's name.

8 Q Let me stop you right there. That hasn't been admitted
9 yet as an exhibit. I just wanted to ask you how you recognize
10 it.

11 A Okay. The -- it's a property inventory sheet.

12 Q Okay. Are there certain identifiers on there for a
13 specific individual?

14 A Yes, they are.

15 Q Okay. Is your handwriting on there?

16 A Yes.

17 Q Is your handwriting on there to detail specific
18 property of an individual?

19 A Yes.

20 Q Okay. Is your badge number on there?

21 A Yes, it is.

22 Q Okay. Your Honor, State moves to admit Exhibit 22.

23 THE COURT: 28? 22.

24 MR. BOGALE: 22.

1 THE COURT: Okay. You know, any objection.

2 MR. SCHACHTER: No, Your Honor.

3 THE COURT: Exhibit 22 is admitted.

4 (Exhibit 22 was admitted into evidence.)

5 BY MR. BOGALE:

6 Q I'm going to retrieve that from you. Thank you.

7 A You're welcome.

8 Q And let me direct your attention to June 8th, 2014,
9 okay? Were you work, at the detention facility.

10 A Yes, I was.

11 Q Were you working at intake that day?

12 A Yes.

13 Q Okay. Kind of direct your attention to the early
14 afternoon hours of that day. Do you recall an individual named
15 Marc Schachter being brought in to the detention facility by law
16 enforcement?

17 A Yes.

18 Q Okay. Do you see Marc Schachter here in the courtroom
19 today?

20 A Yes.

21 Q Could you please point at him and describe an article
22 of clothing he's wearing?

23 A He is sitting here wearing the blue shirt.

24 Q Is he wearing a jacket?

1 A No.

2 Q Your Honor, may the record reflect the identification
3 of the defendant by this witness?

4 THE COURT: Yes, the record will so reflect.

5 BY MR. BOGALE:

6 Q Okay. What do you remember about the booking process
7 of the defendant that day?

8 A I remember Mr. Schachter being brought in. And I don't
9 remember searching him as much as I remember what he had with
10 him, and/or not with him, what was brought in with him. In a
11 plastic shopping bag he had a solar light, a hair color kit,
12 which I thought was odd. I picked up the solar light, because I
13 thought that's not something somebody normally takes around with
14 them. And I remember a deputy pointing out this was a solar
15 light, because she had some in her front yard, which some kids
16 stole from her. So I remember that about him.

17 Q Okay.

18 MR. BOGALE: Your Honor, may I publish Exhibit 22.

19 THE COURT: You may.

20 BY MR. BOGALE:

21 Q I'm just going to put on the screen here Exhibit 82,
22 the property sheet.

23 A Okay.

24 Q I'll just kind of go step by step through this. Okay.

1 Is there a date on here?

2 A At the upper left-hand corner, yes.

3 Q What's the date?

4 A June 9th, 2014.

5 Q Okay. And then what's the stuff listed on miss other?

6 A On misc other an SSC is a Social Security card. Misc C
7 and P is miscellaneous cards and papers, those include your
8 gaming cards, receipts, store credit cards, such as Macy's that
9 doesn't have a major Visa or MasterCard label on it. He had a
10 gray stylus, which I thought would go to his cell phone. He had
11 the hair color kit and the solar light.

12 Q And is this your handwriting?

13 A Yes, it is.

14 Q Okay. And I'll just kind of scroll here. Is your name
15 on this piece of paper?

16 A Yes, it is. It's directly across from the signature.
17 It says Ellis, 33277.

18 Q And what's 3277?

19 A That is my badge number.

20 Q And if you would just answer one more question here on
21 this. Does this receipt show how much money or cash the
22 defendant had on him when he was booked at the detention
23 facility?

24 A Yes, it does.

1 Q Where does it show that and how much does it show?

2 A In the middle in the box right there it says \$16 and
3 \$0.14.

4 MR. BOGALE: No further questions at this time, Your
5 Honor, thank you.

6 THE COURT: Cross-examination.

7 BY MR. SCHACHTER:

8 Q Again where it said miss C and P?

9 A Correct.

10 Q So that could have been a gift card or it's not
11 itemized what cards and what --

12 A Yes, that's correct.

13 Q What kind. It could have been anything. Could have
14 been a gift card, could have been a Walmart card or anything?

15 MR. BOGALE: Objection. It calls for speculation, Your
16 Honor.

17 THE COURT: Stained.

18 BY MR. SCHACHTER:

19 Q But it's not itemized as to any particular card.
20 There's just multiple cards, plastic cards I'm assuming?

21 A Correct.

22 MR. BOGALE: Objection again, Your Honor. It calls for
23 speculation.

24 THE COURT: Overruled. She knows what they were. It's

1 not speculation. You can answer the question.

2 THE WITNESS: If it does not have a Visa, MasterCard,
3 Discover, American Express logo on it, it does go under
4 miscellaneous C and P.

5 MR. SCHACHTER: Nothing further.

6 THE COURT: Anything further?

7 MR. BOGALE: Nothing further?

8 THE COURT: May this witness be excused?

9 MR. BOGALE: She may.

10 MR. SCHACHTER: She may.

11 THE COURT: You may step down. You're excused.

12 MR. BOGALE: Thank you, Your Honor. The State has no
13 further witnesses to call at this time. However, the State would
14 juice like before the State rests to especially sure that all the
15 exhibits that the State wants admitted and thinks are admitted
16 are actually admitted.

17 THE COURT: You may approach the clerk. Mr. Schachter
18 and Mr. Hylin, you can go with him. Go over the lists with the
19 clerk.

20 MR. BOGALE: The State has confirmed that all the
21 State's exhibits the State wants admitted and thinks are
22 admitted, are in fact, admitted so we rest at this time.

23 THE COURT: Okay. Mr. Schachter.

24 MR. SCHACHTER: We call Scott Yoder.

1 THE COURT: Okay.

2 (Witness Sworn)

3 THE CLERK: Thank you. Please be seated at the witness
4 stand.

5 THE COURT: You may proceed.

6 BY MR. SCHACHTER:

7 Q Can you spell the your name for the court reporter.
8 Can you please spell your first and last name for the court
9 reporter.

10 A My actual first name is Phillip, P-H-I-L-L-I-P, Yoder,
11 Y-O-D-E-R.

12 Q And you're employed at? Your employment?

13 A Is Walmart.

14 Q And which Walmart is that?

15 A Currently store manager of the store on Mae Anne,
16 Seventh Street.

17 Q Okay. And as part of your -- and your job description?

18 A Store manager.

19 Q And so you're responsible for all the employees,
20 everything that happens at the store?

21 A Yes.

22 Q Okay. Including asset prevention?

23 A Yes, to an extent.

24 Q And are you familiar with the details of why we're

1 here?

2 A No.

3 Q So you're not familiar with any of the incident?

4 A Not at all.

5 Q Is it Walmart policy to have an incident report when a
6 crime happens on the property on the premises?

7 A I would I assume, but that's nothing that would go
8 through, go across my desk.

9 Q So if a major crime happens at your store?

10 A Right.

11 Q It wouldn't necessarily go across your desk.

12 A Not a report, no.

13 Q What would you generally find out about it some other
14 way?

15 A Oh, yeah. Yeah. Discussions with the other
16 associates, sure.

17 Q But you haven't heard nothing in concerning this
18 particular case?

19 A Not at all.

20 Q Do you know what the store policy is for or Walmart
21 policy for recovering items that asset protection gets in the
22 course of their, their job?

23 A I don't understand the question.

24 Q Me neither. Is there a store policy that when asset

1 protection stops a shoplifter or a thief or stops anybody outside
2 the store, what the policy is for the property that is recovered?

3 A I'm not familiar with that policy.

4 Q Um-hum?

5 A I would I assume that there is one, but I would -- I'm
6 not familiar with it, no.

7 Q Are you familiar with Ms. Anna young?

8 A Yeah, she work for us as an AP for a period of time.

9 Q Do you have any recollection of what kind of employee
10 she was?

11 A The only contact that I have in regards with a lot of
12 the people that are at the store basically is based on their
13 performance issues. And best of my recollection she didn't have
14 any. So she would have been considered a good employee.

15 Q Can I get one moment, Your Honor?

16 THE COURT: You may.

17 Counsel, the witness has indicated that have he's
18 having a little difficulty with his hearing aid, so speak up. He
19 might be having trouble hearing you.

20 THE WITNESS: Thank you.

21 BY MR. SCHACHTER:

22 Q Do you get any reports from other stores concerning
23 security issues or from Walmart corporation as a whole?

24 A Could you define the reports. What are we talking

1 about reports? About somebody that's getting stopped for
2 something. I mean I get 500 reports a day.

3 Q Okay. Reports specifically about asset protection,
4 about shoplifting or about robberies, anything that's criminal
5 related?

6 A From a policy standpoint.

7 Q Okay.

8 A Not specific, no.

9 Q And again, you don't have any personal knowledge as to
10 the procedures as far as asset protection, their individual
11 procedures, whether it's surveillance video, how they go about
12 doing surveillance or reports?

13 A I don't have the training they have in regards to the
14 detail on that. Just a broader view.

15 Q Okay. Nothing further, Your Honor.

16 THE COURT: Any cross-examination?

17 MR. BOGALE: Yes, Your Honor. Just a few questions,
18 here.

19 BY MR. BOGALE:

20 Q Good afternoon, Mr. Yoder.

21 A Afternoon.

22 Q Who do you report to as the Walmart store manager?

23 A I have direct supervision, or market manager, he's
24 responsible for 6 or 7 stores in the area.

1 Q Okay. So one of the stores that the market manager here
2 is responsible for is yours?

3 A Yes.

4 Q And does asset protection at your store, does asset
5 protection at your store supervised by the same market manager?

6 A No, there's a separate market apprehension or
7 apprehension, asset protection manager.

8 Q So the asset protection at your store reports up to a
9 market manager of some kind?

10 A Correct.

11 Q And you report up as well to a market manager of some
12 kind as well?

13 A Yes.

14 Q But they're not to the same person?

15 A No.

16 Q So you sort of have parallel managerial hierarchies.
17 Is that a good way of putting it?

18 A Yes, that would be accurate.

19 Q What asset protection does, doesn't really concern you.
20 They report up to somebody else. They don't report to you?

21 A No, not in regards to any kind of apprehension or
22 shoplifting or anything like that no.

23 Q So if they had a apprehension case where they thought
24 somebody was shoplifting from the store as a matter of course

1 they wouldn't really advise you of that, right?

2 A No.

3 Q Do you have control over anything that asset protection
4 does at your store?

5 A Well, we work closely in regards to shrinkage aspects.

6 Q Explain shrinkage for the jury?

7 A Shrinkage is just unaccounted loss of merchandise from
8 our book inventory. And that would entail a lot of internal
9 processes in regards to have price changes, mark downs, clearance
10 items in the handling properly of those. That's my main
11 connection with the AP.

12 Q And so shrinkage seem to me if I understand you
13 correctly is sorts of a generic term for losses at the store,
14 essentially?

15 A Yes.

16 Q And if you can, how much, what percentage of all the
17 shrinkage at your store is attributed to like shoplifting and
18 stuff like that?

19 A Surveys have been held and we've been given information
20 regarding those where it shows 90 to 92 percent is internal,
21 paperwork issues, delivery, receiving issues, and then obviously
22 the other 8 to 10 percent would be theft issues.

23 Q Okay. Now when you get these sort of shrinkage reports
24 from asset protection, are they kind of like bulk data or is it

1 specific data before each individual being apprehended and each
2 item they're accused of taking?

3 A No. It's more in terms of more of like a financial
4 report, you know, where it would be a breakdown, you know, based
5 on, you know, some of the broader shrinkage issues.

6 Q So it's a broad report, not individually focused?

7 A No, it's broad.

8 Q So if you had a report it wouldn't include, for
9 example, the defendant's intent at your store?

10 A No. No. The only detail it would have, it would be an
11 account of stops or apprehensions that were made in a weekly or a
12 monthly period.

13 MR. BOGALE: No further questions, Your Honor.

14 THE COURT: Anything further?

15 MR. SCHACHTER: Yes, Your Honor.

16 THE COURT: Okay.

17 BY MR. SCHACHTER:

18 Q So again, if there's major -- excuse me.

19 In this particular case I'm being charged with
20 attempted robbery, a major felon in the state, it's your
21 testimony that as a store manager, you don't get any reports
22 about felonies happening on store property to store employees?

23 A Could you repeat that again please.

24 Q I'm being charged with attempted robbery in this case,

1 so a felony. It's your testimony that you did not receive any
2 reports about attempted robbery at your store on June 9th, at
3 all?

4 A No, I didn't.

5 MR. SCHACHTER: That's all Your Honor.

6 THE COURT: Anything further?

7 MR. BOGALE: Nothing further, Your Honor.

8 THE COURT: May this witness be excused.

9 MR. SCHACHTER: He may, Your Honor.

10 THE COURT: You may step down. You're excused.

11 THE WITNESS: Thank you.

12 THE COURT: Mr. Schachter.

13 MR. SCHACHTER: I just want to call Officer West for a
14 couple of brief questions.

15 THE COURT: Okay. Officer West, please.

16 THE BAILIFF: Your Honor, Officer West is not outside.

17 MR. HYLIN: I thought he was going to be here after
18 lunch, because we discussed being back at 1:30, but I was
19 addressing the whole bevy of witnesses. So I didn't really speak
20 to him personally.

21 THE COURT: Mr. Bogale, we knew Mr. Schachter and
22 Mr. Hylin talked about this and see if you have an idea where the
23 witness is.

24 (Discussion held off the record.)

1 MR. HYLIN: Your Honor, he's actually on call, I guess
2 so.

3 If we can take a brief recess.

4 THE COURT: We'll take a break.

5 Ladies and gentlemen of the jury, we have the attorneys
6 and I have lots of work to do while you're in the jury room.
7 Fortunately, you won't have anything to do for a few minutes but
8 wait for us and I appreciate your patience.

9 During this break do not discuss the case amongst
10 yourselves or with anyone else. Do not form or express any
11 opinion about the ultimate outcome about this matter. Do not
12 allow anyone to speak to you or in any matter tempt to have
13 influence you in should any person make such an attempt report it
14 to the bailiff immediately. News immediate a yeah or any
15 accounts regarding this indication independent investigation or
16 inquiry into any of the facts or circumstances surrounding the
17 case. Go ahead and go into the jury room for a few minutes.
18 Thank you. Outside the presence of the jury).

19 THE COURT: You may be seated. Do you have an state,
20 have we called for the officer now at this time.

21 MR. BOGALE: I didn't know the defendant was going to
22 call him. But I can have my investigator contact him now.

23 THE COURT: Yeah, will she please do that. So while
24 we're on this break. The Court has had an opportunity to go over

1 all of your instructions that you provided to us. The law clerk
2 has a copy of those instructions, which she will hand to you now.
3 And we also have some proposed verdict forms. And we will hand
4 those to you. And we can take a short recess and let you look at
5 these while we're waiting for the officer. And circumstances
6 actually now this is probably housekeeping, but in Schachter
7 would like to ask for the lesser included petit larceny
8 instruction with the attendant verdict form.

9 THE COURT: I think if you view the packet, proposed
10 instructions, the petit larceny instruction would be 23 B and we
11 would pull 23 A out. So you can kind of decide which one, we'll
12 just call it 23 in the finished packet.

13 MR. HYLIN: Oh, the grand larceny?

14 THE COURT: Right. There's grand and the petit.

15 MR. SCHACHTER: Perfect.

16 THE COURT: And in the verdict forms you were just
17 handed, we did prepare robbery -- attempted robbery and the
18 lesser included. So you can look at those and make a record.

19 In this proposed stack there's also the proposed
20 instructions Mr. Schachter was requesting for the Constitutional
21 Right not to testify.

22 This is just a set of instructions so we can all talk
23 about the same number at the same time. And it isn't a final set
24 of any instructions. So feel free to look at them, but that way

1 we're all looking at the same piece of paper at the same time.

2 So I think I'll give you a few minutes to look at
3 these. I don't know how long officer will take. If you're ready
4 to talk about the instructions in 10, 15, 20 minutes, and if the
5 officer is not here let the clerk know and we'll do that. I'd
6 rather keep working on whatever things we need to resolve while
7 we're waiting for the officer.

8 So we'll be in recess.

9 (Recess taken)

10 THE COURT: Thank you. Please be seated.
11 Mr. Schachter, the clerk tell tells me that maybe you don't want
12 to wait for Officer West.

13 MR. SCHACHTER: The follow-up questions were small and
14 as long as I've got until tomorrow to do my closing, I don't have
15 any problem releasing the jury and letting us do the housekeeping
16 end.

17 THE COURT: You know you have the right to have Officer
18 West. He's available.

19 MR. SCHACHTER: I understand.

20 THE COURT: By waiving your right to call him you're
21 giving up any issue about not being able to call him. You
22 understand that?

23 MR. SCHACHTER: Absolutely.

24 THE COURT: And that's what you want to do?

1 MR. SCHACHTER: Yes, Your Honor.

2 THE COURT: Have you made any decision about testifying
3 or not?

4 MR. SCHACHTER: Yes. I will not testify. So I did
5 jury instructions 25 --

6 THE COURT: You will request --

7 MR. SCHACHTER: Yes, please.

8 THE COURT: What we will do is we'll bring the jury
9 out, and you can stand up and say, Your Honor, I've changed my
10 mind, I'm not going to call Officer West. And I rest. And then
11 I can excuse the jury until tomorrow morning.

12 MR. SCHACHTER: Okay.

13 THE COURT: Do you have a rebuttal? You don't have a
14 rebuttal case, do you?

15 MR. BOGALE: No, Your Honor.

16 THE COURT: I didn't mean to exclude that as a
17 possibility. So let's bring the jury in. Thank you.

18 (Proceedings in the presence of the jury.)

19 THE COURT: Counsel, will you stipulate to the presence
20 of the jury?

21 MR. BOGALE: Yes, Your Honor.

22 THE COURT: Mr. Schachter.

23 MR. SCHACHTER: Yes.

24 THE COURT: Thank you. Okay. Mr. Schachter.

1 MR. SCHACHTER: The defendant has decided not to recall
2 Officer West and I rest my case.

3 THE COURT: Okay. So ladies and gentlemen of the jury,
4 that concludes the evidence that you're going to be hearing
5 today. What will happen next in the case is I will instruct you
6 as to the law that applies to the case, and then each side will
7 be able to make their closing arguments.

8 After all of that happens, then you may begin
9 deliberating and thinking about the ultimate outcome of the case.
10 But between now and the time I submit it to you for your
11 decision, after I've given you the law and you've heard arguments
12 of counsel, it would be premature for you to start deciding on
13 anything.

14 So we had kind of arranged for tomorrow morning to be
15 the time for closing arguments, but I don't think counsel is
16 really ready to go forward with that today, and Mr. Schachter.
17 So I am going to let you leave for the day and come back tomorrow
18 morning. So when you come back first thing in the morning you
19 will be hearing the law, I will instruct you as to the law and
20 then you'll be hearing closing arguments. And then you'll begin
21 deliberating.

22 So once you come and see us tomorrow morning you won't
23 be leaving while you're reaching your verdict. So if it happens
24 to be the lunch hour, we will be having food brought in for you

1 and you will be checking your cell phones with the bailiff. So
2 make sure your family and anybody who needs to get a hold of you
3 understand that you will be out of pocket tomorrow while you're
4 deliberating. So does anybody have any questions about that.
5 Okay.

6 Now during this evening recess it's going to be kind of
7 difficult, because you know you aren't going to hear any
8 testimony, so you might start thinking oh, what does this mean or
9 reaching a conclusion in your own mind that. And that would be
10 improper.

11 The jury is not supposed to reach any conclusions until
12 you begin your deliberations with each other, and you are not
13 allowed to do that until I give you the law, because you don't
14 really know what your putting the facts with the law in. And
15 closing arguments are intended to point out the facts that each
16 side thinks that you should think about when you're deliberating.

17 So this of evening is good time to rest and relax and
18 don't think about the case and then tomorrow morning you'll have
19 plenty of time to deliberate.

20 During of this evening's recess I wanted to remind you
21 of the admonition that I give at all the breaks and remind you
22 that this applies to electronic research, speaking electronically
23 and in writing, not just verbally and you may not discuss the
24 case amongst yourselves or with any other person. You may not

1 allow anyone to speak of the case to you or in any manner attempt
2 influence with regard to it. If any person should make such an
3 attempt, report it to the bailiff immediately.

4 Do not make any independent investigation or inquiry
5 into the facts and circumstances surrounding this case and do not
6 listen to, view or read any news media or any other accounts
7 regarding the case.

8 Thank you, ladies and gentlemen, we will see you back
9 tomorrow at 9:30.

10 (Jury excused for the day).

11 THE COURT: Okay. Everyone have a seat. Are you ready
12 to talk about instructions? Have you had a chance to look at
13 them enough?

14 MR. SCHACHTER: I have.

15 MR. HYLIN: I'm satisfied, Your Honor. We have to
16 choose between 23 A and B, other than that.

17 THE COURT: Okay. And you're ready to go forward.

18 MR. BOGALE: State's prepared to go forward.

19 THE COURT: Then let's look at the instructions as they
20 are in the packet. These are the instructions that you both
21 submitted basically, to me, with modifications if you've made
22 them or asked for them to be made.

23 The first one would be ladies and gentlemen of the
24 jury, the second one is if in these instructions any rule

1 direction or idea, three, if during this trial I have said or
2 done, four, the defendant Marc Paul Schachter, five, an amended
3 information is a formal method, six, every person charged with
4 the commission of a crime, seven in every crime there must exist.
5 Eight, a reasonable doubt is one based on reason. Nine, there
6 are two times of evidence, ten intent may be proved by
7 circumstantial evidence. 11, nothing that counsel say, 12,
8 neither the prosecution nor the defense, 13, it is the duty of
9 attorney, 14, to the jury alone belongs the duty of weighing, 15,
10 robbery is the unlawful taking. 16, the crime of robbery does
11 not in any degree depend upon, 17, the crime of robbery is in the
12 fact of the taking of person's property.

13 That was 17. 18, a thing is in the presence of a
14 person in respect to robbery, which is so within his reach. 19,
15 an attempt is an act done. 20, when a person has once committed.
16 And you'll see that that has a couple of changes in that it was
17 gender neutral in some places and not gender neutral in all, so
18 it's now gender neutral throughout. 21 is Mr. Schachter 's
19 requested instruction. Specifically the instruction that was
20 requested pursuant to Crawford with the change that I believe the
21 defense stipulated to that was requested by Mr. Bogale. And that
22 would be at the end of line three, the comma, but failed to do
23 so.

24 MR. HYLIN: That is correct, Your Honor.

1 THE COURT: Okay. 22, the offense of attempted robbery
2 includes the lesser offense. And this was requested, the lesser
3 offense of larceny was requested by the defense. And that's sort
4 of the transitional instruction. Then we have 23 A and 23 B. 23
5 B just makes the distinction between petit and grand.

6 MR. BOGALE: Your Honor, just to clarify. Is this the
7 time where we lodge objections or are we just going through the
8 numbers.

9 THE COURT: This is kind of when we would -- if we were
10 all, if Mr. Schachter were an attorney, we'd be in chambers and
11 we would talk about it. So you might as well feel free to talk
12 about it now.

13 MR. BOGALE: Okay. As to 23 A and B, 23 A --

14 THE COURT: Is the one you submitted to me.

15 MR. BOGALE: That's correct. All of the language in 23
16 A is included in 23 B somewhere. I think it's the first sentence
17 of 23 B. And so if you just do away with 23 A if we're going to
18 go with 23 B --

19 THE COURT: Right. Yes.

20 MR. BOGALE: And I would also submit removing the
21 language about grand larceny, because there's no evidence in this
22 case that the property was of a value of greater than \$650. So I
23 think any reference to grand larceny would be improper.

24 THE COURT: Are you okay with that, Mr. Schachter?

1 MR. SCHACHTER: Yeah. I agree, Your Honor. I think we
2 should do away with the grand larceny.

3 THE COURT: So instruction 23 A is pulled. So we don't
4 need that anymore. 23 B will be modified. And that will be on
5 line five, we'll just take line five stops at the end of 650, so
6 it will read, larceny is committed when a person intentionally
7 steals, takes and carries away personal goods or property owned
8 by another person. Petit larceny is committed when a person
9 intentionally steals, takes and carries away personal property --
10 goods, personal property of another with a value of less than
11 \$650. Then we'd delete the rest of it?

12 MR. BOGALE: Yes, Your Honor.

13 THE COURT: Mr. Schachter.

14 MR. SCHACHTER: Yes, Your Honor, that's fine.

15 THE COURT: Okay. So that will be marked as 23, the
16 change. Then we have if the defendant tried to flee, 24. It is
17 the Constitutional Right of the defendant, 25, that was
18 specifically requested by the defendant. 26, although you are to
19 have consider only the evidence.

20 27 it is your duty as jurors.

21 And 28, upon requiring to the jury room you will select
22 one of your number to act as foreperson. And that was modified
23 from the -- to be foreperson instead of foreman.

24 Then we have verdict forms, which based upon this

1 discussion, we should only have guilty and not guilty of
2 attempted robbery and guilty and not guilty of petit larceny. Is
3 that correct?

4 MR. BOGALE: Yes, Your Honor. So it would remove the
5 verdict form regarding the lesser included for grand larceny?

6 THE COURT: Correct.

7 MR. SCHACHTER: Your Honor, can we ask that the not
8 guilty verdict sheet be placed on top?

9 THE COURT: Did Mr. Hylin tell you to ask for that?

10 MR. HYLIN: Oh, I would never.

11 THE COURT: You would never. You would always.

12 Whatever -- however they flow will be the way they go
13 in there. I have no problem with whatever order.

14 So now with regard to the proposed packet, which is 1
15 through 28, as we've now modified, Mr. Bogale, do you have any
16 other objection to any of the exhibits, or the instructions 1
17 through 28?

18 MR. BOGALE: Yes, I do, Your Honor.

19 THE COURT: Okay.

20 MR. BOGALE: Start with just objection to jury
21 instruction number 21. That's the one that the defendant
22 offered. And I believe the Court admitted it previously.

23 THE COURT: I heard your argument.

24 MR. BOGALE: I just wanted to clearly articulate it.

1 The Crawford case deals with burglary, it's not a robbery case.
2 It doesn't deal with attempt either. I think the analogy that
3 the defense is trying to make is that all intent crimes, specific
4 intent crimes and burglary happens to be a specific intent crime,
5 so we're going to import the analysis from the Crawford case that
6 there is burglary into this case, which deals with an attempt.

7 I don't believe it's on point, Your Honor. I just
8 wanted to lodge that objection. I do see we have inserted the
9 amendment that the State requested if Your Honor decided to admit
10 this exhibit or decided to give this instruction.

11 And with that, that's my record, Your Honor.

12 THE COURT: Okay. Mr. Hylin.

13 MR. HYLIN: Well, Your Honor, as I mentioned before,
14 this is a negative instruction that comes at the behest of
15 Crawford versus State that we've discussed before, and I supplied
16 a copy of that case, also I believe. And the court in Crawford
17 made what the Supreme Court deemed a mistake when the court
18 rejected the negative instruction in that matter, which had to do
19 with self-defense, but they had adopted a line of reasoning that
20 started with a case called Stroup versus State years earlier, and
21 reversing themselves essentially and mandating upon request of
22 the defendant that a negative instruction be given if it
23 clarifies for the jury what a particular aspect of that charge
24 would be from a defendant's point of view.

1 And what this accomplishes, this instruction
2 accomplishes is to inform them that it's a specific intent crime
3 and they have to find beyond reasonable doubt that he
4 specifically intended to commit a robbery before they can find
5 him guilt. And I think this Crawford is pretty clear on that
6 issue.

7 THE COURT: Okay. The Court has had an opportunity to
8 review the Crawford case in its totality, as well as some of the
9 approved language that the Court utilized from running v. State.
10 I find at this time that the Court recognizes that the specific
11 jury instructions remind jurors that they may not convict the
12 defendant if proof of a particular element is lacking, should be
13 given upon his request, especially under the theory of the
14 defense case. So therefore, your objection is noted but denied
15 and I will be giving instruction 21 as modified.

16 MR. BOGALE: Thank you, Your Honor. One more point the
17 State would like to bring up. As to the verdict forms and the
18 lesser included offense of petit larceny.

19 THE COURT: Yes.

20 MR. BOGALE: First this is just kind of a formality. I
21 believe petit is spelled P-E-T-I-Tin the statute, and here it's
22 spelled petty with a TY at the end. And we can change that or
23 keep that. I don't know if it makes any difference.

24 THE COURT: We have to look and see how we define it.

1 MR. SCHACHTER: I have it here, Your Honor. It's NRS
2 205.220; is that correct?

3 MR. BOGALE: I believe so, Your Honor.

4 THE COURT: If you want it to be P-E-T-I-T, pursuant to
5 the statute, then we should change instruction 23 to reflect
6 that.

7 MR. BOGALE: That is correct, Your Honor. The State
8 would request that.

9 THE COURT: And Mr. Schachter, your position?

10 MR. SCHACHTER: No objection to the spelling.

11 THE COURT: So 23 will be changed to show line three,
12 it will be P-E-T-I-T. And the verdict form, with regard to
13 lesser included offense of on line -- I think 18 and half
14 P-E-T-I-T.

15 MR. BOGALE: And, Your Honor, while we're making an
16 addition to the verdict form on the petit larceny account, the
17 State believes it should read of a lesser included offense of
18 attempted petit larceny, because the defendant didn't commit
19 petit larceny. He would have committed an attempted petit
20 larceny.

21 THE COURT: You know, I'm not positive about that.
22 Because I think if you move the property past the point of sale
23 you've committed the larceny.

24 MR. HYLIN: Actually, even under the old common laws

1 you take it away from the counter the crime is complete. So any
2 asportation of the good itself.

3 MR. BOGALE: Any asportation, that is correct.

4 THE COURT: That's why it's a lesser included, because
5 it was actually not an attempt.

6 MR. BOGALE: Right. Okay. Thank you. That's my
7 mistake.

8 THE COURT: So everybody agrees with that?

9 MR. BOGALE: Yes.

10 MS. WILSON: And it wasn't Mr. Bogale's mistake, it was
11 Ms. Wilson's mistake, for the record.

12 THE COURT: This is interesting and we're all thinking
13 about it.

14 MR. SCHACHTER: I thought that was strange.

15 THE COURT: Okay. So anything else?

16 Mr. Bogale, for the State?

17 MR. BOGALE: No, Your Honor. Thank you.

18 THE COURT: Okay. Mr. Schachter, any objection to --

19 MR. SCHACHTER: No, Your Honor.

20 THE COURT: -- to the packet as it's now modified?

21 MR. SCHACHTER: No, Your Honor.

22 THE COURT: Any additions to the packet, Mr. Bogale?

23 MR. BOGALE: None, Your Honor.

24 THE COURT: Mr. Schachter, any additional instructions?

1 MR. SCHACHTER: No, Your Honor.

2 THE COURT: Then let the record reflect we've settled
3 the instructions on the record with the defendant present. They
4 are 1 through 28. The typographical changes will be made and
5 given, I think it's 28.

6 MR. BOGALE: Yes.

7 THE COURT: Okay. The typographical changes will be
8 made and given to you, but for purposes preparing for closing
9 arguments the numbers aren't going to change and the content will
10 be the same. It's just those few typographical issues that we're
11 going to change. We will give you those in the morning when you
12 come back, but can you prepare your closing arguments expecting
13 the numbers the way they are.

14 MR. BOGALE: Your Honor, just one more question. Are
15 we going to get a new exhibit list of all the exhibits they were
16 admitted and when they were tomorrow morning?

17 Thank you.

18 THE CLERK: Those are for Mr. Schachter. I can email
19 it to you this afternoon.

20 I'm highlighting and want to make sure I have
21 everything correct.

22 MR. BOGALE: That works for me. Thank you. What time
23 should we be coming back tomorrow morning?

24 THE COURT: Why don't you plan on being here by 20

1 after nine. I have some early morning hearings, but I anticipate
2 they'll be finished very quickly, otherwise if counsel and Mr.
3 Schachter stipulate to it, we can start the case between reading
4 instructions and prior to argument. Do you stipulate?

5 MR. BOGALE: I stipulate.

6 THE COURT: Mr. Schachter?

7 MR. SCHACHTER: So stipulated.

8 THE COURT: Then we'll start in the morning and have a
9 good evening.

10 Thank you, everyone. Court's in recess.

11 (Proceedings Continued to Wednesday, September 24, 2014)

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1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss.
3)

4 I, EVELYN J. STUBBS, official reporter of the
5 Second Judicial District Court of the State of Nevada, in and for
6 the County of Washoe, do hereby state:

7 That as such reporter I was present in Department No. 4
8 of the above court on, Tuesday, September 23, 2014, at the hour
9 of 9:00 a.m. of said day, and I then and there took stenotype
10 notes of the proceedings had and testimony given therein upon the
11 JURY TRIAL of the case of THE STATE OF NEVADA, Plaintiff, vs.
12 MARC P. SCHACHTER, Defendant, Case No. CR14-1044.

13 That the foregoing transcript, consisting of pages
14 numbered 1 to 141, inclusive, is a rough draft transcript of my
15 said stenotype notes, so taken as aforesaid, and is not fully
16 edited.

17
18
19 DATED: At Reno, Nevada, this 11th day of February,
20 2015.

21
22
23 /s/ Evelyn Stubbs
EVELYN J. STUBBS, CCR #356
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JUDITH ANN SCHONLAU
CCR #18
75 COURT STREET
RENO, NEVADA

COPY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

-o0o-

THE STATE OF NEVADA,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. CR14-1044
)	DEPARTMENT NO. 4
MARC PAUL SCHACHTER,)	
)	
Defendant.)	
_____)	

TRANSCRIPT OF PROCEEDINGS

TRIAL

WEDNESDAY, SEPTEMBER 24, 2014, 9:00 A.M.

Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
Computer-aided Transcription

A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY
BY: ZELALEM BOGALE
DEPUTY DISTRICT ATTORNEY
WASHOE COUNTY COURTHOUSE
RENO, NEVADA

FOR THE DEFENDANT: APPEARING IN PROPER PERSON

STANDBY COUNSEL OFFICE OF THE PUBLIC DEFENDER
BY: CARL HYLIN, ESQ.
DEPUTY PUBLIC DEFENDER
350 S. CENTER STREET
RENO, NEVADA

1 RENO, NEVADA; WEDNESDAY, SEPTEMBER 24, 2014; 9:00 A.M.

2 -oOo-

3 THE COURT: Let the record reflect we have convened
4 outside the presence of the jury. The typographical
5 corrections that you needed to have made on the Jury
6 Instructions have been made, and I think the law clerk has
7 handed you a copy.

8 MR. BOGALE: That's correct, Your Honor.

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Are you ready to do your argument as
11 soon as I read the Instructions?

12 MR. BOGALE: Yes, Your Honor, I am.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Are there any last minute issues before
15 we bring the jury in?

16 MR. BOGALE: No, Your Honor.

17 THE COURT: Okay. Then let's bring the jury in.
18 Counsel, Mr. Schachter, will you stipulate to the presence of
19 the jury?

20 MR. BOGALE: Yes, Your Honor.

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Thank you. Please be seated. Good
23 morning ladies and gentlemen of the jury. Well, as I told you
24 yesterday, today is the day that you are going to get this

1 case for resolution. Now in the order of what is going to
2 happen today is I am going to read to you the Instructions
3 that have been prepared in this case and that is the
4 Instructions with regard to the law. Then the State will be
5 allowed to do an opening and closing argument, then the
6 defendant will do his closing argument, and then the State is
7 allowed to conclude their closing argument. They are allowed
8 to go at the beginning and the end because they have the
9 burden of proof. Now I wish that I could just tell you what
10 the law is and talk about the law and answer your questions,
11 but that is not permissible under the law. What is required of
12 me is to read a specific set of Instructions to you that are
13 in writing. Now if any Instruction does appear to be
14 confusing as I read it or you lose track of what I am saying
15 as I read it, just relax, don't worry about it. You do not
16 have to take notes. You will have a set of the Instructions
17 for each of you in the jury room and you can review them
18 during deliberation.

19 (Whereupon the Instruction were read by the Court.)

20 THE COURT: Ladies and gentlemen of the jury, it is
21 now time to begin hearing closing arguments. The State may
22 proceed.

23 MR. BOGALE: Thank you, Your Honor.

24 THE COURT: You're welcome.

1 MR. BOGALE: May it please the Court. First of all,
2 I want to thank you all for your jury service. It has been
3 about three days, and I really appreciate your time and
4 attention, so thank you.

5 You have now seen and heard all of the evidence in
6 this case. And now you have been instructed on the law by the
7 Judge. So I am going to make it simple. I am going to go
8 through each of the elements of attempted robbery beginning
9 with robbery and moving to attempt to show you the State has
10 proven beyond a reasonable doubt that the defendant committed
11 the crime of attempted robbery in this case.

12 So the Jury Instruction on robbery is number 15. It
13 looks like this. You will have it in your packet. It is in
14 paragraph form, so I have kind of given you here a little
15 simplified numbered version of it. I am going to go through
16 each element here. So robbery is the unlawful taking. That is
17 number one. So what evidence do we have this was an unlawful
18 taking? Well, we have the testimony of Alex Monroy, the asset
19 protection investigator involved in this case. He saw the
20 defendant take stuff off the shelf. He took Icy Hot off the
21 shelf, heating pad off the shelf, a backpack off the shelf.
22 He took hair gel off the shelf. He took those small items and
23 stuffed them in the backpack and walked away with the
24 backpack. He paid for some other stuff and walked away with

1 the backpack and just left. He never paid for the heating
2 pad, hair dye, Icy Hot. That is unlawful. That is theft. He
3 stole those items, so that is the unlawful taking. We
4 satisfied that element. Okay.

5 Of other's personal property. I sort of just went
6 over this, but it wasn't his. He took it off the shelf. All
7 this stuff in Wal-Mart on the shelf is Wal-Mart's property.
8 It is not yours until you pay for it. And you have testimony
9 from Ana Young who said we weren't concerned with the stuff he
10 paid for. There was a receipt in a Wal-Mart bag. He paid for
11 a package of hair dye, a solar light. That was his stuff. We
12 were concerned about the backpack he didn't pay for and the
13 items inside the backpack he didn't pay for. That wasn't his
14 property. That was Wal-Mart's property. We satisfied that
15 element.

16 From their person or in his or her presence. So
17 what evidence do we have of that? Well, Jury Instruction 18,
18 these are all numbered, Jury Instruction 18 defines when
19 something is taken in a person's presence. Okay. It explains
20 that it is taken in the presence if it is within their reach,
21 inspection, observation or control that the person could, if
22 not overcome by violence, retain possession of it. So the
23 person here I'm talking about isn't Alex. Wal-Mart is the real
24 victim here. It was Wal-Mart's stuff. Wal-Mart is not a

1 person. You can't steal from Wal-Mart but you can rob
2 Wal-Mart by robbing its representative. Think of a bank
3 robbery. It is a common crime. Say a bank robber goes into
4 Wells Fargo and demands money to the teller. And the teller
5 gives him the money. He runs away. That is bank robbery of
6 the bank. And it is robbery, because the defendant used fear
7 in that case to scare the teller into giving him the money.
8 So you can't rob an entity, but you can rob the entity's
9 representative. In this case, that was Alex. He's asset
10 protection. He's their legal representative. He's there to
11 enforce the asset protection policy there, and the defendant
12 took those items in Alex' presence. Alex said, he testified
13 he was within 30 feet of him the entire time. He saw him take
14 the backpack off the shelf. He saw him take the hair dye, the
15 Icy Hot and heating pad. He saw him do it in Alex' presence
16 when the defendant left Wal-Mart with the stuff he didn't pay
17 for, the defendant used force to retain it in Alex' presence.
18 That element is satisfied as well.

19 Now against his or her will. This element is pretty
20 easy. It is against Alex' will. He doesn't want people to
21 steal and run away. You have seen the video of the
22 altercation outside. The whole purpose of asset protection is
23 to stop people from shoplifting and just running away so he
24 confronted him telling him you should come inside and you talk

1 to me. I want to talk about the items that you didn't pay
2 for. The defendant resisted that with force. So that was
3 clearly against Alex' will. Number four is satisfied.

4 Number five is by means of immediate force or
5 violence to his or her person at the time of the taking. I
6 just spoke a little about that. We have evidence from Alex
7 Monroy. We have evidence from Ana Young. We have evidence
8 from Matt Hand. We have evidence from Coralee Bunker. All
9 four of these people saw the defendant pushing Alex Monroy.
10 Matt Hand knew it was a prospective shoplifter because he
11 knows who Alex is. Alex is asset protection. He's seen Alex
12 confront people before. He figured it was a shoplifter.
13 Coralee Bunker saw it all happen, saw the defendant initiate
14 the force. She testified to that. We have Ana Young, she was
15 there as a witness the entire time. She saw the defendant
16 initiate the force. Of course, we have testimony from Alex
17 who testified to the same thing. So immediate force or
18 violence to his or her person at the time of the taking, that
19 is satisfied.

20 Now those are the elements. The State has satisfied
21 all the elements of robbery. There is an additional note in
22 the Jury Instructions on robbery that sort of explains how the
23 use of force is integrated into the robbery crime. It says a
24 taking is by force if the force is used to obtain or retain

1 possession of the property, to prevent or overcome resistance
2 to the taking or facilitate escape. We only need to prove one
3 of those. But I would submit the evidence shows the defendant
4 tried to do all three of those. He tried to retain possession
5 of the property with force. He was pushing with Alex Monroy.
6 In fact, he dropped the plastic bag. The actual stuff he paid
7 for. We have testimony from Ana Young he was more concerned
8 with the backpack and the items he didn't pay for. He tried to
9 use force to overcome resistance to the taking. Alex was
10 resisting the taking. He's an asset protection associate. He
11 told him he wanted him to come inside. After the defendant
12 pushed him, he tried to keep the defendant on the premises
13 until the police arrived. So clearly the force was used to try
14 to overcome Alex' resistance or to facilitate escape. You
15 have seen the video. He was trying to run away with the
16 backpack. Once Alex had the backpack, he was trying to leave.
17 He was trying to flee. Now this is an attempted robbery,
18 because the defendant failed at this. He didn't retain
19 possession of the property. He didn't overcome the resistance
20 to the taking. It was ultimately taken from him. He didn't
21 escape. So he didn't complete the robbery. He tried to, but
22 he didn't complete it. So that is where we move into attempt.
23 This is what the Jury Instruction on attempt looks like. It
24 is jury Instruction 19. It says attempt is an act done with

1 the intent to commit a crime intending but failing to
2 accomplish it. An attempt to commit a crime, three elements
3 are involved: One, the intent to commit the crime. Two,
4 performance of some act towards the commission. And, three,
5 failure to consummate its commission. Let's go through those
6 three elements there. Again, I have kind of simplified it on
7 this page. So intent to commit the crime. Well, as the Judge
8 instructed you, intent is a mental state. You can't directly
9 observe it. It is a state of mind in your head. You can't
10 directly observe that. But that is why we have Jury
11 Instruction 10 which tells you intent may be inferred from
12 actions. So if you look at somebody's actions, you can
13 determine what their intent is. Intent can be proven by
14 circumstantial evidence, because you can't directly observe
15 it. What are the actions here? Well, the actions are the
16 defendant pushed Alex Monroy. He kept pushing Alex Monroy.
17 He grabbed Alex Monroy's throat. He grabbed Alex Monroy's
18 thumb and twisted it. Those are the actions of this case. He
19 was trying to keep the bag, ultimately, sorry the backpack.
20 The backpack was taken from him. So he intended to commit the
21 crime. Look at his actions. That is what you look at.

22 Circumstantial evidence, as Jury Instruction number
23 9 tells you, is proof of a chain of circumstances. What are
24 the chain of circumstances to prove his intent? Well, Alex'

1 observation of the defendant taking the stuff. Alex sees him
2 take the backpack the other time I talked about. He doesn't
3 pay for them. The defendant walks out. He's confronted. They
4 say, hey, I want to talk to you about the stuff you didn't pay
5 for. He holds up the plastic bag. No, You didn't pay for
6 this. No, we are talking about the backpack. Oh, I don't know
7 what you are talking about. Then he uses physical force and
8 pushes him. That chain of circumstances shows he intended to
9 rob. Rob is theft with force. He stole the items. He used
10 force. His intent was to rob. He failed to do it because he
11 never got away with robbery. So intent has been proven. He had
12 the intent to rob.

13 Number two, performance of some act towards its
14 commission. Well, there are several acts here. The push,
15 push, push, grab, twist, push, push, run away. He did a bunch
16 of different acts that you can rely upon in evidence toward
17 its commission. He wanted to run away with the backpack. He
18 got confronted and he decided to use force to keep it. Number
19 two is proven.

20 Number three, failure to consummate it commission.
21 Well, we know he failed because the backpack was ultimately
22 recovered. The backpack was restocked. The items were
23 restocked. You have seen a picture of them. They are
24 restocked and resold. Those were new items. They didn't have

1 to send them off, you know, to loss prevention or something to
2 get a damage receipt. These were new items. They restocked
3 them. Wal-Mart retained possession of them. The defendant
4 did not, so he failed to rob Wal-Mart. That is why this is an
5 attempt.

6 Based on all the evidence, ladies and gentlemen of
7 the jury, the State has proven beyond a reasonable doubt the
8 crime of attempted robbery. You should find him guilty of
9 that crime. Thank you.

10 THE COURT: Thank you. Mr. Schachter, you may now
11 make your closing argument.

12 THE DEFENDANT: Thank you. Ladies and gentlemen of
13 the jury, first of all let me thank you for your patience as I
14 stumbled through the last couple of days with you and with the
15 court. Thank you for your patience. This has been by far the
16 most stressful 110 days of my entire life. On Monday I asked
17 you to listen carefully to the testimony, give me a fair
18 opportunity to present my defense and not hold any of my
19 inexperience against me. I now ask you to use your common
20 sense as I review the testimony we heard here in the last two
21 days.

22 Mr. Bogale and the State have accused me of the
23 crime of attempted robbery. It's an extremely serious life
24 altering allegation as you can all imagine. In their attempt

1 to prove that accusation, the State presented six separate
2 witnesses. Yesterday we heard from the Wal-Mart cashier,
3 Coralee Bunker, who testified that I purchased the garden
4 light and a box of hair dye. That is in contrast to
5 Mr. Bogale's original opening statement that I wasn't there to
6 shop. She also testified that the anti-theft alarm didn't go
7 off as I walked in the door. I'll leave that to your own
8 common sense as to why the alarm wouldn't go off if the items
9 inside were stolen. We heard from deputy Ellis, the sheriff
10 who testified that I had sixteen dollars and some odd change
11 on my person when I was booked into the jail. I'm not really
12 sure how that proves that I intended to rob Mr. Monroy, but at
13 least it was honest testimony.

14 We heard from Alex Monroy's friend, Mr. Hand, who
15 testified that even though Mr. Monroy was in a fierce battle
16 with myself who was maybe drunk, he didn't bother to get out
17 of the car or call anybody else from Wal-Mart. He called
18 9-1-1, but not anybody to help from Wal-Mart. That wasn't his
19 responsibility he said. We heard from officer West who told
20 us when he arrived on the scene I was sitting on the curb. A
21 sure sign I was trying to flee from stealing or robbing
22 Wal-Mart. Also officer West testified even though he knew that
23 the backpack and items inside the backpack were evidence in
24 this crime, he didn't take them because Wal-Mart already had

1 possession of them. He didn't take any photographs of them,
2 but he did remember that he checked all three zipper pockets
3 of the backpack. Even though, as you can see from the picture,
4 there is only one zipper in that backpack.

5 Then we heard Mr. Monroy, this was on-- I'm sorry --
6 Mr. Monroy who did take the picture. You can see in that
7 picture there is only one zipper pocket on the backpack. We
8 heard from Ana Young who testified she never saw any video or
9 witnessed me personally stealing anything. She said even
10 though she's a video expert, there was no video of me taking
11 the backpack off the shelf, no video in automotive of me
12 selecting two hair dyes, health and beauty, no video of me
13 selecting garden lights. No video of me stuffing things
14 inside the backpack. No video of me walking in the store she
15 could find, even though she testified 90 percent of the store
16 is under surveillance. The only blind spots are in
17 housewares, sporting goods and grocery. Ms. Young also didn't
18 see Mr. Monroy drop his phone, although she did pick up my bag
19 as Mr. Bogale just said. She testified she didn't call 9-1-1,
20 that she called non-emergency dispatch because it wasn't an
21 emergency. And on Monday we heard from Mr. Monroy, himself,
22 who by his own admission was a complainant, not a victim. He
23 incredibly testified his memory was better on Monday than 30
24 minutes after the incident. I can tell you I have done

1 nothing but eat, sleep, drink this day over and over for the
2 past 110 days, and I don't remember better today than right
3 after it happened.

4 He says in his written statement that he first
5 observed me in automotive at 11:40 and then he testified he
6 originally saw me in the pharmacy earlier because that is what
7 the video showed. He said I passed all the points of sale,
8 then he admitted that I paid for some items in the garden
9 center and, again, it didn't occur to me until we were reading
10 the Jury Instructions yesterday, and as I was tweaking on the
11 statement here that Mr. Monroy's own testimony is the most
12 important thing, and that is why all the admonishment by the
13 Court about not thinking about the case before you heard the
14 law. The law says attempted robbery is an intent crime. I had
15 to have -- the State has to prove beyond a reasonable doubt
16 that I had the intent to commit the robbery before the actual
17 commission. That is 19 and 21 of the Jury Instructions.

18 Mr. Monroy testified that he didn't even get a chance to
19 identify himself. That he dropped the phone as I pushed him
20 when he originally confronted me. If I didn't know that he was
21 Wal-Mart security when I first pushed him, how could I have
22 had the intent to commit the robbery? I didn't know he was a
23 Wal-Mart employee. I pushed him because he was in my way.

24 That's it. All this time, I have been thinking I am not guilty

1 because I didn't steal anything. But the fact is I am not
2 guilty because I didn't steal anything, and the State can't
3 prove beyond a reasonable doubt that I had the intention,
4 because there was no intention to rob. The property was mine,
5 and he was in my way. The continued altercation is false
6 accusation, but there was no prior intent and the State hasn't
7 shown any prior intent.

8 MR. BOGALE: Your Honor I am going to object.

9 THE COURT: Mr. Schachter, I want to remind you this
10 is argument, and you can't tell the jury what you might have
11 said you were doing if that evidence isn't here. Ladies and
12 gentlemen remember this is argument not testimony.

13 THE DEFENDANT: So I just ask you in closing to use
14 your common sense. Think about everything that was said from
15 the witnesses not from me. Just what was said from the
16 witnesses. Go back to the jury room, deliberate and come back
17 with not guilty verdicts. Thank you for all your patience and
18 again for my inexperience. Thank you. Thank you.

19 THE COURT: You're welcome. Counsel, you may
20 conclude your arguments.

21 MR. BOGALE: Thank you, Your Honor. I am going to
22 address some of the points Mr. Schachter just made, but first
23 let me say this, if the defendant didn't fight, if he didn't
24 fight, if he didn't use force or violence and keep the

1 property he stole from Wal-Mart on June 9th, we wouldn't be
2 here today talking about attempted robbery. You wouldn't be
3 here. I wouldn't be here. Cheryl wouldn't be here. The
4 Honorable Judge wouldn't be here. Court staff wouldn't be
5 here. Defendant wouldn't be here. Standby counsel, none of
6 us would be here talking about attempted robbery if he didn't
7 fight, but he did. You have seen the evidence in this case.
8 You saw him use force and violence to keep the stuff he stole.
9 Alex saw him grab the backpack off the shelf. He saw him grab
10 the items off the shelf and stuff them in the bag. That is the
11 evidence in this case that has been presented to you. Of
12 course, he ultimately failed. That is why it's an attempt.
13 He clearly intended to commit a robbery. They asked him about
14 the stuff he stole. This bag, this is my stuff. We are not
15 concerned about that, talking about the backpack. I don't
16 know what you are talking about. Push. You have heard that
17 several times. That is what happened in this case. He's
18 committed an attempted robbery.

19 Now in my opening statement, I said a few things
20 about the stuff, about the evidence you are going to hear in
21 this case. We have shown all that, especially the core facts.
22 The core fact he stole the items off the shelf, stuffed it in
23 his bag, walked out without paying. You heard it from Alex.
24 You heard it from Ana. You heard it from Coralee. You have

1 seen and heard all that evidence. You have seen the video of
2 the fight. It's not great high definition video. Alex
3 identified himself in the video. So did Ana Young. Matthew
4 Hand in the car drove around, pulled in and stopped. They all
5 saw the defendant using force and violence. Those are the core
6 facts.

7 But even other facts were shown. I said he had
8 about 20 bucks on him. That's right. He spent five bucks in
9 cash for the solar lights and the other package of hair dye.
10 When he gets booked, he has about sixteen dollars on him.
11 That is about twenty-one dollars. He wasn't there to shop. I
12 think the defendant made some reference to that. Well, I
13 think you have evidence to show he was there to steal. Yeah,
14 he bought a solar light. Yes, he bought a package of hair
15 dye. But that was all done to legitimize his presence there.
16 He saw Alex. After he stuffed the bag, Alex said he was ready
17 to walk toward the garden center doors. He makes eye contact.
18 He changes course and decides to buy a couple of things. Was
19 he going to buy those things when he walked in the store? No.
20 He bought items to legitimize his presence there. You are
21 allowed to make reasonable inferences from the evidence in the
22 case. There is an Instruction to that effect. You can
23 reasonably infer that he did that to sort of cover up his
24 intent to steal. He intended to steal.

1 The defendant makes a plea to your common sense.
2 Well so do I. Use your common sense. Nobody is hiding
3 anything because there is no video. Wal-Mart, unfortunately,
4 can't cover every square inch of the store. But we don't need
5 video of him taking the items off the shelf. Alex saw him.
6 Alex Monroy saw him. He saw him stuff them in the bag. The
7 bag still had a tag inside and was able to be scanned by Ana
8 Young to get the training receipt. The UPC number. She got
9 the value of it from the tag inside. Let me just bring one
10 other point of common sense. The defendant is pushing a
11 backpack in his cart. If the backpack was his, why wasn't he
12 wearing it? After all, a backpack is to be worn on your back,
13 right? So if you are there with a backpack, why would you
14 place it in your cart and risk like turning around to buy
15 something and having the possibility of it being stolen? Why
16 would you do that? Why would you later ditch the cart and
17 then wear the backpack later? Why weren't you wearing it the
18 entire time? That doesn't make sense.

19 Let me take you a couple days back to jury
20 selection. I posed a hypothetical of going 26 in a 25. Okay.
21 As you know, this isn't a 26 in 25 case. This is a push,
22 push, push, push, grab, twist, push, run. That is what this
23 case is. It is not a crime by a hair. This is a crime beyond
24 a reasonable doubt, and the State has proven that. Thank

1 goodness it isn't, for Mr. Monroy's sake at least, not 100
2 miles per hour in a school zone, and the defendant had a gun
3 on him and knife. He didn't have that. There is no evidence
4 of that. This isn't a crime by a hair. This is a crime
5 beyond a reasonable doubt.

6 The testimony that Mr. Schachter alluded to about,
7 oh, I was sitting on a curb, that is evidence of flight. We
8 saw the video. You saw the video. He was running away. He
9 was trying to run with the bag, trying to get past Alex Monroy
10 while Alex was standing in front of him. Of course, he was
11 trying to flee. The alarm didn't go off. Coralee Bunker says
12 the alarm doesn't always go off with our stuff. She told you
13 sometimes things under a certain value just don't go off.
14 Wal-Mart doesn't keep track of those items in that way. So
15 that doesn't explain that bag and stuff inside it.

16 The defendant clearly had intention to rob. The
17 intention is proven by his actions. He's pushing him. He
18 grabbed his throat, twisted his thumb. He tried to rob them.
19 He failed. That's why it's attempted robbery.

20 The State asks you to convict the defendant and find
21 him guilty of attempted robbery. Thank you.

22 THE COURT: Thank you. The Court at this time is
23 ready to provide the case to the jury. The law provides that
24 12 people will hear the case, and as you know, there is

1 thirteen. Yes, Ms. Argall, I am so sorry. As it turned out,
2 you were the last person selected, therefore, you are our
3 alternate and everyone stayed healthy, and I am especially
4 sorry because I know this happened to you before, and I saw
5 how diligently you were taking notes. So you really get the
6 award for hanging in there with the Court twice now. And as
7 you know, it is possible that there could be a problem with
8 one of the jurors between now and the time they reach a
9 verdict. If that were to happen, we would need to bring you
10 back into the room and substitute you on to the jury. So even
11 though everyone else in a few minutes will begin deliberating
12 on this matter, you are subject to the admonition I have given
13 at all the breaks. And you cannot yet start forming or
14 expressing any opinion about the case, nor may you make any
15 independent investigation inquiring into the matter or allow
16 anyone to speak of the case to you, listen, view or read any
17 newspaper account regarding the case or any other account
18 regarding the case. And stay in telephone contact with my
19 office until we can in fact excuse you from bringing you back
20 into the courtroom. Are you comfortable with that admonition
21 and will you follow it?

22 THE ALTERNATE: I will.

23 THE COURT: I think I owe you lunch at the very
24 least, so we'll have to make arrangements for that. If you

1 leave your note pad with the bailiff, she'll keep it secure,
2 and if you are brought back in, she will have it for you.
3 Otherwise, go ahead in the jury room, gather up your
4 belongings and give us your phone number. Thank you.

5 Ladies and gentlemen of the jury, we don't tell
6 anyone who the alternate is, because we like everyone to pay
7 attention and things can happen. We don't know who that will
8 be until the very last moment. But if you remember during
9 jury selection, she told us she actually was an alternate on a
10 case in this department with me previously. That is why I
11 really owe her lunch. But that being said, the twelve of you
12 will be the ones who will be hearing this matter. And we are
13 at the stage in the proceedings when I will swear the officers
14 to take charge of you. Once that happens, you will go into
15 the jury room and the clerk will bring into you all the papers
16 that have been admitted or items that have been admitted into
17 evidence here in this case.

18 In addition, you will receive the written
19 instructions of the Court that I read to you, and you will
20 find the verdict forms that have been prepared for your
21 convenience. So all of that will be provided to you in just a
22 few minutes after you go into the jury room and everyone is
23 prepared to begin their deliberation.

24 The clerk will swear the officers to take charge of

1 the jury.

2 (Whereupon the the officers were sworn by the clerk.)

3 THE COURT: Ladies and gentlemen, go ahead and go
4 into the jury room in a few minutes. We'll be in recess
5 subject to your call.

6 (Whereupon the jury deliberated.)

7 THE COURT: Please be seated. Yesterday you all
8 asked for an updated evidence list, and I think the clerk told
9 you she would give it to you this morning. Did you both get
10 that?

11 MR. BOGALE: Yes, Your Honor.

12 THE DEFENDANT: I didn't, Your Honor. Oh, I did.

13 THE COURT: Do you have it?

14 THE DEFENDANT: I do.

15 THE COURT: She usually puts it on the desk. As you
16 can see, it tells you which exhibits have been admitted. All
17 the exhibits admitted will go to the jury except for 14. 14
18 was admitted for that limited purpose. If the jury requests
19 it, we'll convene and do that. Also I want to make a record
20 the computer that we have been using in the courtroom, it is
21 my understanding it has nothing on it except the program that
22 allows those videos to be played on it. That computer will be
23 made available to the jury. It has been disabled for its
24 internet connection. And even if you could figure out how to

1 get around that, you have to have the web address which we
2 have not provided or the internet address. So the clerk will
3 be providing the computer to the jury for them to use if they
4 want to review the videos. Any objection to that process?

5 MR. BOGALE: No objection, Your Honor.

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: If there is nothing further, we'll be in
8 recess subject to the call of the jury.

9 (Recess taken.)

10 THE COURT: Thank you. Please be seated. Do we have
11 a verdict?

12 THE BAILIFF: Yes, we do, Your Honor.

13 THE COURT: Okay. Will you please bring the jury
14 in? Please be seated. The clerk will call the roll of the
15 jury. Please answer here or present when your name is called.

16 (Whereupon the roll of the jury was called by the clerk.)

17 THE COURT: The clerk will record in the minutes of
18 the Court that the jury is all present. I see that you have
19 some paperwork in your hand. Mr. Royce, are you the
20 Foreperson?

21 A JUROR: I am, Your Honor.

22 THE COURT: Has the jury reached a verdict?

23 A JUROR: Yes, Your Honor.

24 THE COURT: Go ahead and hand the verdict to the

1 bailiff who will in turn hand it to the Court. The whole file
2 is fine.

3 THE COURT: Mr. Royce, you may be seated. The
4 defendant will please rise. The clerk will read the verdict

5 THE CLERK: In the Second Judicial District Court of
6 the State of Nevada in and for the County of Washoe the State
7 of Nevada, Plaintiff, versus Marc Paul Schachter, defendant.
8 Case CR14-1044, Department 4, verdict. We the jury in the
9 above entitled matter find the defendant, Marc Paul Schachter,
10 guilty of Count I, attempted robbery. Dated this 24th day of
11 September 2014, Tom Royce, Foreperson.

12 THE COURT: Thank you. You may be seated. Does
13 either party wish the jury polled?

14 MR. BOGALE: Not the State, Your Honor.

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Ladies and gentlemen of the jury the
17 clerk, will now poll you as to the verdict.

18 (Whereupon the clerk polled the jury.)

19 THE COURT: The clerk will record the verdict in the
20 minutes of the Court.

21 Ladies and gentlemen of the jury, I want to thank
22 you for your service. We appreciate your willingness to serve
23 and the attentiveness you have provided to this case, and the
24 time that you have been here with us. I hope you understand

1 better what goes on in juries and your experience is one you
2 will again serve on a jury in the future. I know it was a
3 hardship for you, and we appreciate that. You gave so much
4 time and effort to this process. The admonition I gave you at
5 all the breaks, you are now released from. You no longer have
6 to follow that. You can talk about your jury service with
7 anyone you want to. You can discuss the case, anything you
8 would like to do. However, your right is still yours to not
9 discuss the case. So if you don't want to answer questions,
10 don't want to talk to anyone about the case, you do not have
11 to. In a few minutes what is going to happen next, the clerk
12 is going to give us a date and time for the sentencing of the
13 defendant. But before I sentence the defendant on these
14 charges, I will get a report from the Division of Parole and
15 Probation. They will make a recommendation to me as to the
16 appropriate sentence within the law, and then we'll have a
17 hearing. And in that hearing, both sides can present their
18 case and argument as to what the potential sentence should be
19 at which point I will make the decision. If you would like to
20 be present for the sentencing, you may do so, or just call the
21 office and we'll be glad to tell you what occurs. If you have
22 any questions for me, I am glad to answer them. In fact, I
23 would be happy to have you come into my office when you go get
24 your personal belongings, and I could visit with you for a few

1 minutes if you have any questions and would like to talk to
2 me. If not today, another time. People can either call
3 deputy Butler or me for any questions you may have. Again,
4 thank you very much for your service. I will let you go on
5 into the jury room, let you start gathering up your belongings
6 while we tend to the business of setting the date for
7 sentencing. Thank you very much. Please be seated.

8 How much time are you going to want for the
9 sentencing?

10 MR. BOGALE: Like for the actual hearing?

11 THE COURT: Right.

12 MR. BOGALE: I guess thirty minutes.

13 MR. HYLIN: I would say two hours with their
14 pleading unless they aren't going to pursue the habitual. I
15 was also going to ask for a date a little further out so we
16 could do a more proper memo.

17 THE COURT: Are you going to work on mitigation with
18 Mr. Schachter?

19 MR. HYLIN: Mr. Leslie will.

20 THE COURT: Mr. Schachter, you are going to get help
21 of standby counsel for your sentencing.

22 THE DEFENDANT: I am pretty sure, although I haven't
23 made up my mind, I will revoke waiver and use counsel for
24 sentencing purposes. But I just want to try to get everything

1 in my mind straight first. I was not expecting this.

2 THE COURT: I think for what Mr. Hylin is saying
3 they are going to start working on this with you so there
4 isn't a delay. And you are still proceeding with Count III?

5 MR. BOGALE: Yes, Your Honor.

6 THE COURT: How much time do you think you would
7 like?

8 MR. HYLIN: I was going to ask for an additional
9 month so we could formulate a better sentencing scenario. We
10 should also set a status hearing in a week so he can make a
11 decision so we are not spinning our wheels. We are looking at
12 December 4th at 3:00 o'clock in the afternoon.

13 MR. HYLIN: I think that would be enough,
14 particularly if we had a status hearing in the week.

15 THE COURT: We could always change it if you like.

16 MR. HYLIN: Right. 3:00 o'clock p.m.?

17 THE COURT: Yes. We will set the status hearing on
18 the 9:00 a.m. calendar. Would next week be soon enough
19 Mr. Schachter?

20 THE DEFENDANT: Yes, Your Honor.

21 THE CLERK: October 2nd at 9:00 o'clock.

22 THE COURT: Okay. Is there anything further for the
23 Court at this time?

24 MR. HYLIN: Not from me, Your Honor.

1 THE COURT: Mr. Schachter?

2 THE DEFENDANT: No, Your Honor.

3 MR. BOGALE: Not from the State, Your Honor.

4 THE COURT: All right. Then the defendant's bail
5 will remain the same as it has been.

6 THE DEFENDANT: I don't know what it is right now.

7 THE COURT: I don't know.

8 THE DEFENDANT: Was there additional bail when the
9 habitual charge was filed?

10 MR. HYLIN: Well, they did dismiss the burglary, so
11 it should probably take \$20,000 off of it at least.

12 THE COURT: I am looking at the proceedings from
13 Justice Court. It looks like the bail was set at \$20,000 in
14 Justice Court. And I'm not seeing whether it was ever
15 increased. Under the probable cause sheet, they set bail at
16 \$10,000.

17 MR. HYLIN: For attempted robbery? I don't have the
18 bail schedule with me. I can't say for sure. That sounds
19 about right for an attempt.

20 THE COURT: So I think \$10,000 was the bail
21 originally under the bail schedule, but it looks like the
22 Justice Court set the bail at \$20,000 bondable. The clerk is
23 calling the jail right now to see if they show something
24 different.

1 THE CLERK: Currently set at \$40,000.

2 THE COURT: I don't know how it got to \$40,000, but
3 it's at \$40,000 right now.

4 MR. HYLIN: I don't know if they add-booked him on
5 the burglary. Each Category B is \$20,000 on the usual bail
6 schedule. That is probably how it happened.

7 MR. BOGALE: The \$40,000 likely includes the
8 burglary count now dismissed. The State wouldn't be objecting
9 to it being reduced to \$20,000. It is my understanding he's
10 already in custody. I ask he be remanded so we can keep the
11 bail at \$20,000 to reflect the burglary count.

12 THE COURT: We'll set the bail at \$20,000 bondable
13 and you are remanded back to the custody of the Sheriff. The
14 Division of Parole and Probation will be getting in touch with
15 you in the next couple of weeks. There being nothing further,
16 Court's in recess.

17 (Whereupon, the proceedings were concluded.)

18 --oOo--

19

20

21

22

23

24

1 STATE OF NEVADA,)
2) ss.
COUNTY OF WASHOE.)

3 I, Judith Ann Schonlau, Official Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, DO HEREBY CERTIFY:

6 That as such reporter I was present in Department
7 No. 4 of the above-entitled court on Wednesday,
8 September 24, 2014, at the hour of 9:00 a.m. of said day and
9 that I then and there took verbatim stenotype notes of the
10 proceedings had in the matter of THE STATE OF NEVADA vs. MARC
11 PAUL SCHACHTER, Case Number CR14-1044.

12 That the foregoing transcript, consisting of pages
13 numbered 1-31 inclusive, is a full, true and correct
14 transcription of my said stenotypy notes, so taken as
15 aforesaid, and is a full, true and correct statement of the
16 proceedings had and testimony given upon the trial of the
17 above-entitled action to the best of my knowledge, skill and
18 ability.

19 DATED: At Reno, Nevada this 28th day of January, 2015.
20
21

22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24

CR14-1044
STATE VS. MARC PAUL SCHACHTER 1 Page
District Court 09/24/2014 11:30 AM
4245
Washoe County
NCR011BT

CODE 4245

FILED

SEP 24 2014 @ 11:30am

JOEY HASTINGS, CLERK
By: *[Signature]*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR14-1044

v.

Dept. No. D04

MARC PAUL SCHACHTER,

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, MARC PAUL SCHACHTER, GUILTY of COUNT I. ATTEMPTED ROBBERY.

DATED this 24th day of September, 2014.

Tom Roice
Joan Roice
FOREPERSON

1 4185
2 JUDITH ANN SCHONLAU
3 CCR #18
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -o0o-

11 THE STATE OF NEVADA,)	
)	
12 Plaintiff,)	
)	
13 vs.)	CASE NO. CR14-1044
)	DEPARTMENT No. 4
14 MARC PAUL SCHACHTER,)	
)	
15 Defendant.)	
_____)	

16
17 TRANSCRIPT OF PROCEEDINGS

18 STATUS HEARING

19 THURSDAY, OCTOBER 2, 2014, 9:00 A.M.

20 Reno, Nevada
21
22

23 Reported By: JUDITH ANN SCHONLAU, CCR #18
24 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
Computer-aided Transcription

A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY
BY: ZELALEM BOGALE,, ESQ.
DEPUTY DISTRICT ATTORNEY
WASHOE COUNTY COURTHOUSE
RENO, NEVADA

FOR THE DEFENDANT: APPEARING IN PROPER PERSON

STANDBY COUNSEL: OFFICE OF THE PUBLIC DEFENDER
BY: JAMES LESLIE
DEPUTY PUBLIC DEFENDER
350 S. CENTER STREET
RENO, NEVADA

PAROLE AND PROBATION: BRIAN CAMPOLIETO

1 RENO, NEVADA; THURSDAY, OCTOBER 1, 2014; 9:00 A.M.

2 -oOo-

3 THE DEFENDANT: Good morning, Your Honor.

4 THE COURT: How are you today, Mr. Schachter?

5 THE DEFENDANT: A little better, I think.

6 THE COURT: This is the time set for a status
7 hearing. I think we set this to see if you were going to ask
8 that your standby counsel act as your attorney for sentencing
9 purposes.

10 THE DEFENDANT: I talked to Mr. Leslie briefly
11 before the hearing. It would be helpful to me if I could know
12 ballpark wise what we are looking at. Are we deciding whether
13 life without, ten to life or some other sentence as opposed to
14 giving the Court comment prior to the trial and everything,
15 the pretrial issues and the testimony at the trial. Are we, I
16 mean is that what the Court sees as the probable outcome here?

17 THE COURT: I haven't reached any idea about what I
18 am going to do. The State has alleged that I find you a
19 habitual criminal. But I will wait and hear the evidence and
20 the argument and whatever the mitigation may be. And then,
21 even if I were to find you a habitual criminal, the amount of
22 your sentence is still, again is up to be debated. If you
23 think I know what I am going to today, I don't.

24 THE DEFENDANT: I meant more ballpark, not to hold

1 you to specific.

2 THE COURT: No, I am sorry, I can't. It is a nice
3 question. Mr. Leslie would love it if I could give him that
4 for every time.

5 THE DEFENDANT: If we know what your intentions are
6 in this court, it goes much smoother. I am aware enough to
7 follow along.

8 THE COURT: You mean I kind of try to give you
9 hints?

10 THE DEFENDANT: Yes.

11 THE COURT: You didn't listen to me when I told you
12 not to represent yourself.

13 THE DEFENDANT: That is why I say it is a learning
14 process. That's why I asked. Now in that case, I don't see
15 the need to bring back the Public Defender, so I would just as
16 soon keep the pro per status, really, Your Honor.

17 THE COURT: Counsel for the State, you are alleging
18 how many priors?

19 MR. BOGALE: I believe in the Amended Information
20 the State listed seven.

21 THE COURT: And you are requesting they find the
22 defendant a habitual criminal?

23 MR. BOGALE: That's correct.

24 THE COURT: What is your request going to be, just

1 so he understands what he's looking at.

2 MR. BOGALE: Well, the maximum penalty on the
3 habitual criminal is life without parole. It can also include
4 ten to life or I believe twenty-five, or a definite term of
5 twenty-five years.

6 THE COURT: With a minimum ten.

7 MR. BOGALE: With a minimum ten.

8 THE DEFENDANT: Minimum five I thought.

9 MR. BOGALE: I think minimum ten.

10 THE COURT: With that many priors, the State
11 believes you are at the level of a minimum ten, so you are
12 looking at the options would be life without any parole, life
13 with parole after you have served ten years or a definite term
14 of twenty-five years with a minimum of ten served.

15 THE DEFENDANT: Correct.

16 MR. LESLIE: I might clarify ten to life is actually
17 a life sentence with parole eligibility beginning at ten
18 years. It is not required he be paroled at ten years. He's
19 eligible. It will either be granted or denied and can be
20 reviewed successively forward at that point.

21 THE COURT: I am sure, Mr. Schachter, if you asked
22 Mr. Leslie, he could tell you what the average is. I mean it
23 is just an average of people on a life sentence in terms of
24 how they get out. But ten, I have never heard of anyone

1 actually getting paroled in their first parole on a life
2 sentence. It can happen.

3 THE DEFENDANT: That is why I was asking where we
4 were at.

5 THE COURT: Whether I am thinking of giving you life
6 without or life?

7 THE DEFENDANT: Yes.

8 THE COURT: Because that is really what your choices
9 are.

10 THE DEFENDANT: Or, even like I said, it would be
11 nice to know if the Court, given all the comments and
12 everything, is considering the habitual, but I understand that
13 you can't.

14 THE COURT: I can't tell you that. I will tell you,
15 Mr. Schachter, you have an absolute constitutional right to
16 represent yourself. But as I told you before I did the trial,
17 I thought it was not a good idea. You didn't do bad in the
18 trial, although the verdict came back very, very quickly. You
19 did a good job as best you could with regard to the trial.
20 You are in a different world when you are talking about
21 sentencing with these kinds of possible penalties. And I will
22 tell you that, whether we all think you are interesting or we
23 smile at your jokes or I am pleasant, it does not mean that I
24 will not find you a habitual criminal. I want to make sure

1 you don't get the wrong impression from me that you are kind
2 of free just because I am smiling or I am pleasant that it
3 means I would never find you a habitual criminal. I do find
4 defendants habitual criminals, and I have done it. It is the
5 rare occasion that I don't. So with your kind of criminal
6 history, I encourage you to go forward with the Public
7 Defender's Office. If you want them to be standby, they will
8 not do the mitigation. I am sure any investigation they will
9 do that you request, but they are not going to put together
10 what they would if they were representing you. Did I in any
11 way mislead you somehow?

12 THE DEFENDANT: No. I was talking about to the case
13 in particular, not personal comment you had made prior to the
14 trial.

15 THE COURT: The kind of case?

16 THE DEFENDANT: Kind of case, exactly. I still
17 would prefer to represent myself at the sentencing.

18 THE COURT: Okay.

19 THE DEFENDANT: There is a couple of other issues
20 because of that. One is I have a motion for the trial
21 transcript. I didn't know --

22 THE COURT: Your right to appeal will start thirty
23 days after a judgment is entered, and we can get your trial
24 transcript. You should file that motion. It normally happens

1 along with the appeal, but that is fine, we'll be sure that
2 your request for trial transcript is processed. But you
3 remember you will only have 30 days to file your notice of
4 appeal, and that is a deadline that you can't claim the mail
5 didn't go out or anything like that.

6 THE DEFENDANT: Yes, Your Honor. Are you going to
7 continue standby counsel even if I go forward?

8 THE COURT: I will continue standby counsel in case
9 something occurs with regard to the prior convictions being
10 utilized or anything like that.

11 THE DEFENDANT: Just for the record, I have a list
12 of legal supplies for standby counsel based on those.

13 THE COURT: All right.

14 THE DEFENDANT: Would the court mind if we set a
15 status conference sometime in November just in case there are
16 any other issues, pro per issues?

17 THE COURT: When did we set your sentencing?

18 MR. BOGALE: December 4th, Your Honor.

19 THE COURT: Mr. Leslie has given you everything you
20 need. Mr. Hylin was here during the trial. They have been
21 responsive to you, right?

22 THE DEFENDANT: For the most part. I understand
23 because of the speedy trial not everything could be afforded
24 to me.

1 THE COURT: Well, if you want a status hearing
2 before sentencing, we can set that.

3 THE DEFENDANT: Mr. Leslie also informed me that any
4 argument, I haven't really looked over every prior the State
5 has discovered to me, but any issues will be argued at the
6 sentencing hearing. It is not a status hearing.

7 THE COURT: Right. It is all one thing.

8 THE DEFENDANT: There is also a PSI that is within
9 the five years on file with this Court from '09.

10 THE COURT: Are you suggesting you want to waive a
11 new PSI?

12 THE DEFENDANT: Given I am still, there is not going
13 to be anything new that needs to be on the PSI, you are aware
14 of the facts of the case, so I can't imagine anything that is
15 really going to be new in the PSI, I would prefer to waive it.

16 THE COURT: I don't know, it is possible your
17 criminal history probably puts you high on the grid for
18 possible penalties. But the nature of the offense may put you
19 over on the grid. I don't know. I can't tell you what the
20 Division of Parole and Probation would recommend. It is
21 possible I suppose they could recommend something in the low
22 end which would certainly impact argument with regard to
23 habitual criminal. If you waive the right to have that
24 pre-sentence investigation, then you are also waiving the

1 potential for any mitigation that may come. I can't say
2 mitigation. As I said, with your criminal history, although
3 the nature of the charge was somewhat minimal, the kind of
4 case you were convicted on for the attempted robbery, I can't
5 say it would be mitigation. It could be aggravation. I don't
6 know. But that is your call. You can waive your pre-sentence
7 investigation if you have a valid one within five years, but
8 because of the nature of the potential penalty, I really think
9 that is a bad idea. And even if you want to waive it, I don't
10 think the State would.

11 THE DEFENDANT: It was a low recommendation on the
12 last one, so that is why I was hoping.

13 MR. BOGALE: Your Honor, to make a record, the State
14 wouldn't waive it. I believe, since he's facing habitual
15 criminal, a PSI would be of great assistance.

16 THE COURT: Okay. All right.

17 THE CLERK: Status hearing November 20th at 9:00
18 o'clock.

19 THE COURT: Mr. Leslie, would you advise, be sure to
20 advise the defendant about any right he has about any right to
21 make a statement or not make a statement on the PSI?

22 MR. LESLIE: Yes, of course. What I
23 tell somebody after a conviction in trial is they cooperate
24 with regard to social history, confirmation of their past,

1 things like that. And I have had very good luck with the
2 Division, not luck, but I have had very good interaction with
3 the Division. They respect a defendant who is found guilty at
4 trial and wishes to make no comment on the merits of the case,
5 although he can allocute without commenting on guilt at the
6 time of sentencing. I will explain what those words mean. I
7 think Mr. Schachter probably already knows, but I will talk to
8 him about it.

9 PAROLE AND PROBATION: If I may, to be clear, the
10 Court is ordering a PSI in this case?

11 THE COURT: Yes, I am.

12 PAROLE AND PROBATION: The Division has not received
13 any communication in that regard the sentencing date was
14 December fourth.

15 THE COURT: I think you did get referral from the
16 clerk.

17 PAROLE AND PROBATION: I will verify that.

18 THE COURT: But you have got it now. December
19 fourth.

20 PAROLE AND PROBATION: Yes.

21 THE COURT: Anything further for this morning?

22 MR. BOGALE: One point, Your Honor. Two certified
23 copies of prior convictions were lodged with the court during
24 the trial or at the evidentiary hearing, I am not sure which

1 one. The State intends to use those at sentencing in addition
2 to others, so I just wanted to make sure those are available
3 at sentencing.

4 THE COURT: Yes, they will all be here for
5 sentencing.

6 THE DEFENDANT: And there is no new priors?

7 THE COURT: He says he has more.

8 THE DEFENDANT: More since the two that were lodged
9 as evidence?

10 THE COURT: What is your question, Mr. Schachter?

11 THE DEFENDANT: Was there any new discovery as to
12 the convictions other than the two admitted for impeachment
13 purposes?

14 THE COURT: Then the other five that have been
15 marked before.

16 THE DEFENDANT: No, I definitely don't have that
17 many. That is what I am saying.

18 MR. BOGALE: There were only two marked.

19 THE COURT: Where are the others?

20 MR. BOGALE: There are requests out for others. They
21 may come in. I want to make sure I can use the two marked in
22 addition to ones that might come in.

23 THE COURT: If they do come in --

24 MR. BOGALE: I will discover them, of course.

1 THE COURT: -- they will have to be discovered to
2 Mr. Schachter.

3 THE DEFENDANT: Thank you.

4 THE COURT: Anything else?

5 MR. LESLIE: No, Your Honor.

6 THE COURT: Court's in recess.

7 (Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)

4 I, Judith Ann Schonlau, Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department
8 No. 4 of the above-entitled court on Thursday,
9 October 2, 2014, at the hour of 9:00 a.m. of said day and that
10 I then and there took verbatim stenotype notes of the
11 proceedings had in the matter of THE STATE OF NEVADA vs. MARC
12 PAUL SCHACHTER, Case Number CR14-1044.

13 That the foregoing transcript, consisting of pages
14 numbered 1-14 inclusive, is a full, true and correct
15 transcription of my said stenotypy notes, so taken as
16 aforesaid, and is a full, true and correct statement of the
17 proceedings had and testimony given upon the trial of the
18 above-entitled action to the best of my knowledge, skill and
19 ability.

20 DATED: At Reno, Nevada this 1st day of November, 014.

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/s/ Judith Ann Schonlau
JUDITH ANN SCHONLAU CSR #18

1 4185
JUDITH ANN SCHONLAU
2 CCR #18
75 COURT STREET
3 RENO, NEVADA
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

8 -o0o-

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

CASE NO. CR14-1044

) DEPARTMENT NO. 4

12 MARC PAUL SCHACHTER,)

13 Defendant.)

14
15 TRANSCRIPT OF PROCEEDINGS

16 STATUS HEARING

17 THURSDAY, NOVEMBER 13, 2014, 9:00 A.M.

18 Reno, Nevada
19

20 Reported By: JUDITH ANN SCHONLAU, CCR #18
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
21 Computer-aided Transcription
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A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY

 BY: ZELALEM BOGALE, ESQ

 DEPUTY DISTRICT ATTORNEY

 WASHOE COUNTY COURTHOUSE

 RENO, NEVADA

FOR THE DEFENDANT: APPEARING IN PROPER PERSON

STANDBY COUNSEL: WASHOE COUNTY PUBLIC DEFENDER

 BY: JAMES LESLIE, ESQ.

 DEPUTY PUBLIC DEFENDER

 350 S. CENTER STREET

 RENO, NEVADA

1 RENO, NEVADA; THURSDAY, NOVEMBER 13, 2014; 9:00 A.M.

2 -oOo-

3 THE COURT: Let's hear Mr. Schachter's case.

4 MR. BOGALE: Zelalem Bogale on behalf of the State,
5 Your Honor.

6 THE DEFENDANT: Good morning, Your Honor.

7 THE COURT: This was set on calendar I think by you.

8 MR. LESLIE: It was. He requested it. I think he
9 wanted to address the Court. So here we are Mr. Schachter.

10 THE DEFENDANT: I was hoping the court might
11 entertain, I was accepted to the Salvation Army. I understand
12 I am facing a lengthy prison sentence to say the least. I was
13 hoping the court might entertain the Salvation Army. It is a
14 little more structured and a little more appropriate not just
15 for the gambling issues, the drug issues and the life skills
16 issues I have already talked to the present about. It is also
17 part of my last pre-sentence report that the Court might
18 consider a supervised OR to that program pending sentencing,
19 push out sentencing at the completion of the program.

20 THE COURT: Counsel?

21 MR. BOGALE: Your Honor, the State opposes any OR
22 release to the Salvation Army. The defendant has seven prior
23 felony convictions. He has seven prior probation or parole
24 violations. He's facing habitual criminal in this case. I

1 don't believe the Salvation Army is appropriate.

2 THE COURT: Mr. Schachter, I am going to deny your
3 request.

4 THE DEFENDANT: I understand, Your Honor. I did
5 have some pleadings I would like to either file or have Mr.
6 Leslie file.

7 THE COURT: We can get the pleading filed.

8 MR. LESLIE: You could have mailed them to me.

9 THE DEFENDANT: Part of the problem, I am out of
10 postage. I can't get these in the mail.

11 THE COURT: They don't charge you to give them to
12 Mr. Leslie.

13 THE DEFENDANT: The jail won't do it. They won't
14 take anything if standby counsel doesn't come and get it. I
15 tried to get all that stuff in writing.

16 THE COURT: You want to file some documents?

17 THE DEFENDANT: Exactly.

18 THE COURT: How many copies do you have?

19 THE DEFENDANT: Just the one.

20 THE COURT: The original. Mr. Leslie, will you file
21 these in court today?

22 MR. LESLIE: Yes. You want to file those now?

23 THE COURT: We can't because we don't have anything.

24 THE COURT: Are they things, Mr. Leslie, that can be

1 filed by the clerk today to give people notice or things that
2 should be paper filed?

3 MR. LESLIE: Your Honor, we can file them and
4 convert it to document. That is probably easy to deal with on
5 the copy machine.

6 THE DEFENDANT: One is a Petition for Habeas Corpus.

7 MR. LESLIE: We'll screen them. If there is
8 something I don't think I can file, I will give them back to
9 him.

10 THE COURT: It is premature to file something that
11 would be of benefit.

12 MR. LESLIE: I had no idea. He called this hearing
13 to file motions. He has given me several items. I will take
14 it. I will look and file what I think is appropriate. If I
15 don't, I will get back to him with it.

16 THE DEFENDANT: I also have some more legal material,
17 possibly cases.

18 MR. LESLIE: Again, he's given me a list of cases he
19 wants. He could have just mailed that to me, but I was glad
20 we were able to do this in hearing.

21 THE DEFENDANT: The jail will not process nothing
22 for pro pers. They have zero pro per service.

23 THE COURT: That is why you have standby counsel. I
24 think you can call standby counsel.

1 THE DEFENDANT: I tried. The only way I can get in
2 touch with Mr. Leslie is go through Mr. Bosler's secretary. I
3 can't get a call back. I haven't got a response from the
4 investigator.

5 THE COURT: Call Mr. Bosler's secretary if you have
6 issues. Call her and say I have got stuff to pick up. Okay?

7 THE DEFENDANT: Okay. As far as no postage?

8 THE COURT: I don't have any stamps to give you. I
9 can't help you there. It doesn't make sense to me the jail
10 won't let you mail something to Mr. Leslie.

11 MR. LESLIE: Your Honor, for Mr. Schachter's
12 edification, I receive mail from my clients all the time, and
13 I receive them from self-representing clients where I am
14 standby counsel. We have had cases in front of this Court
15 where I received reams of documentation from my pro per
16 clients. For his edification it can be done. For the record,
17 I have done it in the past.

18 THE COURT: I don't understand why they are not
19 doing it.

20 THE DEFENDANT: Would you like me to help? I have
21 got documentation from the jail saying they wouldn't.

22 MR. LESLIE: He could certainly forward that to me.
23 I will let the jail know they need to let him transmit things
24 to me.

1 THE COURT: Okay. That will be great. Anything
2 else for today?

3 THE DEFENDANT: Nothing, Your Honor.

4 THE COURT: We have a sentencing next week.

5 THE DEFENDANT: No.

6 THE COURT: It is a status conference. Do we need
7 that hearing?

8 THE DEFENDANT: The only reason I would is if they
9 were going to discover more information. The State discovered
10 another conviction on me today. Only if they are going to
11 discover anymore convictions within the 15 day time period.

12 THE COURT: Counsel?

13 MR. BOGALE: The state requested certified copies of
14 all of Mr. Schachter's prior convictions before this trial
15 back in the Summer I think the State requested them. They kind
16 of come trickling in. The State received the fifth certified
17 copy of a prior conviction. I just discovered a copy to
18 Mr. Schachter this morning. I have the original certified copy
19 if Your Honor would like to mark it and keep it for the
20 sentencing or the State can keep it. I think Your Honor has
21 more on file currently.

22 THE COURT: Why don't you hold on to it for now, and
23 then we can mark it at the sentencing. We'll have all of them
24 up at sentencing. The clerk didn't bring all the priors

1 today. We'll have them all in front of me at the same time.

2 THE DEFENDANT: Given I just gave Mr. Leslie the
3 cases, I don't know how long it is going to take for it to
4 turn around time. Is it possible we can push out sentencing
5 at this point?

6 THE COURT: We have got a status next week. Let's
7 see what is going on there.

8 THE DEFENDANT: Thank you.

9 THE COURT: See you next week.

10 (Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)

4 I, Judith Ann Schonlau, Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department No
8 4 of the above-entitled court on Thursday, November 13, 2014,
9 at the hour of 9:00 a.m. of said day and that I then and there
10 took verbatim stenotype notes of the proceedings had in the
11 matter of THE STATE OF NEVADA vs. MARC PAUL SCHACHTER, Case
12 Number CR14-1044.

13 That the foregoing transcript, consisting of pages
14 numbered 1-9 inclusive, is a full, true and correct
15 transcription of my said stenotypy notes, so taken as
16 aforesaid, and is a full, true and correct statement of the
17 proceedings had and testimony given upon the trial of the
18 above-entitled action to the best of my knowledge, skill and
19 ability.

20 DATED: At Reno, Nevada this 13th day of December, 2014.

21
22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24

1 4185
2 JUDITH ANN SCHONLAU
3 CCR #18
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -oOo-

11 THE STATE OF NEVADA,)	
)	
12 Plaintiff,)	
)	
13 vs.)	CASE NO. CR14-1044
)	DEPARTMENT NO. 4
14 MARC PAUL SCHACHTER,)	
)	
15 Defendant.)	
)	

16
17 TRANSCRIPT OF PROCEEDINGS

18 STATUS HEARING

19 THURSDAY, NOVEMBER 20, 2014, 9:00 A.M.

20 Reno, Nevada
21

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23 Reported By: JUDITH ANN SCHONLAU, CCR #18
24 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
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A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY

 BY: ZELALEM BOGALE, ESQ.

 DEPUTY DISTRICT ATTORNEY

 WASHOE COUNTY COURTHOUSE

 RENO, NEVADA

FOR THE DEFENDANT: APPEARING IN PROPER PERSON

STANDBY COUNSEL: OFFICE OF THE PUBLIC DEFENDER

 BY: JAMES LESLIE, ESQ.

 DEPUTY PUBLIC DEFENDER

 350 S. CENTER STREET

 RENO, NEVADA

PAROLE AND PROBATION: THOMAS WILSON

1 RENO, NEVADA; THURSDAY, NOVEMBER 20, 2014; 9:00 A.M.

2 -oOo-

3 THE COURT: Marc Schachter.

4 MR. BOGALE: Zelalem Bogale on behalf of the State,
5 Your Honor.

6 THE DEFENDANT: Good morning, Your Honor.

7 THE COURT: Good morning, Mr. Schachter. We set
8 this status just to make sure we are still ready to go forward
9 with sentencing next week. Is everything on track?

10 THE DEFENDANT: No.

11 MR. LESLIE: I'm not sure where we are. If I might
12 summarize for a moment. First of all, he had requested last
13 time I give him some paper, so I am giving him two pads worth
14 of paper today. He had requested, he had handed me for the
15 first time at the last hearing a number of files, also
16 proposed filings. We took possession of those. We did in
17 fact file them, waiver of attorney-client privilege and other
18 matters concerning him. The record would reflect I am going
19 to return all those original handwritten pleadings to him.

20 Additionally, he had requested a form of Notice to
21 Appeal. I asked somebody in our office to prepare that so we
22 could give him a form of Notice of Appeal. He had already,
23 additionally I should say, in that pile of materials he gave
24 me last time, there was a two-page handwritten request for

1 various cases. I went ahead and copied all those cases. I
2 believe I will say, I think there actually may be one case
3 that I skipped by accident. He can give me a call. I will
4 get that to him. I don't know which one it was. Other than
5 that possible error I think I provided him all the cases that
6 he listed and he can read those.

7 Your Honor, one of the things he filed is a Motion
8 for Clarification of Pretrial Order. Certainly that is for
9 him to file and to take up with the Court. He's also
10 requested the file including work product, standby product. I
11 am not entirely sure he's entitled to that, at least not at
12 this stage of the proceedings. And he's also filed what he's
13 titled Petition for Writ of Habeas Corpus which alleges a
14 number of things including allegations that standby counsel
15 refused to engage in certain investigation and other matters
16 that he had requested. I counseled him that might create a
17 conflict of interest because the professional rules I am
18 operating under allow me to respond. An exception to the
19 attorney-client privilege is if counsel is responding to a
20 claim being asserted. I suggested to him that if he wanted to
21 proceed with those kinds of allegations, there would be a
22 point downstream where he could do so after the sentencing,
23 after a direct appeal which I assume he wants to take based on
24 requesting the Notice of Appeal. Then he would be able to

1 bring an ineffective assistance claim if he saw fit. He
2 insisted we go ahead and file the documents, so I filed them
3 because I am standby counsel. I think a conflict of interest
4 arises based on the filings that he has put before the Court.
5 It is a little different than a situation where somebody
6 pleads guilty then wishes to allege they never should have
7 pled guilty prior to sentencing. So there is not really a
8 Motion to Withdraw a plea that could be pending. I think there
9 is a conflict. I don't know what the Court's thought is.
10 Standby counsel is a little different than, for lack of a
11 better term, than actual counsel. I continue to stand by and
12 respond to him. He, as I view it, is in the driver's seat in
13 making the tactical decision he makes, the allegations he
14 makes in that Petition for Writ of Habeas Corpus. Without
15 getting too far into it, I would say we dispute some of these
16 allegations, so I am not sure how the Court wants to proceed.

17 THE COURT: The filing of the Writ is probably in
18 most circumstances going to be dismissed as premature and is
19 of no validity. However, the allegations contained in the
20 document do create a conflict, so I think you do have to have
21 new standby counsel appointed.

22 MR. LESLIE: Court's indulgence.

23 THE COURT: Yes.

24 MR. LESLIE Judge, he also filed, it was bugging me

1 when I was reciting those documents, he also filed I neglected
2 to recite, a Motion for Trial Transcripts at Public Expense.
3 I am not taking a position on that. That is for the Court to
4 determine whether that is ripe or whether that is part of the
5 appellate process. I neglected to recite that. I wanted to
6 point that out.

7 THE COURT: Was that motion filed by you?

8 MR. LESLIE: No, Your Honor. It is one of the
9 handwritten motions. I double checked the other day. I think
10 we got everything filed with the eflex. Then my secretary put
11 Mr. Bogale as opposing counsel. We attached typed
12 Certificates of Service.

13 THE COURT: With regard to the motion for transcript
14 of the trial, I haven't seen that motion. I haven't got that
15 one. So I don't know, is he asking for them before he's
16 sentenced?

17 MR. LESLIE: You know, Your Honor, I would have to
18 take a look.

19 THE DEFENDANT: If I may, it was to go along with
20 the Motion for Clarification. I didn't know if the Court was
21 going to entertain more. I have had the negligence, gross
22 negligence in the Motion for Clarification.

23 THE COURT: The Motion for Clarification was filed
24 November 18th. Time has to run. The State has a right to

1 oppose it. It doesn't affect your sentencing.

2 THE DEFENDANT: No, I know. I am saying for the
3 trial transcript.

4 THE COURT: But your Notice of Appeal, the day I
5 sentence you, you need to file your Notice of Appeal, and you
6 have ten days. You should do it the day we set that
7 sentencing. Soon as you file that Notice of Appeal, then your
8 request for trial transcript becomes relevant and I will grant
9 that request and you will get the transcript, rough draft
10 transcripts to start. That is the appellate rule. And
11 Mr. Leslie's appellate deputies get them routinely. But we
12 can order it for you. We can enter the same kind of order
13 based upon your motion for transcripts. We would do that at
14 that point in time. The motion would have run anyway. But
15 none of that is necessary before sentencing.

16 THE DEFENDANT: I understand. The transcript part
17 was only if it was going to be present, if I was going to be
18 able to reargue the order denying the dismissal.

19 THE COURT: Right. The State hasn't opposed it.
20 Unless they stipulated to it, then I would still deny given
21 the tenure of the case. It is really not a time you can
22 appeal, that that is an issue on appeal. If I was wrong, the
23 Supreme Court will tell us.

24 THE DEFENDANT: That was the reason for asking for

1 the transcripts prior.

2 THE COURT: So we have, then we have Petition for
3 Writ of Habeas Corpus which you now allege basically
4 ineffective assistance of standby counsel. By doing that,
5 they cannot continue as your standby counsel, so we need to
6 appoint you standby counsel. I don't know how we do that. I
7 have never had it get to this point.

8 MR. LESLIE: Well--

9 THE COURT: Does it go to the Alternate Public
10 Defender?

11 MR. LESLIE: I have never dealt with this either,
12 but I think if there is a conflict, you simply send it to them
13 and indicate -- I mean you appointed us as standby.

14 THE COURT: So they would only be appointed as
15 standby counsel?

16 MR. LESLIE: I would imagine so. I think that is, I
17 don't mean any disrespect by this, but we didn't ask to be
18 appointed standby counsel to him. I see certain cumbersome
19 problems with having standby counsel and trying to accommodate
20 what the client wants to get done. But the Court appointed us
21 as standby. I am not trying to tell the APD -- I would
22 imagine you would take that appointment of standby counsel and
23 transfer to it the APD based on his allegations they would
24 handle it similar with the way a Motions to Withdraw Plea are

1 handled.

2 THE COURT: If you are regular counsel, don't you do
3 a notification of your conflict for the Alternate Public
4 Defender? Isn't there a form or process?

5 MR. LESLIE: That is sort of what I would call a
6 normal course, but then there are cases where things arise in
7 a hearing or things arise in the middle of litigation at the
8 District Court. I couldn't think of an example off the top of
9 my head where you ordered in another case a case be
10 transferred to the APD. If your concerned about notice, I
11 would do this in any event, I pretty customarily send an
12 e-mail to Jennifer Lunt and say here's what is going on. I
13 usually welcome them to give me a call if they have any
14 questions. Especially in the circumstances here where there
15 is allegations against counsel, I think because some people
16 perceive generally defense counsel get defensive, won't
17 cooperate with our outside counsel trying to determine the
18 merit of such an allegation. I invite them to let me know,
19 and I am willing to have a conversation.

20 THE COURT: Our sentencing date is currently set for
21 what day?

22 MR. BOGALE: December 4th, Your Honor.

23 MR. LESLIE: I did counsel Mr. Schachter if he
24 persisted in his allegations, I would have to bring the matter

1 up with the court, and that it was my prediction sentencing
2 would be continued.

3 THE COURT: We'll see what the Alternate Public
4 Defender says. I am not sure, because Mr. Schachter is
5 preparing his own sentencing. So you provided him today with
6 everything that he wants, so I don't necessarily think there
7 is going to have to be a continuance, but we'll have to notify
8 Mr. Schachter of the new counsel. It will be the Alternate
9 Public Defender's Office, but I don't know which attorney
10 there.

11 Mr. Schachter, they will be in touch with you and
12 let you know. If you have anymore requests you have to notify
13 them just like you did Mr. Leslie.

14 THE DEFENDANT: I would ask for the sentencing to be
15 pushed out.

16 THE COURT: Mr. Schachter, we have been continuing
17 this a long time. There has been a lot of little delays along
18 the way, and your verdict was September 4th so we are out
19 there a ways here already. So if there is a good reason to
20 continue your sentencing, there is more you need to prepare
21 for, I will grant your continuance. But I want to first get
22 the Alternate Public Defender on board, and then you have to
23 make a specific request based on something you need.

24 THE DEFENDANT: I object to certain things in the

1 pre-sentence report.

2 MR. LESLIE: Your Honor, that reminds me. When he
3 and I were conferring, we talked about the PSI. He indicated
4 he received it and he asked what to do if he had objections.
5 I said he could wait until the day of sentencing. I told him
6 sometimes I file objections. Do you want this filed then?

7 THE DEFENDANT: Please.

8 MR. LESLIE: May I file it with the court?

9 THE COURT: Yes. The clerk can file the document in
10 for you. It will be served on Parole and Probation and the
11 State. I think the statute says that once the defense alleges
12 objections to a pre-sentence report, the Division is to
13 investigate that and make a report as to whether or not those
14 corrections should be made, correct?

15 PAROLE AND PROBATION: That's correct, Your Honor.
16 Depending on what the corrections are specified in that
17 objection, we may or may not, unless it is ordered by you
18 specifically, Your Honor, that we need to correct them. Some
19 may be deemed, without any knowledge, as frivolous.

20 THE COURT: One of his objections is the
21 pre-sentence report does not identify the source of the
22 defendant's criminal history, so he's claiming he doesn't know
23 what the errors are, because he doesn't know where the sources
24 are. And then he's alleging mistakes in the criminal record

1 pages 3 through 6.

2 PAROLE AND PROBATION: Under those circumstances a
3 PSI would have to be ordered. We would have to request the
4 formal document, legal certified document from the State
5 depending which one he's was disputing. That would take some
6 time, Your Honor.

7 THE COURT: Okay. Because the defendant is facing
8 habitual criminal, we have quite a few certified copies of
9 convictions. Then the Division would have to determine which
10 other criminal history is in the PSI whether or not it is
11 accurate or not, correct?

12 PAROLE AND PROBATION: That's correct. Your Honor.

13 MR. BOGALE: Just a couple of points on that. Your
14 Honor, in the PSI there are a list of criminal convictions
15 that aren't supported by the certified copies on file with the
16 court. The ones we don't have certified copies for, I guess
17 Parole and Probation would need to find evidence of those. As
18 far as getting the certified copy from the State, the State
19 doesn't have the originals anymore. I think four are on file
20 with the court. The State has a fifth.

21 THE COURT: Why don't you note right now for the
22 Division of parole and probation which ones you provided the
23 Court the certified copies of.

24 MR. LESLIE: Are these available on eflex or just

1 marked as exhibits?

2 THE COURT: I think they are marked as exhibits.
3 They are not available on eflex.

4 MR. LESLIE: It was just a thought.

5 MR. BOGALE: One is out of the Second Judicial
6 District, CR09-1729, this department, Your Honor. 2009 case.

7 Next is out of the Ninth Judicial District Court
8 from 2006, the case is 06CR-00052. The third is out of the
9 Suffolk County, New York, 1987. The Indictment number,
10 actually the criminal case number 86-863893. And the fourth
11 and final is out of --

12 THE COURT: That one, is that the case listed as
13 102486 that is in the pre-sentence report?

14 MR. BOGALE: That could be. On that certified copy,
15 it is listed as the Indictment number. I am not sure what
16 number they go by.

17 THE COURT: What is the charge?

18 MR. BOGALE: It is attempted burglary and forgery.
19 I think we are talking about the same case, Your Honor.

20 THE COURT: Do you have a Judgment of Conviction on
21 that?

22 MR. BOGALE: On that case?

23 THE COURT: Yes.

24 MR. BOGALE: Court's indulgence. Yes, Your Honor.

1 It is the first page in the certified copy.

2 THE COURT: What is the sentence?

3 MR. BOGALE: One year as to each count and there
4 were two counts.

5 THE COURT: I am just comparing it to what is in the
6 PSI.

7 MR. BOGALE: The fourth and final is out of the
8 Municipal Court of California, Santa Clara County, a 1991
9 case, case number E917929, I believe.

10 MR. BOGALE: Yes, Your Honor.

11 THE COURT: I don't show that.

12 MR. BOGALE: Santa Clara County 1991. Actually
13 1992. Excuse me. E917929.

14 THE COURT: What is the charge?

15 MR. BOGALE: It is driving or taking a vehicle. I
16 think like an unlawful taking in California.

17 THE COURT: What is the judgment for?

18 MR. BOGALE: I am sorry?

19 THE COURT: What is the judgment for?

20 MR. BOGALE: The sentence?

21 THE COURT: Yes.

22 MR. BOGALE: The sentence is -- I am sorry. I am
23 not very good at reading these.

24 THE COURT: Mr. Wilson may help you with it.

1 MR. BOGALE: Taking a vehicle convicted April 1st
2 1992. It is a hard to read the copy. It was a copy of a copy
3 it appears.

4 THE COURT: You think it is the entry that you have
5 convicted of taking a vehicle without an owner's consent? You
6 show it as E91-68931?

7 PAROLE AND PROBATION: I did not see 97. I did see
8 E196. I believe that is the case we are talking about and
9 referred to on the PSI.

10 THE COURT: We'll get you copy of the certified copy
11 that we have. We'll get you a copy of each of those and
12 counsel for the State and make sure you get the 5th one you
13 have not added. You haven't given it to us yet. Give that to
14 Parole and Probation and we'll keep the sentencing date on
15 calendar to see how close we come to the criminal history
16 there. You may need more time, Mr. Wilson, to develop it.

17 PAROLE AND PROBATION: If we have to find a 1997
18 case, that will be difficult. In reference, it said ten
19 months as reflected on the PSI.

20 THE COURT: We'll get those for you. We'll see
21 which ones you can find. We'll get standby counsel and we'll
22 leave the sentencing date on calendar. You will be at the end
23 of the calendar. You don't have to sit from 9:00 if you don't
24 want to.

1 MR. BOGALE: Thank you, Your Honor. I think the
2 sentencing is set at 3:00 p.m.

3 THE CLERK: It is a special set.

4 THE COURT: It is a special set anyway. Okay. Is
5 there anything further, Mr. Schachter?

6 THE DEFENDANT: The one thing we talked last week
7 about what the jail was providing for pro per services. I
8 got -- the jail recently went to paperless inquiries, so I
9 could not get a hard copy of the response saying they are not
10 providing any pro se services. When I asked for a copy of it
11 on the computer, they said I need a court order or subpoena to
12 get the copy of the request and the response and they don't
13 have any pro per services. That was sergeant Sealy.

14 THE COURT: Who is sergeant Sealy?

15 THE DEPUTY: Classification sergeant. I can contact
16 her and find out the logistics.

17 THE COURT: I think that would be a good idea if
18 he's being denied paper and pen to prepare for his sentencing,
19 and we'll make sure perhaps we can rectify whatever
20 misunderstanding is going on without a court order. We'll see
21 what we can do.

22 THE DEFENDANT: Thank you. Your Honor.

23 THE COURT: Anything further for today?

24 MR. BOGALE: Not from the State, Your Honor.

1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)
4

5 I, Judith Ann Schonlau, Official Reporter of the Second
6 Judicial District Court of the State of Nevada, in and for the
7 County of Washoe, DO HEREBY CERTIFY:

8 That as such reporter I was present in Department NO. 4 of the
9 above-entitled court on Thursday, November 20, 2014, at the
10 hour of 9:00 a.m. of said day and that I then and there took
11 verbatim stenotype notes of the proceedings had in the matter
12 of THE STATE OF NEVADA vs. MARC SCHACHTER, Case Number
13 CR14-1044.

14 That the foregoing transcript, consisting of pages numbered
15 1-17 inclusive, is a full, true and correct transcription of
16 my said stenotypy notes, so taken as aforesaid, and is a full,
17 true and correct statement of the proceedings had and
18 testimony given upon the trial of the above-entitled action to
19 the best of my knowledge, skill and ability.

20 DATED: At Reno, Nevada this 23rd day of December, 2014.
21
22

23  /s/ Judith Ann Schonlau
24 JUDITH ANN SCHONLAU CSR #18