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IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Oct 26 2015 04:49 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

STATE OF NEVADA,  
PLAINTIFF,

No. 68789

VS.

STELLA LOUISE SINDELAR,  
DEFENDANT.

FAST TRACK STATEMENT

1. Name of party filing this fast track statement: Stella Sindelar.
2. Name, law firm, address, and telephone number of attorney submitting this fast track statement: Richard W. Sears, Sears Law Firm, ltd., 457 Fifth Street, Ely, Nevada 89301, 775 289.3366.
3. Appellate counse: Same counsel.
4. Judicial district, county, and district court: Seventh Judicial District Court, White Pine County, Nevada, CR-1304037, Ely Justice Court, 18-13000.
5. Name of judge issuing decision, judgment, or order appealed from: Hon. Steven L. Dobrescu.
6. Length of trial. 2 days.
7. Conviction appealed from: Driving Under the Influence of Alcohol, Felony.

1 8. Sentence for each count: Count I: 75 months maximum, 30 months  
2 minimum incarceration in Nevada Department of Corrections.

3 9. Date District Court announced decision, sentence, or order appealed  
4 from: September 3, 2015.

5 10. Date of entry of written judgment or order appealed from: September  
6 14, 2015.

7 (a) If no written judgment or order: Not Applicable.

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

11 (a) Specify whether service was by delivery or by mail: Not Applicable.

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

14 (a) specify the type of motion, and the date of filing of the motion: Not  
15 Applicable.

16 (b) date of entry of written order resolving motion: Not Applicable.

17 13. Date notice of appeal filed: September 9, 2015

18 14. Specify statute or rule governing the time limit for filing the notice of  
19 appeal, e.g., NRAP 4(b), NRS 34.560, NRS 34.575, NRS 177.015, or other: NRS  
20 177.015.  
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1 15. Specify statute, rule or other authority which grants this court  
2 jurisdiction to review the judgment or order appealed from: NRAP 3C(a)(1).

3 16. Specify the nature of disposition below: Judgment after jury verdict.

4 17. Pending and prior proceedings in this court: Not Applicable.

5 18. Pending and prior proceedings in other courts: Not Applicable.

6 19. Proceedings raising same issues: None known to Defendant.

7 20. Procedural history. Briefly describe the procedural history of the case  
8 (provide citations for every assertion of fact to the appendix, if any, or to the  
9 rough draft transcript): District Court Arraignment, April 2, 2013 following a  
10 bind over from Justice Court preliminary examination AA, 1: Trial conducted  
11 June 30 to July 1, 2015. AA, 148. Timely appeal filed.

12 21. Statement of facts. Briefly set forth the facts material to the issues on  
13 appeal:

14 On March 27, 2013, Officer Caleb Sumrall stopped Stella Sindelar for  
15 driving a vehicle with a defective left side tail light lamp. AA, 161. The center  
16 and right side brake lamp and center brake lamp were operable. AA, 16.  
17 During mid-trial motions, Stella complained that the stop was unlawful  
18 because she had two operable lamps on the rear of her vehicle. AA, 199.  
19 Accordingly, Stella argued her vehicle met the requirements of the law for two  
20 lighted brake lamps. AA, 199. The Court, in an oral decision, decided that all  
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1 brake lamps were required to be lighted, despite the plain language of the  
2 statute that only required two brake lamps. AA, 199.

3 After the stop, Officer Sumrall required Stella to perform the  
4 standardized field testing normally administered during a DUI stop: Horizontal  
5 Gaze Nystagmus, 9-Step Walk and Turn, and 1 Legged Stand. When  
6 instructing Stella on how to perform each test, Officer Sumrall was  
7 purposefully deceptive, in that he told her to perform the test in a manner that  
8 was different from his physical demonstration. During cross-examination,  
9 Sumrall was asked whether he was playing a child's game like "Simon Says"  
10 with her: In other words, she should only do what he said, not what he  
11 demonstrated. Sumrall reluctantly agreed that his demonstration did not  
12 match his instructions. Sumrall determined that Stella failed sobriety testing  
13 in the field and arrested her for Driving Under the Influence of Alcohol.  
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17 At the jail booking counter, Stella was advised to give blood or have it  
18 taken by force. She asked for an attorney but the request was denied. AA, 154.  
19 Stella allowed blood to be taken rather than submit to a forced blood draw. *Id.*  
20 A blood tech was called and the tech drew Stella's blood at the booking counter  
21 of the White Pine County jail. AA, 21. Stella was questioned at the jail, but she  
22 never waived Miranda as determined by the District Court judge. AA, 156.  
23

24 **PRIOR FELONY CONVICTION UNCONSTITUTIONALLY OBTAINED.**  
25

At trial and again at sentencing, Stella objected to the constitutionality of a prior felony driving under the influence conviction from Utah that was entered in 2005. Stella's objection was based upon the fact that Utah's statutory look-back for counting DUI's for enhancement purposes was ten years, not seven years as in Nevada. Accordingly, the 2005 conviction in Utah would have only been a misdemeanor second offense DUI conviction in Nevada.<sup>1</sup> The district judge determined that the Utah felony conviction was the "same or similar law" as is required by the Nevada enhancement provisions, even though under Nevada law existing then and now, that conviction would only have been a misdemeanor. AA, 157. Based upon the determination that Utah's law was the "same or similar", the Court found the prior conviction constitutional. *Id.* The Nevada Statute, NRS 484C.410, states in relevant part,

1. Unless a greater penalty is provided in NRS 484C.440, a person who has previously been convicted of:

- (a) A violation of NRS 484C.110, 484C.120 or 484C.430;
- (b) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430; or
- (c) A violation of a law of any other jurisdiction that prohibits the **same or similar** conduct as set forth in paragraph (a) or (b).<sup>2</sup>

## THE STATE'S INTERFERENCE WITH THE DEFENSE CASE PRESENTATION

<sup>1</sup> This is because the prior that enhanced her Utah arrest was more than seven years old: Under Nevada Law, Stella was only guilty of a first offense misdemeanor DUI, not a felony DUI.

<sup>2</sup> The 2013 version of the statute is quoted, since that was the law in effect at the time of this incident.

1 This Court declared the underlying analysis in a misconduct claim in  
2 Rudin, stating: “In determining whether prosecutorial misconduct has  
3 deprived a defendant of a fair trial, we inquire as to “whether the prosecutor’s  
4 statements so infected the proceedings with unfairness as to make the results a  
5 denial of due process.” *Rudin v. State*, 120 Nev. 121, 86 P.3d 572 (Nev., 2004).  
6 The prosecution in this case could not resist the temptation to ridicule and  
7 make light of the defense presented to the jury in this case.  
8

9 During the course of the trial, the defense pointed out the many lapses that  
10 occurred in the evidence: Facts testified to but not recorded in the report; facts  
11 not remembered accurately by the arresting officer; circular reasoning relied  
12 upon to support a lapel video that was manipulated first by the officer and  
13 second by the prosecution; blood contamination that the government’s expert  
14 could not account for, resulting in the discarding of evidence in the blood box,  
15 due to contamination by blood. When all these problems were pointed out to  
16 the jury during the defense closing, the State ridiculed the defense in its final  
17 closing. AA, 219-221.  
18

19 Defense counsel was characterized as a dog handler who stopped witnesses  
20 from giving truthful evidence to the jury.<sup>3</sup> AA, 219. The obvious inference was  
21 the defense was treating the State’s witnesses like dogs. This was a degrading  
22 characterization of defense counsel’s attempt to obtain answers from witnesses  
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25 <sup>3</sup> The prosecutor argued the witness “was trying to explain and he was **leashed in** by the defense attorney”. “The defense attorney **leashed in** Richard Bell. . .” AA, 219.

1 who refused or evaded answers to the question asked. (The State's reference  
2 was back to an exchange with the prosecution and the judge because the  
3 arresting officer refused to answer questions.) The judge finally stepped in,  
4 noting that the the arresting officer had been refusing to answer the question  
5 that had been asked five times by the defense. AA, 189.

7 The District Attorney advised the jury that the defense was tricking the jury  
8 into focusing on the wrong facts. AA, 220. The District Attorney ridiculed the  
9 defense for referring to the prosecution as the government, implying the  
10 reference was improper and laughable. AA, 220. The District Attorney argued  
11 to the jury that the Defense wants you to draw "fancy inferences" not based on  
12 the evidence. AA, 220. "Defense would have you imagine" (i.e., the defense is  
13 a fantasy). AA, 220.

15 Improper comments were also made during the trial. When the defense  
16 reminded a witness that this case was important, due to the defendant having  
17 important liberty interests at stake, the State objected to the reference to  
18 "liberty interests" as though a criminal defendant has no right to defend her  
19 liberty interest. To make matters worse, the judge agreed, and sustained the  
20 defense objection. AA, 183.<sup>4</sup> The defense was not even allowed to argue the  
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23 <sup>4</sup> Sears: Okay. Now you understand that this is an important case, correct?

24 Deputy Sumrall: Yes

25 Sears: Okay. Because it affects someone's liberty interests, right?

Wheable: Objection, your honor. That's actually information that's not to have the jury consider her liberty interests.

1 issue: The Court immediately sustained the objection, in no uncertain terms. AA,  
2 183. The jury was left with the impression that the defendant's fundamental  
3 interest in her liberty could not be considered by them, and was not an  
4 important factor in the juries' duty to determine guilt beyond a reasonable  
5 doubt. "[M]isconduct that involves impermissible comment on the exercise of  
6 a specific constitutional right has been addressed as constitutional error."  
7 *Valdez v. State*, 196 P.3d 465, 124 Nev. 97 (Nev., 2008).  
8

9 Presumably, the government believed the reference to "liberty" was a  
10 reference to sentencing. However, the word "liberty" contains a much broader  
11 meaning than a prison sentence - and to stifle its use when emphasizing the  
12 importance to a witness, and the jury, of honest and complete testimony - is  
13 improper. When a person is convicted of a crime, there are an entire series of  
14 consequences that result, and all of those consequences affect that person's  
15 fundamental liberty interests. The most important liberty interests interfered  
16 with are the right to be left alone, and its corollary, the right to conduct one's  
17 life in the way one sees fit. When criminal conduct is determined by the  
18 government, the government decides whether the person can vote, own  
19 firearms, run for public office, where they can live, and what occupation they  
20 can practice. When a government condemns one as a criminal, that  
21 condemnation seriously interferes with the principles that underpin the  
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The Court: Sustained.



1 Constitution: life, liberty, and the pursuit of happiness. To advise a jury they  
2 could not consider a single one of those interests is a serious intrusion into  
3 one's right to present a defense.  
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5 While a reviewing court may not regard any single instance as dispositive,  
6 the accumulation of statements degrading both the defense and defense  
7 counsel tainted the defense case in the mind of the jury.

8 24. Preservation of issues. State concisely how each enumerated issue on  
9 appeal was preserved during trial. If the issue was not preserved, explain why  
10 this court should review the issue: The prosecution's multiple instances of  
11 ridicule of the defense occurred during the final closing statement. The defense  
12 had no further opportunity to correct the false impression created by the  
13 prosecution and the statements were made during argument. The defense  
14 would have been required to object on multiple occasions to the improper  
15 characterizations of the defense case and the defense counsel. The jury was  
16 already being told by the State that defense counsel was treating the state's  
17 witnesses like dogs: Continuing objections would only have further damaged  
18 the defense case which was still at issue for the jury.  
19

20 25. Issues of first impression or of public interest. Does this appeal present a  
21 substantial legal issue of first impression in this jurisdiction or one affecting an  
22 important public interest: If so, explain: The interpretation of NRS 484(c).10  
23 may be worthy of that classification.  
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1 Date: October 26, 2015.  
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5 \_\_\_\_\_s/ Richard W. Sears, 5489\_\_\_\_\_  
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VERIFICATION

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

[x] This fast track **statement** has been prepared in a proportionally spaced typeface using Microsoft Word, Version 12.3.6 in 14 point Georgia.

2. I further certify that this fast track **statement** complies with the page- or type-volume limitations of NRAP 3C(h)(2) because it is either:

[x] Proportionately spaced, has a typeface of 14 points or more, and contains 2075; or

[x] Does not exceed 15 pages.

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

Dated this 26th day of October, 2015

/s Richard W. Sears  
Richard W. Sears, 5489  
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