IN THE SUPREME COURT OF THE STATE OF NEVADA

CEASAR SANCHEZ VALENCIA,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 75282

RESPONDENT'S ANSWERING BRIEF

Appeal From Judgment of Conviction
Eighth Judicial District Court, Clark County

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ROUTING STATEMENT

This appeal is nor presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(1) because, although it is a direct appeal from a Judgment of Conviction based on a jury verdict, it involves Category B felonies.

STATEMENT OF THE ISSUE(S)

1. Whether the district court abused its discretion in denying Appellant's request to represent himself made at Calendar Call and necessitating a continuance of the trial date.

2. Whether the district court abused its discretion in denying Appellant's request for a mistrial.

STATEMENT OF THE CASE

On June 9, 2016, Ceasar Sanchaz Valencia ("Appellant") was charged by way of Information as follows: Count 1 – Assault on a Protected Person with a Deadly

Weapon (Category B Felony – NRS 200.471); Count 2 – Ownership or Possession of Firearm by Prohibited Person (Category B Felony – NRS 202.360); Count 3 – Trafficking in Controlled Substance (Category B Felony – NRS 453.3385.1); and Possession of Controlled Substance (Category E Felony – NRS 453.336). 1 AA 1-3. On June 10, 2016, Appellant was arraigned, pleaded not guilty, and invoked his right to a speedy trial; Jury Trial was set for July 25, 2016. 1 AA 12.

On July 11, 2016, Appellant filed a Pro Per Motion to Dismiss Counsel and Appointment of Alternate Counsel.[1] On July 19, 2016, Senior Judge Joseph Bonaventure continued the hearing on Appellant's motion to July 26, 2016, and Appellant waived his right to a speedy trial to have his motion heard. 1 AA 8, 12. On July 26, 2016, Appellant alleged that his first appointed counsel had engaged in "professional misconduct" by "not agreeing with [him]" and stated that he had filed a complaint with the State Bar of Nevada about his counsel. 1 AA 11-12. The district court stated that there was no reason to believe counsel had done anything wrong in his representation of Appellant, but, due to a breakdown in their communication, the

[1] It is Appellant's burden "to provide the materials necessary for this court's review." Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975); see also Fields v. State, 125 Nev. 785, 220 P.3d 709 (2009) (appellant's burden to provide a complete record on appeal); Thomas v. State, 120 Nev. 37, 43 & n. 4, 83 P.3d 818, 822 & n. 4 (2004); M&R Investment Company, Inc. v. Mandarino, 103 Nev. 711, 718, 748 P.2d 488, 493 (1987). Appellant has failed to provide several documents in his Appendix, particularly those needed to present the facts and procedural history of this case. As such, the State has provided cites only where available.

court granted Appellant's Motion to Dismiss Counsel and Appoint Alternate Counsel. 1 AA 13-14. As a result, the court appointed new counsel and, on August 9, 2016, Gregory Coyer Esq. confirmed as Appellant's second appointed counsel. 1 AA 22.

On August 23, 2016, Appellant requested yet another appointed counsel alleging that "there's a problem with my attorney. I want to discharge him." 1 AA 25. Appellant claimed that his second appointed counsel had been "dishonest" with him and stated that he had also complained to the State Bar of Nevada about his second appointed counsel. 1 AA 25-26. Appellant then orally requested to represent himself; the district court continued this oral request to August 25, 2016. 1 AA 30.

On August 25, 2016, the district court conducted a Faretta canvass and determined that Appellant was competent to represent himself and granted Appellant's request to represent himself. 1 AA 43.

That same day, a record was also made about the offer that had been extended to Appellant and that Appellant had rejected – the offer had been for Appellant to plead guilty to one count of assault on a protected person with use of a deadly weapon and one count of possession of controlled substance with intent to sell; the State would retain the right to argue but would have no opposition to concurrent time and would not seek habitual criminal treatment; and Appellant would forfeit all items seized in this case. 1 AA 46-47.

On October 11, 2016, Appellant filed a pro per Motion for Right of Access to the Courts.

On November 1, 2016, the parties appeared in court. 1 AA 63. At the start of this hearing, Appellant requested that the court appoint "co-counsel" in his case. 1 AA 65. However, towards the end of the hearing, Appellant asked the court to re-appoint his second appointed counsel Greg Coyer; the court continued the case for one week for Coyer to confirm. 1 AA 67.

On November 8, 2016, after a lengthy discussion in court, Greg Coyer was re-appointed as Appellant's counsel; Appellant agreed to this appointment of counsel. 1 AA 78. Additionally, the district court denied Appellant's other pro per motions as moot. 1 AA 81.

On December 28, 2016, Appellant filed another Pro Per Motion to Dismiss Counsel and Appoint Alternate Counsel. 1 AA 83. On January 19, 2017, the district court denied this motion. 1 AA 97, 101-02.

On February 3, 2017, the State filed a Notice of Intent to Seek Punishment as a Habitual Criminal. 1 AA 103.

On February 7, 2017, the parties appeared for calendar call. 1 AA 106. At that time, defense counsel stated that Appellant wanted to represent himself and that Appellant would be asking for a continuance of the trial date to do so. 1 AA 108.

The district court continued Appellant's request to represent himself to February 28, 2017. 1 AA 110.

On February 28, 2017, the parties again appeared in court and Appellant stated: "I don't think I want [second appointed counsel Coyer] to represent me anymore just because he's denying me everything," specifically that he had requested that Coyer bring him certain supplies and he had not provided all of them. 1 AA 116. Counsel stated that he had tried to bring Appellant the supplies he had requested, however, since Appellant was in custody at the Clark County Detention Center ("CCDC"), there were some materials that he was not able to provide to Appellant. 1 AA 117. The district court denied the Appellant's Motion to Dismiss Counsel and Appoint Alternate Counsel. 1 AA 120-21.

On November 27, 2017, a Second Amended Information was filed charging Appellant with Count 1 – Assault on a Protected Person with a Deadly Weapon (Category B Felony – NRS 200.471); Count 2 – Trafficking in Controlled Substance (Category B Felony – NRS 453.3385.1); and Counts 3 and 4 - Possession of Controlled Substance (Category E Felony – NRS 453.336). 1 AA 122-23. The Possession of a Firearm by a Prohibited Person charge was bifurcated for trial purposes. 1 AA 127. On December 1, 2017, a Third Amended Information was filed charging Appellant with Ownership or Possession of Firearm by Prohibited Person (Category B Felony – NRS 202.360). 1 AA 776.

On November 27, 2017, Appellant's jury trial began. 1 AA 127. On December 1, 2017, the jury returned a verdict of guilty to: Count 1: Assault on a Protected Person with Use of a Deadly Weapon; Count 2: Trafficking in Controlled Substance (Heroin); Count 3: Possession of Controlled Substance (Cocaine); and Count 4: Possession of Controlled Substance (Methamphetamine). 4 AA 918-19. That same day, the jury also returned a verdict of guilty of Count 1: Ownership or Possession of a Firearm by Prohibited Person. 4 AA 920.

On January 25, 2018, Appellant was sentenced under the small habitual criminal statute as follows: Count 1 – a maximum of two hundred and forty (240) months with a minimum parole eligibility of eighty-four (84) months; Count 2 – a maximum of seventy-two (72) months with a minimum parole eligibility of twenty-four (24) months, consecutive to count 1; Count 3 – a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months concurrent with count 2; Count 4 – a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months concurrent with count 3; Count 5 – a maximum of seventy-two (72) months with a minimum parole eligibility of twenty-four (24) months, concurrent with count 4. 4 AA 936-37.

Appellant filed a Notice of Appeal on March 1, 2018. 4 AA 938. Appellant filed his Opening Brief ("AOB") on July 20, 2018. The State responds as follows.

/ / /

STATEMENT OF THE FACTS

On May 19, 2016, Las Vegas Metropolitan Police ("LVMPD") Officers Houston and Jacobitz attempted to conduct a traffic stop on Appellant after they observed him operating a moped at a high rate of speed and failing to stop at a stop sign. 2 AA 425; 428-29; 3 AA 503.

Officer Jacobitz activated the patrol car's lights and sirens, and followed Appellant until he appeared to stop and got off the moped. 2 AA 429; 3 AA 510. The officers exited their patrol car and were approximately five to eight feet away from Appellant. 2 AA 431. Appellant turned to face the officers, but then dropped the moped and ran away from the officers. 2 AA 431, 434; 3 AA 521.

The officers pursued Appellant on foot. 2 AA 435. Officer Jacobitz observed a firearm in Appellant's right hand, and yelled "gun" to alert Officer Houston of the presence of a firearm. 2 AA 435; 3 AA 515-16. Appellant raised the firearm and pointed it at Officer Jacobitz, however, Appellant's elbow hit a pole which caused the gun to fall to the ground. 3 AA 522-23.

Officer Jacobitz remained with the firearm while Officer Houston continued chasing Appellant. 2 AA 440. While waiting with the firearm, Officer Jacobitz saw two men (unrelated to this case) attempt to steal the moped that Appellant had abandoned. 3 AA 539-40. Having to react quickly to this attempt theft, Officer Jacobitz retrieved the firearm without gloves so that the firearm would not be left

unattended while he addressed the moped theft. 3 AA 539-40. Officer Jacobitz observed that the firearm was loaded and contained six rounds. 2 AA 441; 3 AA 522. Although Officer Houston continued the foot chase, ultimately Appellant was able to flee the scene. 2 AA 440.

On May 21, 2016, officers arrested Appellant during a felony vehicle stop after conducting surveillance on Appellant. 2 AA 442; 3 AA 638; 3 AA 653; 4 AA 841. During a search of his person incident to arrest, officers located 11.60 grams of heroin, 3.1 grams of methamphetamine, 2.400 grams of cocaine, 2.67 grams of methamphetamine, and $946 in US Currency. 3 AA 640; 3 AA 715-16.

SUMMARY OF THE ARGUMENT

Appellant's claims fail and the Judgement of Conviction should be affirmed. First, the district court did not abuse its discretion in denying Appellant's request to represent himself. The district court conducted a Faretta canvass and granted Appellant's first request to represent himself. Appellant then asked for appointed counsel and, again, the district court granted his request. Then, at Calendar Call, Appellant raised the issue of a third appointed counsel and representing himself and continuing the trial date. This was denied. Appellant's request was untimely and would have necessitated a continuance, was not unequivocal, and the record shows his request was made for the purposes of delay.

Second, the district court did not abuse its discretion in denying Appellant's motion for a mistrial because the witness read a label from an item of evidence that had already been admitted without objection, it was a single reference, and the single reference was inadvertent and not intentionally elicited. Moreover, Appellant rejected the district court's offer for a curative instruction. Therefore, Appellant's claims should be denied.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR REGARDING APPELLANT'S REQUEST TO REPRESENT HIMSELF

A defendant's request to represent himself or herself must be an unequivocal request and waiver of right to counsel must be knowing and voluntary. Vanisi v. State, 117 Nev. at 338, 22 P.3d at 1170 (2001). The United States Supreme Court has mandated that Courts must "indulge in every reasonable presumption against waiver" of the right to counsel. Hooks v. State, 124 Nev. 48, 57, 176 P.3d 1081, 1086 (2008).

District courts have discretion to deny self-representation request when they are made in an untimely fashion, the request is equivocal, the request is made solely for the purposes of delay, or the defendant abuses his right by disrupting the judicial process. O'Neill v. State, 123 Nev. 9, 17, 153 P.3d 38, 43 (2007); Harris v. State, 113 Nev. 799, 803, 942 P.2d 151. 154 (1997).

A request for self-representation need not be granted if it is intended merely as a tactic for delay. Vanisi, 117 Nev. at 338, 22 P.3d at 1170. A court may consider events preceding a motion for self-representation to determine whether the request is made in good faith or merely for delay. Id. Thus, if the district judge determines that the request is part of a pattern of dilatory activity, the court has the discretion to deny the continuance and require the defendant to proceed to trial on the scheduled date either with the counsel designated or pro se. Id.

In considering a request for self-representation, a defendant's pretrial activity is relevant if it indicates that he or she will be disruptive in the courtroom. Id. Since the district court is in a better position to observe a defendant's demeanor and conduct, the Supreme Court will not substitute its own evaluation for the district court's personal observations and impressions. Id.

Additionally, a district court may reject a defendant's request for self-representation as untimely if granting the request would require a continuance and the defendant shows no reasonable cause to justify the lateness of his request. Guerrina v. State, 134 Nev. __, __, 419 P.3d 705, 713 (2018). In Guerrina, this Court held that the district court did not abuse its discretion in denying a defendant's Faretta request, which he inexplicably submitted 24 days prior to trial along with a request for a continuance. Id.

Further, it is not per se error to deny a defendant's request for self-representation without conducting a canvass or specifying the basis for the denial. O'Neill, 123 Nev. at 17, 153 P.3d at 43.

Although the deprivation of the right to self-representation is reversible error, the Nevada Supreme Court has previously asserted that in determining whether a defendant should have been given the right to represent himself, the court will "give deference" to the decisions of the trial court. E.g., Vanisi v. State, 117 Nev. 330, 338, 22 P.3d 1164, 1170 (2001); Graves v. State, 112 Nev. 118, 124, 912 P.2d 234, 238 (1996).

Here, when the parties appeared for Calendar Call on February 7, 2017, defense counsel stated that Appellant wanted to represent himself and that Appellant would be asking for a continuance to do so. 1 AA 108. The district court ultimately denied this request and Appellant argues that the court erred in doing so. AOB at 9-18. This fails.

In making his request to represent himself at Calendar Call on February 7, 2017, Appellant conceded that the request would require a continuance of the trial. 1 AA 106-08. As discussed supra, a district court may deny a defendant's request for self-representation as untimely if granting the request would require a continuance. See Guerrina v. State, 134 Nev. __, __, 419 P.3d 705, 713 (2018). As such, Appellant's request was not timely and would have required a continuance.

Second, the request was not unequivocal. As discussed supra, throughout this case Appellant had expressed inconsistent opinions in this regard. In his various complaints regarding appointed counsel, his requests were, in essence, requests for different counsel. For example, on July 19, 2016, Appellant alleged that his first appointed counsel was inadequate and moved to appoint new counsel. 1 AA 11. Shortly thereafter, the district court appointed a second attorney to represent Appellant, and two weeks later, Appellant brought another motion to appoint alternative counsel. 1 AA 22, 25-27. On August 25, 2016, the district court conducted a Faretta canvass per Appellant's request and found him competent to represent himself, which he did until November 1, 2016, when Appellant asked for any attorney to be appointed as his co-counsel. 1 AA 43, 65. The district court explained that co-counsel could not be appointed, but that counsel could be re-appointed to the case to assist Appellant, and Appellant requested that the court do so:

> THE COURT: So you want Mr. Coyer reappointed at this point?
>
> THE DEFENDANT: Yes, please.
>
> THE COURT: Alright, so Mr. Coyer's not here. We're gonna set this down for a status check for confirmation of counsel to make sure that he believes he can still provide effective representation to you. I need to hear it from him.
>
> THE DEFENDANT: Okay, alright.

> THE COURT: Alright? And then I will forward to him or he will receive a copy of your brief so he knows all the different materials that you're seeking access to.
>
> THE DEFENDANT: Okay.
>
> THE COURT: Alright? Very good?
>
> THE DEFENDANT: Thank you.

1 AA 67-68 (emphasis added).[2]

Then on November 8, 2016, the date set for re-confirmation of counsel, Appellant expressed confusion and alleged that there was a conflict between him and counsel. 1 AA 74-76. Appellant was increasingly non-responsive with the court throughout the hearing, and then requested that the court appoint an investigator to help him. 1 AA 77. Then, Appellant stated that he agreed to counsel's re-appointment (and, in fact, he did so twice during the appearance):

> THE DEFENDANT: I would ask that the Court order for him [Coyer] to provide me at least a couple of books, fresh minted books, for being once under the Hollis case and I'll accept the –
>
> THE COURT: Mr. Coyer, do you know what books he wants? I didn't get a chance to read his papers to see what books he wants.
>
> MR. COYER: I didn't have a chance to read the papers. I don't know what books he's seeking.
>
> THE COURT: Alright.

[2] As such, the State would note that Appellant was far from "reluctant" in Mr. Coyer being reappointed as Appellant contended in his brief. AOB at 11.

> MR. COYER: If it's something that I can get and can get into the jail I'd be happy to do that, but.
>
> THE COURT: Are you comfortable with that? If he represents you he'll do his best to try to get you the books you're looking for. That's all we can do at this point. Yes or no?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Alright, and so Mr. Coyer will be appointed as your counsel and he's gonna confer with you about what materials you want and he'll exercise his best efforts to try to assist you in getting those materials. Is that your understanding?
>
> THE DEFENDANT: Yes, yes.

1 AA 78 (emphasis added).

The inconsistent – and, as such, not unequivocal – nature of Appellant's request was recognized by the district court, specifically the fact that Appellant kept changing his mind. 1 AA 108. In light of that, the district court continued the matter at Appellant's request and revisited his Motion to Dismiss Counsel and Appoint Alternative Counsel at the next court date on February 28, 2017. 1 AA 110; 1 AA112. At that hearing, Appellant alleged that he was being denied access to the law library and research materials. 1 AA 116. As such, Appellant went back and forth with the court on three different occasions and throughout each proceeding. His requests for counsel, alternate counsel, an investigator, or to represent himself were often ambiguous. Therefore, Appellant's request was not unequivocal.

Third, the record shows that Appellant's request was made for purposes of delay. Appellant was disgruntled with each of the attorneys that were appointed to him. As discussed supra, Appellant had a pattern of delaying the proceedings. In this regard, Appellant filed a second Motion to Dismiss Counsel and Appoint Alternate Counsel on December 28, 2016, which was similar to his motion to dismiss his first appointed counsel and appoint new counsel filed on July 19, 2016. Appellant again asked for co-counsel to be appointed on November 1, 2016. And then on November 8, 2016, Appellant agreed to counsel's re-appointment. This history, which the district court could consider in assessing the request, show that Appellant's request was for the purposes of delay. See Vanisi, 117 Nev. at 338, 22 P.3d at 1170.[3]

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[3] Despite the untimely and equivocal nature of the request, and the pre-trial history showing that the request was made for the purposes of delay, Appellant argues that the court erred because even the State noted that it would be "reversible error" to deny the request. However, this comment has been taken out of context. The exchange, in its entirety, is:

> THE COURT: Pardon me? I mean how many times are you allowed to change your mind?
> MS. DEMONTE: I think the closer you get to trial – midway through trial I don't think he can, you know, fire his counsel and just go pro per but I think at this stage of the proceedings when he's asking for a continuance to not –
> THE COURT: Well I want to protect the record and –
> MS. DEMONTE: Yes, and I think at this stage of the proceedings it will be reversible error.
> THE COURT: Well, I don't want that.

Finally, to the extent that Appellant challenges the basis for the district court's denial of his request, such a claim is without merit. As discussed supra, the record shows that the request was untimely and necessitated a continuance of the trial. The request was also not unequivocal, and the record shows that Appellant had a pre-trial pattern of behavior supporting the conclusion that the request was being made for the purposes of delay. It is not per se error to deny a defendant's request for self-representation without conducting a canvass or specifying the basis for the denial. See O'Neill, 123 Nev. at 17, 153 P.3d at 43. Moreover, even assuming arguendo that there was any error in the district court's basis for the denial, this would not be

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> MS. DEMONTE: As long as he passes the Faretta allow him to do so. However, what the Court can do is say Faretta's forever, you can't just cry uncle. Like once you're representing yourself we are now done. I don't think its reversible error for this Court to let the Defendant know that.
> THE COURT: Well –
> MR. COYER: And, Judge, I think that even unless it looks like gamesmanship on the part of the Defendant I think he can change his mind up to and including in the middle of trial, but that's some of the case law that I've read and that's, you know.
> THE COURT: We'll wait and see if we get there. Alright, so –
> MS. DEMONTE: It appears for today's purposes he is asking for a continuance so we can probably just status check this. He's got two motions pending on the 28th.

1 AA 108-09.

reversible error since, given the factors discussed supra, the denial was not incorrect. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.")

For all these reasons, the district court did not commit reversible error regarding Appellant's request to represent himself. As such, this claim fails and the Judgment of Conviction should be affirmed.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANT'S REQUEST FOR MISTRIAL

A denial of a motion for a mistrial is within the district court's sound discretion and, this Court will not disturb the district court's decision unless there is a clear showing of abuse of discretion. Parker v. State, 109 Nev. 383, 388-89, 849 P.2d 1062, 1066 (1993). A mistrial may be granted where "prejudice occurs that prevents the defendant from receiving a fair trial." Rudin v. State, 120 Nev. 121, 144, 86 P.3d 572, 587 (2004).

The test for determining whether a statement is a reference to criminal history is whether the jury could reasonably infer from the fact presented that the accused had engaged in prior criminal activity. Rice v. State, 108 Nev. 43, 44 824 P.2d 281, 281 (1992). In Rice, defendant argued the district court violated his due process rights by denying his motion for mistrial after two state's witnesses made references to the department of parole and probation, in violation of a motion in limine. Id. This

Court held that, although a reasonable juror could conclude from the references at issue that defendant had engaged in prior criminal activity, the error was harmless beyond a reasonable doubt because the statements were unsolicited, the references were inadvertent, and the defense counsel declined the judge's offer to give the jury a limiting instruction. Id. Therefore, a district court can cure inadvertent or spontaneous references to other criminal activity. Sterling v. State, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992).

Appellant argues that the district court erred in denying his motion for mistrial. AOB at 19- 24. Appellant requested a mistrial after the following testimony relating to the gun that was impounded after Appellant fled:

> Q: If you could please explain to the ladies and gentlemen of the jury how it is this bag is marked and what we're seeing here?
>
> A: Yes, sir. Numerically ordered, No. 1 will be the revolver – actually, let's start up top there. We got the date, the time it was – or the type – time in possession, even number, evidence of a felony crime was marked, my initials and –
>
> Q: If you could turn this way so the people at the end can see you as well.
>
> A: Yes, sorry. My initials and Chris's initials, my signature. Suspect is listed as Ceasar Valencia, his ID number, charge is assault with a deadly weapon on a police/ex-felon in possession of firearm.
>
> Q: Can you sit down –

THE COURT: Counsel, you need to take a –

MR. DICKERSON: And can we –

THE COURT: We need to take a five-minute recess.

3 AA 568-69.

Although Appellant did not object, the State requested a recess which was immediately taken. During the recess, the parties discussed the testimony – the witness had read the label on the bag that contained the firearm that had already been admitted into evidence, without objection. 3 AA 572. Additionally, counsel had been shown the bag with the label before trial (as well as all of the State's exhibits) and had not asked for any redaction of the label. 3 AA 575; 3 AA 577. Appellant requested a mistrial and the district court denied the request.

In denying the mistrial, the district court explained that it was a single passing comment and noted that the evidence bag the witness had read from had already been admitted without objection. 3 AA 577-579. The district court also gave Appellant the option of giving the jury a curative instruction or not and allowed Appellant to decide whether or not the evidence bag would be given to the jury during deliberations with the other evidence. 3 AA 577-579. The district court also ordered that the State could not comment on the testimony in argument and that the testimony would not be expanded on. 3 AA 577-579. The district court gave Appellant time to consider what remedy or remedies he wanted. 3 AA 579.

Ultimately, Appellant requested that the evidence bag not be sent back with the jury for deliberations, but declined a curative instruction. 3 AA 584.

The district court did not abuse its discretion in denying the motion for a mistrial. The district court relied on Courtney v. State, 104 Nev. 267, 756 P.2d 1182 (1988) in denying Appellant's Motion for Mistrial. 3 AA 571. In Courtney, the defendant was charged with cheating at gambling. During trial, an exhibit was admitted that listed defendant's name, address, and other personal date including the following "8/12/78, conspiracy to cheat at gaming, cheat at gambling." Id. at 268, 1182. The jury discovered the label during deliberations and asked the court whether it should be considered. Id. Because the jurors question during deliberations, beyond a reasonable doubt, had an effect on deliberations, this Court held that the note concerning the defendant's prior conviction was not harmless error. Id. Here, in contrast, the jury did not ask any questions about the label and the exhibit label was not sent to the jury for deliberations.

Moreover, this lone reference on a bag did not ultimately lead the jury to convict Appellant. Instead, it was the abundance of evidence that the State presented that convicted Appellant of the charges, including but not limited to, Officers Houston and Jacobitz identifying Appellant and testifying that Appellant looked back at them multiple times during the foot chase and pointed a loaded firearm. 2 AA 431; 3 AA 521; 2 AA 441-42. Officer Jacobitz testified about how it felt when

Appellant aimed the firearm at him and how fortunate he felt when Appellant's arm hit the pole knocking the firearm out of his hand. 3 AA 522. In addition, Officer Milewski testified about the car stop when Appellant was ultimately apprehended and the search incident arrest that revealed heroin, methamphetamine, and cocaine. 3 AA 640. For all these reasons, the district court did not abuse its discretion in denying the motion for a mistrial.

Therefore, the district court did not err regarding Appellant's request to represent himself or motion for a mistrial. As such, Appellant's claims are without merit and should be denied.

CONCLUSION

For the foregoing reasons, Appellant's Judgment of Conviction should be AFFIRMED.

Dated this 17th day of August, 2018.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 4,830 words and does not exceed 30 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 17th day of August, 2018.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on August 17, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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