

IN THE SUPREME COURT OF THE STATE OF NEVADA

HELEN NATKO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Case No. 73048

RESPONDENT'S ANSWERING BRIEF

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS	2
SUMMARY OF THE ARGUMENT	8
ARGUMENT	9
CONCLUSION	12
CERTIFICATE OF COMPLIANCE.....	13
CERTIFICATE OF SERVICE	14

TABLE OF AUTHORITIES

Page Number:

Cases

Crawford v. State,

121 Nev. 746, 748, 121 P.3d 582, 585 (2003)9

Cortinas v. State,

124 Nev. 1013, 1019, 195 P.3d 315, 319 (2008).....9

Fields v. State,

125 Nev. 785, 220 P.3d 709 (2009)2

Jacobs v. State,

91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975)2

Walch v. State,

112 Nev. 25, 909 P.2d 1184 (1996)8, 10

Statutes

NRS 100.085 8, 9, 10, 11

NRS 100.085(1) 9, 10, 11

NRS 100.085(4)9

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ROUTING STATEMENT

This appeal is appropriately retained by the Court of Appeals pursuant to NRAP 17(b)(1) because it involves a convictions for Category B felonies.

STATEMENT OF THE ISSUES

- I. Whether the District Court erred by giving Jury Instruction 18, which is a correct statement of the law.

STATEMENT OF THE CASE

On March 29, 2016, Appellant Helen Natko was charged by way of Information with 1 count of Exploitation of a Vulnerable Person (Category B Felony – NRS 200.5092, 200.5099) and 1 count of Theft (Category B Felony – 205.0832, 205.0835.4). 1 AA 1 – 3. On April 3, 2017, Natko’s jury trial commenced. On April 11, 2017, the jury returned a verdict finding Natko guilty of both counts. 1 AA 101.

On April 18, 2017, Natko filed a Motion to Set Aside Verdict and Enter Judgment of Acquittal. 1 AA 102 – 44. The State filed its Opposition on April 27, 2018. 1 AA 145 – 49. The district court denied the Motion on May 3, 2017. 1 AA 150 – 56.

On July 31, 2017, Natko was sentenced to probation not to exceed five years, with an underlying 24 – 96 months on Count 1, and 12 – 24 months on Count 2, in the Nevada Department of Corrections. 1 AA 160 – 62. The Judgment of Conviction was filed on August 10, 2017. 1 AA 163 – 65. An Amended Judgment of Conviction was filed on September 11, 2017, clarifying that it was based upon a jury verdict. 1 AA 166 – 68. Natko filed a timely Notice of Appeal on May 5, 2017. 1 AA 158 – 59. Natko filed her Opening Brief on December 14, 2017. The State herein responds.

STATEMENT OF THE FACTS

Natko exploited Delford Mencarelli of \$25,000 and then another \$195,000 between August 1, 2011 and August 31, 2013. 1 AA 33.¹ Terri Black is Mencarelli's daughter, and only child. Id. She is married to Richard Black, and they have a son named Daniel Black, Mencarelli's grandson. Id.

¹ It is Appellant's burden to provide a complete record on appeal. Fields v. State, 125 Nev. 785, 220 P.3d 709 (2009); see also Jacobs v. State, 91 Nev. 155, 532 P.2d 1034, 1036 (1975). Natko only included the transcript for 1 day of the 7 day jury trial in her appendix (day 6). Further, Natko cited to the facts stated in her own district court motions to support the statement of facts in her Opening Brief. AOB at 2 – 5. Based on Natko's failure to include the jury trial transcript in her Appendix, the State will do the same.

Mencarelli's wife passed in approximately 1980. Id. Natko's husband passed away around the same time. Id. Both Mencarelli and Natko lived in Pennsylvania, but in different towns. Id. Mencarelli and Natko never resided in the same home in Pennsylvania, but they were friends and dated between 1982 and 1992. Id.

In 1992, Natko moved to Las Vegas, Nevada. Id. She sold her home in Pennsylvania and purchased a home in Las Vegas. Id. Mencarelli continued to live in Pennsylvania. Id. Between 1992 and 2002, Mencarelli traveled every other year during the winter to stay with Natko. Id.

In 2000, Mencarelli added his daughter as a joint account holder over his Citizen's bank accounts, as a precautionary measure since he was advancing in age. Id.

In 2002, Mencarelli moved to Las Vegas to live with Natko. Id. at 34. Mencarelli sold his Pennsylvania home and arranged to pay Natko \$700 per month in rent. Id. At that time. Mencarelli's estate, including the sale of the Pennsylvania home, was approximately \$500,000. Id.

While Mencarelli was living in Las Vegas, his daughter and family would visit about once a year, normally coinciding with Spring Break. Id. Terri Black spoke to Mencarelli once a week, usually on the weekends. Id.

In 2008, Mencarelli opened a Plus Credit Union bank account. Id. From that point forward his pension check, of \$928, was deposited and cashed through this account, and the social security check, of \$1211, still went to Citizens Bank. Id.

In April 2011, the Blacks flew Mencarelli and Natko to visit them in North Carolina for Easter. Id. Mencarelli was 80 years old, and was noticeably slowing down. Id. Natko claimed that Mencarelli needed hearing aids, tried to make him wear them, but he refused. Id. During time alone with Mencarelli, his daughter suggested that she could purchase a condo for him and Natko to live in in North Carolina, so they were closer. Id. Mencarelli refused the offer. Id. Natko also refused the offer when it was presented to her. Id. The Blacks also noticed that Natko and Mencarelli bickered and argued frequently. Id.

On July 19, 2011 Dr. Shauna Christiansen-Thistle conducted a Mini Mental Status exam on Mencarelli. Id. He scored a 12 out of 30. 1 AA 34 – 35. Dr. Christiansen-Thistle referred Mencarelli to a Neurologist and said that Mencarelli was not capable of balancing a checkbook, writing out bills, or being organized enough to manage his finances. 1 AA 35.

On August 4, 2011 \$20,000 was transferred from Citizen's bank (which was Mencarelli's, jointly held with his daughter Terri) to a Plus Credit Union account in Las Vegas. Terri Black was not made aware on regular phone calls with Natko and

Mencarelli. Id. On August 15, 2011 \$5,000 was withdrawn from Mencarelli's Plus Credit Union account. Id. Terri Black was also not informed of this. Id.

On October 14, 2011 Mencarelli was seen by Dr. Howard Ehrenfeld, a Neurologist. Id. Mencarelli scored a 13 out of 30 on the Mini Mental Status Exam. Id. Dr. Ehrenfeld noted that Mencarelli has had difficulty with his memory for about three years, and that Natko handled the finances. Id.

On November 1, 2011, \$15,000 was withdrawn from Mencarelli's Plus Credit Union account. Id. Again, Terri Black was not informed of this. Id.

In May 2012, Mencarelli and Natko travelled to Pittsburg to visit relatives. Id. Mencarelli was hospitalized during the stay due to complications with medication and his diabetes. Id. Terri Black was not informed by Natko of her father's hospitalization until she called her aunt. Id. Terri Black attempted to call Natko numerous times before she answered and informed Black that her father was in the hospital. Id. In mid-July 2012, Mencarelli was hospitalized in Las Vegas. Id. Terri Black was never notified by Natko. Id.

On July 23, 2012, \$150,000 was transferred from Citizens Bank to the Plus Credit Union. Id. On the same date, Natko was added to Mencarelli's Plus Credit Union account as a joint account holder. Id. On September 5, 2012, \$5,000 was withdrawn from Mencarelli's Plus Credit Union account. Id. Terri Black was unaware. Id.

In March of 2013, Natko called Terri Black and said, “Come get your father – he hasn’t paid rent this month.” Id. Terri Black found this to be strange because Natko usually took Mencarelli to the bank to cash his pension check, at which point he would give her \$700.00. Id. Terri Black spoke to Natko the next day and she explained that it was just a bad day. Id. Terri Black expressed that she was more than willing to take her father to live with her in North Carolina. Id.

On April 26, 2013, \$50,000 was transferred from Citizen’s Bank to Mencarelli’s Plus Credit Union Account. 1 AA 36. On June 4, 2013, a \$500 check was received by Daniel Black allegedly from Mencarelli for graduation from high school. Id. Terri Black immediately recognized that it was not her father’s handwriting on the check. Id. She was also puzzled because Mencarelli always sent a card and cash, not a check. Id.

On or around June 15, 2013, Terri Black went to the Pittsburg area to attend a funeral. Id. Because of the geographic location of Citizens bank branches, she was finally able to go to a branch and request statements. Id. She discovered disbursements of \$50,000 two times (one returned due to non-sufficient funds). Id. She also discovered transactions of \$20,000 and \$150,000 to an account she was not aware of. Id.

On June 22, 2013, Terri Black called Mencarelli. Id. Terri Black spoke about the funeral and then approached the subject of the large money transfers. Id. Terri

Black asked about the \$200,000 leaving Citizen's bank. Id. However, Mencarelli emphatically and repeatedly said "no, all my money is in Citizen's Bank." Id. Natko was also on the phone, and chimed in saying "we moved the money." Id. Natko then said, "Why should you have it all? Come get your father, I am putting him on a plane." Id. Terri Black explained after several calls that she would travel to Las Vegas (from North Carolina) to get her father the next day. Id. That same day, Terri Black called the Las Vegas Metropolitan Police Department ("LVMPD") to do a welfare check on Mencarelli. Id.

On June 23, 2013 Terri and Richard Black arrived in Las Vegas with a one-way ticket for Mencarelli to North Carolina. Id. Natko refused to release Mencarelli, and would not even allow Terri Black to speak in private with her father. Id. Mencarelli looked disheveled and had lost a significant amount of weight. Id. The police were unable or unwilling to assist in the matter, and suggested pursuing guardianship as a remedy. Id.

On June 27, 2013 Terri and Richard Black filed a petition for appointment of guardian based upon the abovementioned conduct and concerns for his well-being financially and physically. 1 AA 37. On July 5, 2013, Natko transferred \$195,000.00 from Mencarelli's Plus Credit Union Account to an account with access only allowed to Natko. Id.

On August 19, 2013 Mencarelli was evaluated again by Dr. Ehrenfeld and scored a 10 out of 30 on the Mini Mental Status Exam. Id.

On April 17, 2014, LVMPD began an investigation into Elderly Exploitation regarding Natko's actions with Mencarelli's finances. Id.

On July 3, 2015, Mencarelli passed away.

SUMMARY OF THE ARGUMENT

This Court reviews whether an instruction is an accurate statement of the law de novo. Cortinas, 124 Nev. at 1019, 195 P.3d at 319. Natko argues that the district court erred by giving Instruction 18 because it "is in direct contradiction of NRS 100.085, as well as Jury Instruction Numbers 16 and 17. . ." AOB at 6. Instruction 18 provided, "A person's status as a joint account holder does not by itself provide lawful authority to use or transfer another's assets for their own benefit." 1 AA 100. The district court correctly relied on Walch v. State, 112 Nev. 25, 909 P.2d 1184 (1996), in giving Instruction 18. In Walch, this Court held, "Walch's status as joint holder of the two accounts did not preclude the jury from finding that she stole funds which passed through the accounts." Id. Walch is still an accurate statement of the law. Id. Accordingly, Instruction 18 was a correct statement of the law and was properly given by the district court.

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ARGUMENT

District courts have “broad discretion” to settle jury instructions. Cortinas v. State, 124 Nev. 1013, 1019, 195 P.3d 315, 319 (2008). District court decisions settling jury instructions are reviewed for an abuse of discretion. Crawford v. State, 121 Nev. 746, 748, 121 P.3d 582, 585 (2003). This Court reviews whether an instruction is an accurate statement of the law de novo. Cortinas, 124 Nev. at 1019, 195 P.3d at 319.

Natko argues that the district court erred by giving Instruction 18 because it “is in direct contradiction of NRS 100.085, as well as Jury Instruction Numbers 16 and 17. . .” AOB at 6. Instruction 18 provided, “A person’s status as a joint account holder does not by itself provide lawful authority to use or transfer another’s assets for their own benefit.” 1 AA 100. Natko contends that Jury Instruction 18 is in direct contradiction with NRS 100.085. AOB at 6. NRS 100.085(1), which is identical to Instruction 16, states in pertinent part, “When a deposit has been made in the name of the depositor and one or more other persons, and in a form intended to be paid or delivered to any one of them, or the survivor or survivors of them, the deposit is the property of the persons as joint tenants. . .” 1 AA 98 – 99. NRS 100.085(4), which is identical to Instruction 17, states:

. . .[T]he use by the depositor of any of the following words or terms in designating the ownership of an account indicates the intent of the depositor that the account be held in joint tenancy:

- (a) Joint;
- (b) Joint account;
- (c) Jointly held;
- (d) Joint tenants;
- (e) Joint tenancy; or
- (f) Joint tenants with right of survivorship.

Id. Natko argues that Instruction 18 “was a clear misstatement of the law that is set forth in NRS 100.085 and should not have been given to the Jury.” AOB at 8. Natko states that “the Trial Court relied on Walch v. State in deciding to give Jury Instruction numbered [sic] 18.” AOB 8 – 9.

The district court properly relied on Walch in deciding to give Instruction 18. In Walch, the defendant argued that funds deposited in two accounts became her and the victim’s joint legal property and that she therefore had lawful authority to withdraw them and use them as she wished. 112 Nev. at 31, 909 P.2d at 1187-1188. To support this argument, the defendant cited NRS 100.085(1). Id. However, this Court found defendant’s argument to be without merit. Id. This Court stated, “[n]one of this authority establishes that Walch's status as a joint account holder shields her from liability for theft in this case. The effect of NRS 100.085(1) is to protect a depository, such as a bank, from liability if it pays money out to a joint tenant of an account.” Id. at 31, 1188. Accordingly, this Court held, “Walch's status as joint holder of the two accounts did not preclude the jury from finding that she stole funds which passed through the accounts.” Id.

There is a very clear reason why Natko's logic in this appeal fails. If Natko's argument were law, then simply being a joint account holder with another person or entity would give the potential criminal 'carte blanche' authority to take whatever they want from the bank account. It would also shield the thief or exploiter from criminal and civil liability for taking money that they did not generate or have true ownership over. This is an absurd reading of the law, which is clearly countered in that (a) NRS 100.085(1)'s purpose is to protect the depository, not thieves, and (b) the Court in the Walch case clearly recognized the absurdity of this argument.

The district court did not err in giving Instruction 18. Instruction 18 was a correct statement of the law as set forth in Walch. Id. Natko contends that Walch and NRS 100.085 contradict one another. AOB at 8. However, NRS 100.085 was last amended in 1995. The Walch opinion was issued in 1996. 112 Nev. 25, 909 P.2d 1184. This Court was well aware of NRS 100.085, in its current form, when it decided Walch. Id. This Court found that the defendant's arguments were without merit and that the "effect of NRS 100.085(1) is to protect a depository." Id. Further, there has been no subsequent appellate history overturning Walch. Id. Here, NRS 100.085 does not support Natko's argument that her status as a joint account holder does not "shields her from liability for theft in this case." Id. Accordingly, Instruction 18 was a correct statement of the law and was properly given by the district court.

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CONCLUSION

For the foregoing reasons, this Court should affirm Natko's Judgment of Conviction.

Dated this 19th day of March, 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 2,565 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 19th day of March, 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 March 19, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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