

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

Electronically Filed
Apr 28 2022 11:42 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

THE STATE OF NEVADA,

Plaintiff,

vs.

MARC PAUL SCHACHTER,

Defendant.

Sup. Ct. Case No. 84547

Case No. CR14-1044

Dept. 4

RECORD ON APPEAL

VOLUME 3 OF 10

DOCUMENTS

APPELLANT

Marc Schachter #91445
S.D.C.C. PO Box 208
Indian Springs, NV 89018

RESPONDENT

Washoe County District
Attorney's Office
Jennifer P. Noble, Esq. #9446
P.O. Box 30083
Reno, Nevada 89502-3083

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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 ONNI J. STEINHEIMER, DISTRICT JUDGE

10 -o0o-

11 THE STATE OF NEVADA,)

)

12 Plaintiff,)

)

13 vs.)

CASE NO. CR14-1044

) DEPARTMENT NO. 6

14)

15 MARC PAUL SCHACHTER,)

)

16 Defendant.)

17
18 TRANSCRIPT OF PROCEEDINGS

19 PRE-TRIAL MOTIONS PARTIAL TRANSCRIPT

20 THURSDAY, SEPTEMBER 11, 2014, 10:00 A.M.

21 Reno, Nevada

22 Reported By: JUDITH ANN SCHONLAU, CCR #18
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
24 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 OFFICE OF THE PUBLIC DEFENDER

 BY; JAMES LESLIE, ESQ.

 DEPUTY PUBLIC DEFENDER

 350 S. CENTER STREET

 RENO, NEVADA

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1 RENO, NEVADA; THURSDAY, SEPTEMBER 11, 2014; 10:00 A.M.

2 -oOo-

3 THE COURT: This is the time set for a continued
4 motion, and we have Mr. Schachter present with standby counsel
5 Mr. Leslie. Thank you. And the State is represented.

6 Counsel we kind of put off some things, some of
7 Mr. Schachter's motions, as well I do have some rulings to
8 make on the State's motions. Are you ready to go forward with
9 those motions this morning

10 THE DEFENDANT: I am, Your Honor.

11 MR. BOGALE: State is ready to proceed.

12 THE COURT: All right. Shall we, I think we need to
13 talk about the video surveillance. Let's start there.

14 MR. BOGALE: Kay. The State has witnesses here to
15 authenticate the original video as the Court ordered on 9-3 so
16 I guess I'll call both of them first.

17 THE COURT: That's fine. Why don't you tell us the
18 name of who you are going to be calling.

19 MR. BOGALE: Nick Reed.

20 THE COURT: Okay.

21 MR. BOGALE: The next is Alejandro Monroy.

22 THE COURT: Last name Roy?

23 MR. BOGALE: M-O-N-R-O-Y.

24 MR. BOGALE: I will start with Alejandro Monroy, Your

1 Honor.

2 THE COURT: Okay.

3 THE CLERK: Please raise your right hand.

4

5 ALEJANDRO MONROY

6 called as a witness, having been first duly sworn,

7 took the witness stand and testified as follows:

8

9 DIRECT EXAMINATION

10 THE COURT: Counsel you may proceed.

11 MR. BOGALE: Thank you Your Honor.

12 BY MR. BOGALE:

13 Q When you get comfortable, please state your name and
14 spell your last name for the Court Reporter?

15 A Alejandro Monroy, M-O-N-R-O-Y.

16 Q What is your occupation?

17 A Asset protection officer for Wal-Mart.

18 Q And do you work at a specific Wal-Mart?

19 A I now work for the Kietzke Wal-Mart store 2189.

20 Q Have you worked for other Wal-Marts in town?

21 A I have, the Seventh Street Wal-Mart, store 3254.

22 Q And did you work for that Seventh Street Wal-Mart on
23 or about, excuse me, June 9th of this year?

24 A Yes, I did.

1 Q And what was your employment status there? What did
2 you do there?

3 A Asset protection.

4 Q What is asset protection?

5 A Asset protection is basically walking the store
6 looking for safety issues and any suspicious activity that
7 customers must be displaying to catch shoplifters.

8 Q Do you just look with your eyes, look for video
9 cameras, how do you keep track of this?

10 A Ninety-nine percent of the time it is with my eyes.

11 Q So you have an office in the store?

12 A Yes, we do.

13 Q And have you been trained to detect suspicious
14 customers?

15 A Yes.

16 Q What sort of training have you undergone?

17 A Basically walking with an experienced asset
18 protection officer, demonstrating what suspicious activity
19 might look like, looking around nervously, having an empty
20 tote in their hand, shopping erratically, things like that.

21 MR. LESLIE: Your Honor, I apologize for the
22 interruption. I forgot to ask, can we have him uncuffed like
23 we did last time?

24 THE COURT: Yes.

1 MR. LESLIE: Hank you.

2 BY MR. BOGALE:

3 Q Now you said you observe customers with your own
4 eyes; is that correct?

5 A Yes.

6 Q Do you also have video equipment?

7 A Yes, we do.

8 Q Does Wal-Mart have video surveillance?

9 A Yes, they do.

10 Q Is it constantly recording or triggered by certain
11 things? Explain that?

12 A It is recording 24 hours a day 7 days a week.

13 Q Now we are here because an individual named Mark
14 Schachter has been identified, sorry, has been charged with
15 some crimes. Let me bring your attention back to June 9th. Do
16 you recall seeing somebody in your store that you thought was
17 acting suspicious?

18 A Yes.

19 Q Did you eventually confront that person?

20 A Yes, I did.

21 Q Do you see that person here in the courtroom today?

22 A Yes, I do.

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

1 A The defendant has a gray jumpsuit. I can't tell
2 what it is. And orange shoes.

3 MR. BOGALE: May the record reflect the
4 identification of the defendant by this witness?

5 THE COURT: The record will so reflect.

6 MR. BOGALE: Thank you. Your Honor, may I approach?

7 THE COURT: You may.

8 MR. BOGALE: I will ask the clerk to have this
9 marked.

10 THE CLERK: Exhibit C marked.

11 (Exhibit C marked for identification.)

12 THE CLERK: Just so everybody remembers, A and B
13 were marked at the end of the previous hearing which were the
14 CD's in the custody of the defendant.

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

17 THE COURT: You may.

18 MR. BOGALE: Thank you.

19 BY MR. BOGALE:

20 Q Mr. Monroy, I am going to show you what has been
21 marked as Exhibit C, okay? It is a disk. Can you-- do you--
22 can you tell me whose name is on there, first?

23 A That is Mark Schachter.

24 Q Who do you understand Mark Schachter to be?

1 A The defendant.

2 Q And do you know what this disk has on it?

3 A Yes.

4 Q What is on this disk?

5 A It is the video of my confrontation with Mark
6 Schachter along with some video of him in the store selecting
7 some items.

8 MR. BOGALE: Your Honor, may I move to admit Exhibit
9 C in evidence?

10 THE COURT: Any objection?

11 THE DEFENDANT: How does he know what is on that
12 disk?

13 THE COURT: You want to ask him a question before I
14 admit the document?

15 THE DEFENDANT: Yes. How do you know what is on the
16 disk?

17 THE WITNESS: I burned the disk.

18 THE DEFENDANT: Okay. Thank you.

19 THE COURT: Exhibit C is admitted.

20 (Exhibit C admitted in evidence.)

21 MR. BOGALE: Thank you, Your Honor. May I publish?

22 THE COURT: You may.

23 MR. BOGALE: We tried to set up the video so Your
24 Honor can see it. I hope it is sufficient.

1 BY MR. BOGALE:

2 Q Mr. Monroy, there are several files on this disk. I
3 am going to play the beginnings of them, and if you are
4 satisfied it accurately reflects what you burned, just tell me
5 okay?

6 A Okay.

7 THE DEFENDANT: Your Honor, I just have an
8 objection. Where are we going with this? I thought the
9 hearing was about the disk that was already in evidence not a
10 new disk.

11 THE COURT: We may have to compare the two, I guess.

12 THE DEFENDANT: This is a recently burned disk he
13 brought. He said he brought it.

14 THE COURT: He said he burned it. Mr. Schachter, we
15 don't argue back and forth. So since you are in trial in two
16 weeks, we better start figuring this out. So you don't get to
17 sit there and debate issues. If you have a motion, make it.
18 If you have an objection, make it. You say what the objection
19 is. You stand up when you say it, but we don't have to do it
20 today but in a trial, then I rule on it and you don't debate
21 it with me, okay?

22 THE DEFENDANT: Sorry.

23 THE COURT: I am going to let the question stand.
24 Whatever the objection was, which I am not sure I understood,

1 is overruled. I am going to let the question stand and the
2 witness can answer.

3 BY MR. BOGALE:

4 Q Okay. Mr. Monroy, I am going to open this disk and
5 play the file with you. Just look at that screen behind you.
6 Start with a file called AA GM. Do you recognize this video?

7 A Yes.

8 Q What does it show?

9 A It is showing Mr. Schachter going to the front of
10 the pharmacy and health and beauty department.

11 Q I don't believe we have the ability to kind of like
12 use high technology and point and circle things. Can you at
13 least point at Mr. Schachter in the video?

14 A Absolutely. Right there.

15 Q Is this an accurate reflection of the Wal-Mart
16 surveillance recording at your store on Seventh Stree on June
17 9th?

18 A Yes, it is.

19 Q I am going to close that file out and open up
20 another one. This one is entitled GC Portable. Those are the
21 first two words. Okay. Have you had a chance to view that?

22 A Yes.

23 Q What is this video?

24 A This is a video of Mr. Schachter going up to the

1 register at the garden center and paying for some items.

2 Q And there appears to be a date and time stamp on
3 that; is that correct?

4 A Yes.

5 Q What does that date and time stamp say?

6 A June 9, 2014, 11:48 a.m.

7 Q Is this an accurate depiction or reflection of the
8 Wal-Mart surveillance on that date and time?

9 A Yes, it is.

10 Q Is this an accurate reflection of what you burned
11 that day?

12 A Yes.

13 Q While we are on that, do you recall the exact date
14 you burned this file?

15 A These files --

16 Q If you don't remember the exact date that's okay?

17 A I know it was within a few days of the actual
18 incident.

19 Q So within what, two or three days?

20 A Yes.

21 Q Of June 9th?

22 A Yes.

23 Q Could it have been a week?

24 A No. It was two or three days.

1 Q Are these video files maintained on like a server of
2 some kind?

3 A It is actually saved on a computer.

4 Q Do you have a certain amount of time within which
5 you need to burn them if you want to preserve them?

6 A When we create an actual investigation file where we
7 take snippets of the video and place them into an
8 investigation, I am not 100 percent if that ever deletes
9 unless we physically delete it.

10 Q Now I am going to show you a file entitled RX POX
11 are the first two words. Do you recognize this video?

12 A Yes, I do.

13 Q What does it show?

14 A It is showing Mr. Schachter in the first aisle of
15 the pharmacy looking at some items.

16 Q Where is Mr. Schachter? If you could point him out
17 as to the place?

18 A Right in there.

19 Q That is pretty hard to see. How do you know that is
20 Mr. Schachter from the video?

21 A Because I was actually physically surveilling him
22 from the aisle in front.

23 Q So you were personally in this store surveilling him
24 with your own eyes?

1 A Yes, I was.

2 Q You can't see it on the video, but you were
3 somewhere to the right, I guess?

4 A Correct.

5 Q Is this a fair and accurate representation of the
6 Wal-Mart surveillance of that location on June 9th?

7 A Yes, it is.

8 Q I am going to show you file RX-0TC. Do you recognize
9 this video?

10 A Yes, I do.

11 Q Do you see Mr. Schachter in it?

12 A I do.

13 Q Where do you see him?

14 A Right there.

15 Q Okay. And is this video recording activities you
16 were also observing with your own eyes?

17 A Yes.

18 Q And is this a fair and accurate representation of
19 what you observed with your own eyes?

20 A Yes.

21 Q Okay. Just for me could you explain what he's doing
22 here?

23 THE DEFENDANT: Your Honor I object. We'll let the
24 video decide what I am doing or not doing. I don't understand

1 what the question is.

2 THE COURT: Overruled. I will allow him to say what
3 he observed personally. He's saying he saw this personally so
4 I will allow that question.

5 THE WITNESS: It is Mr. Schachter looking at some
6 Icy Hot items and comparing and reading the box.

7 BY MR. BOGALE:

8 Q Okay. What is Mr. Schachter doing with these item?

9 A He places them in the cart.

10 Q Okay. Is it a fair and accurate representation of
11 the video or what you observed?

12 A Yes, it is.

13 Q Now I am going to show you a file called Stanley GC.
14 What does this show?

15 A This is showing the entrance into the garden center.

16 Q Does it show Mr. Schachter in there?

17 A Yes, it does.

18 Q Where is he?

19 A Right there.

20 Q Okay. I will show you another file called Stanley
21 GC. It ends in a zero. The previous one ended in 15. What is
22 this file?

23 A It is the same entrance into the garden center just
24 the angel on the other side of the door.

1 Q Did it show Mr. Schachter in that video?

2 A Yes, it did.

3 Q Just a couple more, Mr. Monroy. This one is entitled
4 Park Lot Cam is the first two words. Now what is happening in
5 this video?

6 A This is where I confronted Mr. Schachter.

7 Q I am going to pause it. Where is the confrontation
8 happening, if you could point it out to us?

9 A Right there.

10 Q Okay. And you personally confronted Mr. Schachter?

11 A Yes, I did.

12 Q And you know where this video was recording from?

13 A Yes.

14 Q Where was it recording from?

15 A There is a camera on one of the lightposts.

16 Q And would this be a fair and accurate reflection of
17 the confrontation?

18 A Yes.

19 Q Okay. Okay. I am now showing you a file entitled
20 Roof Top Cam are the first two words of the file. What is
21 happening here?

22 A The confrontation is continuing. Mr. Schachter is
23 still attempting to get past me.

24 Q Okay. I see there are -- there is a street towards

1 the top of the video. What street is that?

2 A That is Seventh Street.

3 Q You are on like the north side of the parking lot?

4 A Correct.

5 Q And where is Mr. Schachter and where are you in this
6 video?

7 A This is Mr. Schachter.

8 THE COURT: I can't see.

9 THE WITNESS: That is Mr. Schachter and that is me.

10 THE COURT: Okay. Thank you.

11 BY MR. BOGALE:

12 Q It is a long video, so I am going to ask you is this
13 short piece a fair and accurate representation of the
14 aftermath of the confrontation?

15 THE WITNESS: Yes.

16 Q Does anyone else have access to the video files at
17 Wal-Mart besides asset protection?

18 A Upper management.

19 Q Is there any way that these video files could have
20 been -- could have been edited?

21 A Not that I am aware of.

22 Q Do you know how to edit them?

23 A No.

24 Q Okay. Have you reviewed Wal-art's video files for

1 any video showing the defendant entering Wal-Mart?

2 A I did look. Unfortunately, the files delete after 60
3 days.

4 Q And so did you find one?

5 A No. There was no video.

6 Q Did you look within 60 days from June 9th?

7 A I do not recall.

8 MR. BOGALE: No further questions.

9 THE COURT: Mr. Schachter.

10

11 CROSS-EXAMINATION

12 BY THE DEFENDANT:

13 Q You testified that you burned these videos?

14 A This specific video.

15 Q It wasn't Ms. Young who burned them?

16 A That one, no.

17 Q All these -- these are all burned together?

18 A I am testifying to this one.

19 Q I don't even know how to put this. This is not the
20 video that is in my discovery?

21 THE COURT: I don't believe so. The one you gave the
22 clerk for safe keeping is marked A and B.

23 THE CLERK: That is correct.

24 THE COURT: So he's now showing you C. Do you want

1 him to look at A and B? Do you want to ask him questions
2 about A and B?

3 THE DEFENDANT: No.

4 THE COURT: Okay.

5 THE DEFENDANT: I thought the hearing, this was about
6 the discovery about what I was entitled to and whether that
7 video was altered.

8 THE COURT: Mr. Schachter, it really doesn't matter
9 if it was altered. If the State were able to produce the
10 documents that you thought were exculpatory, then it may give
11 you a different remedy if you continue going to trial in two
12 weeks, but maybe it still would be admissible. You made a
13 motion of the fact that they had no video provided to you in
14 the discovery that showed you walking into Wal-Mart, and you
15 said that was exculpatory evidence because you had the
16 backpack on when you walked in. So there are many motions
17 here. You have discovery issues which you are claiming they
18 aren't giving you, is it fair and accurate, whatever they did
19 have. But you are also claiming that they did not burn the
20 proper CDs.

21 THE DEFENDANT: Exactly.

22 THE COURT: Right?

23 THE DEFENDANT: Yes.

24 THE COURT: So the State has said what they burned.

1 They have got a witness here. You can ask him why he burned
2 it, didn't burn it, do whatever you want with it. You can
3 have him look at A and B if you want because you have lodged
4 those with the Court.

5 BY THE DEFENDANT:

6 Q Thank you. So, again, there is no video of me
7 available right now walking into the store?

8 A Correct.

9 Q What was the deadline for you to be able to retrieve
10 that video?

11 A Whatever 60 days would have been.

12 Q Is that the procedure-- How did you decide which
13 snippets to burn?

14 A I burned anything showing you throughout the store
15 selecting items.

16 Q But nothing prior to 11:30 or 11:27 that was on that
17 video, the first video, right?

18 A If that is the time, yes.

19 Q And did you-- that is all the video you could find
20 of me in the store, is that what you are saying?

21 A Yes.

22 Q So it is the policy not to get all, I am sorry, all
23 the entrance videos, right?

24 A I am sorry. Repeat that.

1 Q All the entrances and exists are on video
2 surveillance?

3 A Yes, they are.

4 Q Is it the policy not to record when you have a
5 suspected shoplifter, not to record him or her coming into the
6 store?

7 A There is no policy.

8 Q It was just your decision not to keep that video, is
9 that right, not to burn that video along with the rest of the
10 videos?

11 A Yes. I did not see the relevance.

12 Q There is no other video that you know of of me in
13 the store on that date?

14 A There could be, but I wouldn't see the relevance of
15 recording just you walking down an aisle.

16 Q But in front of the video, does it show me without
17 the backpack?

18 A Okay.

19 Q But you said in your statement that you started
20 surveillance at 11:40 but the video, the earliest video in
21 there is 11:30, and I have the backpack in the shopping cart?

22 A Okay.

23 Q So there is no video prior to 11:30 or any video
24 that you brought with you today or have available that does

1 not show me with the backpack, correct?

2 A Correct.

3 THE DEFENDANT: That's all.

4 THE COURT: That's the end of your questioning?

5 THE DEFENDANT: Yes.

6 THE COURT: Counsel.

7 MR. BOGALE: Just a couple more questions, Your
8 Honor.

9

10

11 REDIRECT EXAMINATION

12 BY MR. BOGLE:

13 Q Did you see the defendant in Wal-Mart without a
14 backpack?

15 A Yes.

16 Q And then did you see him select a backpack?

17 A Yes.

18 Q Is it the same backpack he was holding when you
19 confronted him outside the store after he walked out without
20 paying for it?

21 A Yes.

22 Q Did you view the video of Mr. Schachter coming into
23 Wal-Mart?

24 A I did not.

1 Q Okay. You don't know if there is one, correct?

2 A That is correct.

3 THE DEFENDANT: He just, excuse me, testified there
4 was video.

5 THE COURT: Not a time to object.

6 MR. BOGALE: No further questions. Thank you.

7 THE COURT: Now did you have something?

8 THE DEFENDANT: He just testified -- excuse me.

9

10 RE CROSS EXAMINATION

11 BY THE DEFENDANT:

12 Q You testified all the entrances and exits are video
13 taped?

14 A Correct.

15 Q So at one point, there was video of me walking in
16 the store, correct?

17 A Assuming you used an entrance or exit, yes.

18 Q Is there some other way to get in?

19 A You could have jumped a fence in the garden center,
20 sure.

21 THE COURT: Is there anything further from the
22 State?

23 MR. BOGALE: Nothing further for this witness right
24 now.

1 THE COURT: You may step down.

2 (Witness excused.)

3 MR. BOGALE: The State calls Nick Reed.

4 THE COURT: Counsel, you may proceed.

5

6 NICK REED

7 called as a witness, having been first duly sworn,
8 took the witness stand and testified as follows:

9

10 DIRECT EXAMINATION

11 BY MR. BOGALE:

12 Q Good morning. Please state your name and spell your
13 last?

14 A Nick Reed, R-E-E-D.

15 Q Nick, what is your occupation?

16 A I am a police officer with the Reno Police
17 Department.

18 Q How long have you been there?

19 A About ten years.

20 Q Are you on a special assignment?

21 A I am assigned to detectives.

22 Q Are you part of the Repeat Offender Program?

23 A Yes, sir.

24 Q What is that?

1 A That is basically the career criminal unit.

2 Q Okay. Does that mean you track career criminals?

3 A Yes, sir, we do.

4 Q What sort of tracking do you do?

5 A It could vary from surveillance to checking certain
6 programs that we have that show for instance like a pawn
7 tracking program. We might track somebody through pawns if
8 they are pawning a lot of items or coming up with stolen
9 property, something like that.

10 Q You track their whereabouts and behavior?

11 A Basically, yes.

12 Q Are you assigned a certain amount of targets,
13 essentially?

14 A Yes.

15 Q Is Mark Schachter one of your targets?

16 A Currently, yes.

17 Q Let me bring you back to a few months ago, June of
18 this year.

19 A Yes, sir.

20 Q Were you involved in an investigation of an
21 individual named Mark Schachter?

22 A Yes, sir.

23 Q What did that investigation entail?

24 A Mr. Schachter had been arrested June 9th, and on

1 June 10th I received an in-custody report from Washoe County
2 Jail indicating he had been arrested. I read through the
3 report, the initial report and conducted a little bit of
4 follow up. In that follow up, I collected a surveillance
5 video, and I spoke to asset protection officer named Anna
6 Young both over the phone and in person. I watched the video
7 at Wal-Mart. I completed a report based on what I had seen in
8 the video, what I had read in Mr. Alex Monroy's statement and
9 a little bit of about what Anna, Ms. Young, had told me, and I
10 later booked the video.

11 Q You booked video into evidence?

12 A Yes, sir, I did.

13 Q Okay. I am going to show you what has been marked
14 and admitted as Exhibit C, okay? And just tell me if you
15 recognize these files, how you recognize them and if they
16 comport with the original video that you booked, okay?

17 THE COURT: Wait a minute, is this the video he
18 booked or a different video?

19 MR. BOGALE: It is the State's position it is just a
20 copy of the same video.

21 THE COURT: Where is the video he booked?

22 THE WITNESS: Right here Your Honor.

23 THE COURT: Let's Mark that.

24 THE WITNESS: Okay.

1 MR. BOGALE: Thank you.

2 BY MR. BOGALE:

3 Q Could you open this for me, please?

4 THE COURT: Let the record reflect the envelope is
5 being opened by the witness.

6 THE WITNESS: Your Honor, I just want to indicate it
7 is a Reno Police Department envelope. I has my name and badge
8 number on the front, the date of June 10th. Chain of custody.
9 Case number on the back. It is sealed. My name, Reed, my
10 badge number 9473, case number 14-10834.

11 THE COURT: Is that in the same condition as you put
12 it into evidence?

13 THE WITNESS: Yes, ma'am.

14 THE COURT: Did you retrieve it today?

15 THE WITNESS: I retrieved it last night.

16 THE COURT: From evidence?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Then you can open it. The clerk is
19 going to mark the envelope as well as the CD.

20 THE CLERK: He envelope is marked 1. The CD,
21 itself, will be marked 1-a.

22 (Exhibit 1 and 1-a marked for identification.)

23 MR. BOGALE: Your Honor, pursuant to Mr. Reed's
24 explanation of how he booked this into evidence, where he got

1 it from the chain of custody, his name, badge number and case
2 umber, I move to admit this in evidence.

3 THE COURT: Mr. Schachter. Any objection?

4 MR. LESLIE: Court's indulgence, Your Honor.

5 THE DEFENDANT: For the purpose of this hearing
6 only.

7 THE COURT: No objection?

8 THE DEFENDANT: No objection.

9 THE COURT: Exhibit 1 and 1-a are admitted.

10 (Exhibits 1 and 1-a admitted in evidence.)

11 MR. BOGALE: May I publish the disk, Your Honor?

12 THE COURT: You may.

13 MR. BOGALE: Thank you.

14 THE COURT: Do you want to return C to the clerk?

15 MR. BOGALE: Sure.

16 BY MR. BOGALE:

17 Q Next I am going to show you what has been marked and
18 admitted as Exhibit 1-a.

19 A Okay.

20 Q Now let me show you a couple of videos. This one is
21 called Stanley GC. Is this a fair and accurate representation
22 of what you burned?

23 A You know, I don't recall. I never watched any of
24 these other files. I remember watching Mr. Schachter,

1 specifically, and it was, my focus was more on the end of the
2 surveillance that loss prevention did with Mr. Schachter in
3 the alleged robbery at the time. That is where I kind of
4 focused my attention, so I don't remember the file that you
5 showed me.

6 THE COURT: Just play it for the Court.

7 MR. BOGALE: You want me to play the last one again?

8 THE COURT: No. Do you have the printout of what
9 you are playing? Have you done that?

10 MR. BOGALE: The printout? I am sorry.

11 THE COURT: Have you printed a screen shot from that
12 so you know which file you are supposed to be looking at? The
13 issue here is whether or not you, the D.A.'s office, or the
14 Police Department really burned a fair and accurate copy for
15 the defendant. It is a discovery motion as well as his motion
16 for exculpatory evidence. So in order to compare C which you
17 brought in with the loss prevention officer and this exhibit,
18 it would be helpful if we knew you had a list of the files
19 that you were going to show instead of saying, well, I am
20 going to jump here, I am going to look at this.

21 MR. BOGALE: Well, I can do that.

22 THE COURT: Do you have a list?

23 MR. BOGALE: I don't have a list, but I can make up
24 a list.

1 THE COURT: Maybe you should talk to your
2 investigator.

3 MR. BOGALE: Do you want to do that now?

4 THE COURT: You can ask her now.

5 MR. BOGALE: After speaking with our investigator, I
6 do have a screen shot of the file that we received from RPD.

7 THE COURT: Okay. Did you want to mark that?

8 THE CLERK: Exhibit 1-b marked, "b" as in boy.

9 (Exhibit 1-b marked for identification.)

10 THE COURT: For purposes of today's hearing as it is
11 a pretrial hearing. Where did you get 1-b?

12 MR. BOGALE: From my investigator, Michelle Bays.

13 THE COURT: It was prepared in the course of your
14 preparation for trial?

15 MR. BOGALE: Yes.

16 THE COURT: Have you disclosed that or is that part
17 of your work product?

18 MR. BOGALE: I have not disclosed that, Your Honor.

19 THE COURT: You considered it part of your work
20 product?

21 MR. BOGALE: That's what I figured.

22 THE COURT: But you think it might assist the Court
23 in understanding the exhibits. You can go ahead and show the
24 defendant the document.

1 MR. BOGALE: I think it will definitely help the
2 Court understand the exhibits.

3 THE DEFENDANT: This is for the one that the officer
4 just --

5 THE COURT: Yes, it is. That is my understanding.

6 THE DEFENDANT: Is that what it is? Is this a
7 screen shot?

8 THE COURT: This doesn't have to be on the record.
9 You can talk just like you would a lawyer.

10 MR. LESLIE: Your Honor, I think the colloquy should
11 be on the record, because Mr. Schachter is facing habitual. I
12 am sorry.

13 THE COURT: I didn't know how involved it was going
14 to be.

15 MR. LESLIE: If it was -- I mean those colloquies
16 occur where we say Court's indulgence and whisper at each
17 other, but it sounds like information that probably should be
18 recorded.

19 THE COURT: Okay. Mr. Schachter, you are concerned
20 about the document. What is your question?

21 THE DEFENDANT: Well, the date modified is
22 everything from six to just a couple of weeks ago to August.
23 From June to August. I don't know how it could be from that
24 date. I don't know which video it is from, the date modified.

1 THE COURT: Why don't we hold off on it then. Go
2 ahead and take it back, Mr. Bogale. Hold on to it. We might
3 have to have a witness to testify to whatever it is.

4 THE PLAINTIFF: I think Ms. Bays would be the right
5 person to testify to it.

6 THE COURT: Okay.

7 BY MR. BOGALE:

8 Q Okay. So this disk that I just played a file from,
9 you booked into evidence and never gave it to anybody else.
10 It stayed in evidence; is that correct?

11 A That's correct.

12 Q If it had been moved, it would have been marked on
13 the chain of custody; is that correct?

14 A That's correct.

15 Q And on this chain of custody --

16 MR. BOGALE: May I approach the witness?

17 THE COURT: You may.

18 BY MR. BOGALE:

19 Q Showing you what is marked Exhibit 1, what does the
20 chain of custody say?

21 A So when I booked this in, I put it into a locker
22 identified as 827. So the evidence people show they removed
23 it from 827 and put it into evidence, EVD dated 6-12 of '14
24 and then I put on yesterday that I removed it from evidence,

1 from the evidence clerk, my name and badge number and the date
2 which was 6-10-14.

3 Q Thank you.

4 MR. BOGALE: I have no further questions, Your Honor.

5 THE COURT: Mr. Schachter, do you have any
6 questions?

7 THE DEFENDANT: I don't. I am sorry.

8

9 CROSS-EXAMINATION

10 BY THE DEFENDANT:

11 Q How does that evidence get shared with the
12 prosecutor?

13 THE COURT: Would you return the evidence to the
14 clerk, please? Make sure it all gets put back together.

15 MR. BOGALE: I understand.

16 THE WITNESS: I will answer you in a second. So what
17 I have done, which is common for a detective in my unit, I
18 created two packets. A packet has the evidence disk in it,
19 the reports, the, you know, the paperwork. And in this case,
20 the surveillance disk. So I created a packet for the defense,
21 and I created a packet for the D.A.'s office, and that is only
22 to expedite discovery, because often times a guy in your
23 position will want to go to trial, so it is just to help
24 things along.

1 So to answer your question, he got the disk from me.
2 I burned it or I had Wal-Mart burn it, I don't really
3 remember, but I created two packets, one for the defense and
4 one for the D.A.'s office.

5 BY THE DEFENDANT:

6 Q Prior to lodging it into evidence, correct?

7 A Yeah, correct.

8 Q Do you know the date? Was that the same date that
9 you logged it into, the 10th, on June 10th or sometime after?

10 A It had to have been the same date, because I booked
11 the original in on the 10th and the 10th is when I did my
12 follow-up at Wal-Mart. It was the day after you were arrested.

13 Q So you don't know how the 6-14 date that is on the
14 other copy is on there, right?

15 A I don't even know what you are talking about.

16 Q I am sorry.

17 THE COURT: Did you want Exhibit A or B shown to the
18 witness?

19 THE DEFENDANT: That is helpful. I am trying to do
20 it as quickly as possible.

21 THE CLERK: Which one would you like first? I am
22 handing the bailiff Exhibit A.

23 THE DEFENDANT: Either one of them.

24 THE COURT: Is there anything on the outside of that

1 envelope?

2 THE DEPUTY: Not on the outside of the envelope.
3 They are Marked on the disk, disk 1-DA 14-1219 Schachter,
4 marked 7-24 of '14. The initials of KB.

5 THE COURT: Would you hand that to the witness?
6 We'll just do that first.

7 THE COURT: Is that the condition that you produced
8 a copy of the disk for the defendant?

9 THE WITNESS: I didn't write that down. But I mean
10 the disk, it looks -- I mean they all kind of look the same.
11 It looks similar to what we would use.

12 THE COURT: When you prepare a packet for the
13 defense, do you write on the disk?

14 THE WITNESS: Not always, but I have. Usually it is
15 in a black sharpie. It has the case number and defendant's
16 name on it.

17 THE COURT: Would you write on the sleeve?

18 THE WITNESS: I have done both.

19 THE COURT: Would you leave it completely blank?

20 THE WITNESS: I have done that as well.

21 THE COURT: Would the bailiff hand him Exhibit B.
22 Would you put that disk back in the sleeve?

23 THE WITNESS: Absolutely. Yes, ma'am.

24 THE COURT: Is there any writing on Exhibit B?

1 THE WITNESS: Should I pull it out? There is
2 writing. It is Disk 2, DA 14-12219 Schachter, Mark, 2-24-14.

3 THE COURT: Is that your writing?

4 THE WITNESS: No, ma'am.

5 THE COURT: Okay. Thank you.

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Now did you have some questions?

8 BY THE DEFENDANT:

9 Q On those two videos, all the videos say --

10 THE COURT: The question is for him not me.

11 BY THE DEFENDANT:

12 Q On those two DVDs, all the videos say modified and
13 created on June 14th. Is there some explanation for that that
14 you know of?

15 A No.

16 Q Because you only made copies on June 10th, right,
17 one for the D.A. and one for the defense?

18 A Well, there was three copies. There was the
19 original, then there was two additional copies, but I don't
20 remember, and I apologize, if I had Wal-Mart burn me three
21 total copies, or if I burned two additional copies. I'm not
22 computer, extremely computer savvy, so I tend to believe that
23 I probably asked Wal-Mart to burn me three copies, because
24 that is where I watched this particular incident. So -- I'm

1 sorry. Could you repeat the question? I didn't burn anything
2 after June 10th.

3 Q Okay. In your police report it just says the one
4 disk was booked into evidence. Are you saying it is possible
5 that more than one was booked into evidence? Wal-Mart might
6 have given you additional DVDs or just the one?

7 THE COURT: That is not what he testified to.

8 BY THE DEFENDANT:

9 Q I am sorry. You only received one DVD from Wal-Mart,
10 correct?

11 A Well, I can't say that I received just one, because
12 I may have had three total copies of the same disk. But the
13 two additional videos, whether Wal-Mart burned them or I
14 burned them myself, I don't remember. They were specifically
15 for the defense and the D.A. just to expedite the discovery
16 process. So the one disk that was booked into evidence, that
17 should depict the same as the other two discs.

18 Q That would have been on June 10th, correct?

19 A That it was booked?

20 Q That it was burned?

21 A Yes.

22 Q And booked?

23 A Yes, burned and booked both the same day.

24 Q Okay.

1 THE DEFENDANT: That's it.

2 THE COURT: Thank you. Questions?

3 MR. BOGALE: No further questions.

4 THE COURT: Thank you, sir, you may step down.

5 (Witness Excused.)

6 MR. BOGALE: I want to clarify where we are going
7 here. I wasn't here September 30th. Matt Lee covered for me.
8 I had the pleasure of reading the Court's minutes that were
9 filed yesterday, and they explained what happened at that
10 hearing. We are here, please correct me if I am wrong, to make
11 sure Mr. Schachter has all the video evidence and discovery
12 that the State has; is that correct?

13 THE COURT: That's partially correct. There is
14 also, if you read his motion, there is a motion to dismiss the
15 charges because exculpatory evidence was destroyed. His
16 allegation was he entered the Wal-Mart with the backpack that
17 he is charged with stealing, and that the exculpatory evidence
18 was on a video not produced by the State.

19 He's also objected to the content of video discovery
20 stating that the video discovery that was provided to him was
21 not complete, an accurate copy of whatever was produced and
22 booked into evidence. So your job today was to confirm what
23 was booked into evidence, confirm whether there was any video
24 exculpatory evidence available, perhaps have the witness

1 testify it is not available and refute the exculpatory
2 evidence Mr. Schachter is claiming you destroyed or someone
3 who works for you destroyed.

4 He's also alleging the videos he's been given are
5 not a fair and accurate depiction of what was marked into
6 evidence or booked into evidence, so he's been alleging that.
7 So you have got now what was booked into evidence, but you
8 still haven't been able to compare. And then the one you did
9 play was something that was burned by the witness not having
10 anything to do, I don't think, with the discovery that was
11 provided to Mr. Schachter.

12 So he has his Motion to Dismiss on substantive
13 grounds and Motion to Dismiss for failure to provide
14 discovery.

15 MR. BOGALE: Well, I never had a chance to view the
16 discovery that he has. Evidently he booked that into evidence
17 as A and B.

18 THE COURT: Who did view the discovery before it was
19 provided to Mr. Schachter?

20 MR. BOGALE: I viewed it, but the disks he has, the
21 physical disks he has he's claiming are different or aren't
22 exactly what we provided him, so I would like to view those.

23 THE COURT: That would be fine.

24 MR. BOGLE: To see what the discrepancy is.

1 THE COURT: At the last hearing, Mr. Schachter left
2 those disks with safekeeping in the clerk. They were marked.
3 They have been in the clerk's control ever since. If you
4 would like to take a short recess and review them.

5 MR. BOGALE: Yes, I do.

6 THE COURT: Any objection?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: As long as you do it with Mr. Schachter
9 and the clerk present. We'll be in a short recess.

10 (Short recess taken.)

11 THE COURT: Thank you. Please be seated. Counsel?

12 MR. BOGALE: Thank you, Your Honor. Before we go
13 ahead, I would like to call Michelle Bays as a witness,
14 please, Your Honor.

15 THE COURT: Okay.

17 MICHELLE BAYS

18 Called as a witness, having been first duly sworn,
19 took the witness stand and testified as follows:

21 DIRECT EXAMINATION

22 MR. BOGALE:

23 Q Good morning. Please state your name and spell your
24 last name for the court reporter?

1 A Michelle Bays, B-A-Y-S.

2 Q What is your current occupation?

3 A Supervising investigator with the Washoe County
4 District Attorney's Office.

5 Q Are you assigned as the investigator to a case
6 involving Mark Schachter?

7 A I am.

8 MR. BOGALE: Your Honor, may I approach the clerk?

9 THE COURT: You may.

10 MR. BOGALE: May I approach the witness?

11 THE COURT: Yes, you may.

12 BY MR. BOGALE:

13 Q I am showing you what has been marked as Exhibit
14 1-b. Take a moment to review that and let me know when you
15 are done?

16 A Okay.

17 Q Do you recognize that document?

18 A I do.

19 Q What is it?

20 A It is a screen shot of a disk that was or that is
21 currently in our case file for the Schachter case.

22 Q Did you print that screen shot out?

23 A I did.

24 MR. BOGALE: Your Honor, I move to admit Exhibit 1-b.

1 THE DEFENDANT: For the purpose of this hearing
2 only, I agree.

3 THE COURT: Exhibit 1-b is admitted.

4 (Exhibit 1-b admitted in evidence.)

5 MR. BOGALE: Thank you. Let me take that back from
6 you.

7 MR. BOGALE: Your Honor, may I approach the clerk?

8 THE COURT: Yes.

9 MR. BOGALE: Thank you. May I have this marked?

10 THE CLERK: Exhibit D marked.

11 MR. LESLIE: May we see it before it is proffered?

12 (Exhibit D marked for identification.)

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

14 THE COURT: You may.

15 BY MR. BOGALE:

16 Q Showing you what has been marked Exhibit D, take a
17 look at that for a moment.

18 A Okay.

19 Q Do you recognize that?

20 A I do.

21 Q What is it?

22 A It is a screen shot of disk two of a disk or a file
23 in the Schachter case.

24 Q Did you print that screen shot?

1 A I did.

2 MR. BOGALE: Your Honor, I move to admit Exhibit D.

3 THE COURT: Counsel, should it be marked -- Is it
4 the same as this?

5 MR. BOGALE: That's a little different, because the
6 disks have the exact same files on them, but the date modified
7 is a couple minutes off.

8 THE COURT: If I look at this, would I look at this
9 and the document you handed the witness at the same time?
10 Would I be comparing those two?

11 MR. BOGALE: You would be comparing this with a
12 disk.

13 THE COURT: This meaning 1-b?

14 MR. BOGALE: This meaning 1-b, and you would be
15 comparing that with a disk already in evidence as well to make
16 sure they comport.

17 THE COURT: Okay. What I would like is this document
18 that has been marked D should be marked as a subset of the
19 disk it goes with. You can have the witness help us with that.
20 BY MR. BOGALE:

21 Q Sure. What disk is that?

22 A This would be disk two.

23 Q Okay.

24 THE CLERK: The only disk two that is currently

1 marked in evidence is marked as Exhibit B as in boy so D will
2 be converted to B-1.

3 THE COURT: Do you move its admission?

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

5 THE COURT: Mr. Schachter?

6 THE DEFENDANT: Again for the purpose of this
7 hearing.

8 THE COURT: Exhibit B-1 is admitted.

9 (Exhibit B-1 marked and admitted in evidence.)

10 MR. BOGALE: Can I take that back so she can remark
11 it?

12 THE CLERK: Thank you.

13 BY MR. BOGALE:

14 Q Okay. I am going to do some comparing and
15 contrasting here. Let me give you what is marked Exhibit 1-b
16 and Exhibit B-1. Exhibit 1-b is disk one. Exhibit B-1 is
17 disk two, okay?

18 A Okay.

19 Q So first look at Exhibit 1-b?

20 THE COURT: I am sorry. I don't understand. You
21 say Exhibit 1 is disk one?

22 MR. BOGALE: Disk A.

23 THE COURT: I don't think that is what you said.
24 Ma'am, would you look at 1-b?

1 THE WITNESS: Yes, ma'am.

2 THE COURT: Which disk does that go with?

3 THE WITNESS: It goes with disk one.

4 THE COURT: We don't have a disk one. We have a
5 disk A and B which says it is disk one. We marked it as A,
6 and B says it is disk two, and we marked it as B. Those were
7 both provided to us by Mr. Schachter. We also have a disk
8 marked as Exhibit 1 which was the exhibit that was marked by
9 the officer. What does 1-b go with?

10 THE WITNESS: Well 1-b I created today, took a
11 screen shot of disk one, what we call disk one in our system
12 which had previously been discovered, it is my understanding,
13 today.

14 THE COURT: You took a screen shot of something you
15 have in digital form in your office?

16 THE WITNESS: Yes, I did.

17 THE COURT: It is not here at all, not physically
18 here at all?

19 THE WITNESS: No, ma'am.

20 THE CLERK: We do have an issue because I have C
21 which was marked today at this hearing that has disk 1 on it.
22 Disk B he currently or somebody currently has, what is it
23 labeled?

24 MR. BOGALE: Disk A and B.

1 THE CLERK: Okay. Come here. Disk A that was marked
2 from the Defendant's property also says disk 1. So I know
3 where I got them and how I got them. I am just letting you
4 know talking in disk 1 and disk 2 is not working.

5 THE COURT: We have A and B that were provided to us
6 from Mr. Schachter and they say on the disk, disk 1 and disk
7 2.

8 THE CLERK: Correct.

9 THE COURT: We have Exhibit C that was marked today
10 with Mr. Monroy, and it says on it Exhibit 1, but we do not
11 have anything from Mr. Monroy that says disk 2. And now the
12 witness is saying she has a screen shot marked 1-b and it
13 relates to a digital file that she has in her office, correct?

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

15 THE COURT: Okay.

16 MR. BOGALE: So what I was about to do is compare
17 the screen shot that Ms. Bays took from our file and that
18 screen shot has files on it, I am going to compare it to the
19 files on Exhibit A which is disk 1 which comports with 1-b
20 which says disk 1 on it. I want to show the Court it is a
21 screen shot.

22 THE COURT: Does it matter? Does it matter what you
23 have in your office? Mr. Schachter's objection is he wasn't
24 given what the officer had. His objection has been he's been

1 given a modified version of what the officer had. So I mean I
2 think you are missing the point here about what you need to
3 produce.

4 MR. BOGALE: Okay. In that case, if you don't want
5 me to do that.

6 THE COURT: I am not saying that. I would be more
7 than glad to let you do it, do whatever you want. We are
8 going to go to lunch first. It is noon. If that is the way
9 you want to prove it up, great. I don't think it is what the
10 motion is about. But I can't say -- I am not sure where you
11 are going with it.

12 MR. BOGALE: Can I answer your point?

13 THE COURT: Uh-huh.

14 MR. BOGALE: Please, Your Honor. If your point is
15 for me to prove up that Mr. Schachter didn't have, or to prove
16 Mr. Schachter actually had the files Mr. Reed brought today, I
17 can do that right now, because the same files Mr. Reed brought
18 are included on disk A and disk B Mr. Schachter provided to
19 the Court. In fact, Your Honor, during the break,
20 Mr. Schachter and I agreed to that, he had the exact same
21 files that Mr. Reed brought today in addition to three
22 additional files. So there is a little discrepancy, but he
23 got more than what Mr. Reed brought today.

24 THE COURT: Three additional video files?

1 MR. BOGALE: Just files on the CD. What
2 Mr. Schachter has, always had, is eight video files that is
3 reflected on disks A and B. Those are duplicates of each
4 other, A and B. Those are duplicates. They have eight video
5 files on them. What Mr. Reed brought today has five video
6 files on them. All five of those video files are contained on
7 disks A and B.

8 THE COURT: Where did the other three come from?

9 MR. BOGALE: The other three came from Mr. Monroy
10 who burned them, so he burned those files as we heard him this
11 morning say. I went through all eight files with him and he
12 said that's a fair and accurate depiction of what he burned.

13 THE COURT: The officer -- Are you going to put on
14 some evidence about how you ended up with three files that the
15 officer didn't take? I mean the officer said this is what I
16 got and you are saying that is five files, now all of a sudden
17 you have three more but you have no evidence as to which
18 law-enforcement officer went and collected those three files
19 to give them to you so that you could give them to the
20 defendant.

21 MR. BOGALE: I have Mr. Monroy here who burned the
22 files himself and gave them directly to the D.A.'s office.

23 THE COURT: I didn't hear any testimony like that.

24 MR. BOGALE: I can recall him.

1 THE COURT: Do you think you had him testify to
2 that?

3 MR. BOGALE: No. No, he did not.

4 THE COURT: Okay. So --

5 MR. BOGALE: But he's still here, and I can have him
6 testify to that.

7 THE COURT: Okay. Whatever you want to do, but do
8 you need anymore from this witness right now, from Ms. Bays?

9 MR. BOGALE: Not right now.

10 THE COURT: Okay. Thank you, ma'am.

11 (Witness excused.)

12 THE COURT: We have to figure out when we can do
13 this. I don't know what the schedule is.

14 Let's come back at 1:00 and get the witness
15 testimony done, then we can figure out when else we can do
16 something, okay? We should be able to get through the
17 witnesses.

18 MR. BOGALE: I think so, Your Honor.

19 THE COURT: We will be in the lunch recess.

20 (Whereupon the Court adjourned for the lunch recess.)

21 THE COURT: Go ahead and call your witness.

22 MR. BOGALE: The State calls Michelle Bays.

23 MR. LESLIE: For what it is worth, I can actually go
24 later than 1:30.

1 THE COURT: I have two 1:30's. Ma'am, you are still
2 under oath. Please retake the stand. Welcome back, Ms. Bays.

3 THE WITNESS: Thank you.

4 BY MR BOGALE:

5 Q When we broke, we were discussing comparing screen
6 shots to disks and all that. Do you remember that?

7 A I do.

8 Q So I'm going to --

9 MR. BOGALE: Actually, Your Honor, may I approach the
10 clerk?

11 THE COURT: Certainly.

12 THE CLERK: Exhibit D marked. That was "D" as in
13 dog.

14 (Exhibit D marked for identification.)

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

16 THE COURT: Yes. Did you show Mr. Schachter?

17 MR. BOGALE: Yes.

18 BY MR. BOGALE:

19 Q Let me show you what has been marked Exhibit D.
20 Take a look at that and tell me if you recognize it?

21 A I do.

22 Q What is that?

23 A It is a screen shot of a disk in the Schachter file
24 that is maintained by my office.

1 Q Okay. What do you understand that file-- Where did
2 that file come from?

3 A Are we talking about the disk, itself?

4 Q The actual disk you made the screen shot from, yes?

5 A Meaning it is maintained in our physical file for
6 the Schachter case, and my assumption is that it came from the
7 Reno Police Department in the course of them collecting
8 evidence in the case which is routine.

9 Q And did you print that screen shot, yourself?

10 A I did.

11 Q You printed it after you put in the physical disk?

12 A I did.

13 MR. BOGALE: Your Honor, move to admit Exhibit D.

14 THE COURT: Do you have any objection?

15 THE DEFENDANT: On the assumption we don't know
16 where it came from.

17 THE COURT: Sustained.

18 BY MR. BOGALE:

19 Q You know where the disk is, correct?

20 A Yes.

21 Q Where is the disk?

22 A The actual physical disk is maintained in the case
23 file for the Schachter case in our office.

24 Q And you inserted that disk into a computer?

1 A Yes.

2 THE COURT: You are leading.

3 BY MR. BOGALE:

4 Q What did you do with that disk?

5 A I inserted the disk into the computer into the
6 screen shot of all the files contained in the disk.

7 Q Okay.

8 MR. BOGALE: Based on that, Your Honor, the State
9 moves to admit Exhibit D.

10 THE COURT: Where is the disk she's talking about?

11 MR. BOGALE: It is here.

12 THE COURT: Why don't you have her talk about that.

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

14 THE COURT: Yes.

15 MR. BOGALE: It hasn't been marked or anything. I
16 just wanted to show her, see if it is the same disk she burned
17 or printed the screen shot from.

18 THE COURT: You probably should have it marked. Just
19 approach the clerk and she will have it marked for you.

20 THE CLERK: Exhibit E marked.

21 (Exhibit E marked for identification.)

22 BY MR. BOGALE:

23 Q Thank you. Showing you what has been marked as
24 Exhibit E, do you recognize that?

1 A I do.

2 Q What is it?

3 A It is the disk in which I took the screen shot of
4 the digital files.

5 Q And where was that disk?

6 A The disk was in our master file for the Schachter
7 case.

8 MR. BOGALE: I move to admit Exhibit D, the screen
9 shot.

10 THE COURT: Any objection?

11 THE DEFENDANT: That is a copy of the disk from
12 officer Reed that was in evidence that was taken out of the
13 evidence?

14 THE COURT: Are you asking a question of the
15 witness, of Mr. Bogale or me?

16 THE DEFENDANT: The witness.

17 THE COURT: You may ask the witness a question on
18 voir dire.

19

20 VOIR DIRE EXAMINATION

21 BY THE DEFENDANT:

22 Q That is a copy of the disk that officer Reed brought
23 to court today that was in evidence?

24 A I believe so, yes.

1 Q You believe so?

2 A I would have, to be 100 percent sure, I would have
3 to compare the two, but as a routine, they make copies. The
4 police department makes a copy and forwards it to our office.

5 Q Who made--

6 THE DEFENDANT: I would object. There is no
7 foundation where the copy came from.

8 THE COURT: May I see Exhibit D?

9 MR. BOGALE: You may.

10 THE COURT: D as in Dog.

11 THE WITNESS: Can I clarify, Your Honor?

12 THE COURT: Yes.

13 THE WITNESS: Earlier today during the recess, I
14 apologize, I forgot, I was able to view the files that
15 contained the copy detective Reed brought with him and they
16 are the same as the digitals that are contained on this disk
17 that we had in our file.

18 THE COURT: Okay. There is five video clips on
19 Exhibit D and five the officer testified to on this exhibit
20 disk that he brought, so I am going to go ahead and admit
21 Exhibit D as it is. What it says it is.

22 (Exhibit D admitted in evidence.)

23 THE COURT: Exhibit E, no one has asked for it to be
24 admitted yet.

1 MR. BOGALE: That's correct. I can take that back
2 from you, the disk.

3 THE COURT: It goes to the clerk once it is marked.

4 THE CLERK: Are you going to talk about D still?

5 BY MR. BOGALE:

6 Q Actually I am going to give this to you. Ms. Bays, I
7 am just going to put the files on this disk, make sure they
8 comport with the printout?

9 THE COURT: You are going to play Exhibit 1-b?

10 MR. BOGALE: Not going to play it, just pull up the
11 files and have her look at the files on the disk.

12 THE COURT: Okay.

13 BY MR. BOGALE:

14 Q Okay. Ms. Bays, do you see there on the television
15 screen the video files on the disk admitted as Exhibit 1-b?

16 A I do.

17 Q Can you just look and compare the video files with
18 the printout on Exhibit D and tell me if you find any
19 discrepancies?

20 A Okay.

21 Q Expand the name of the file so you can see the
22 entire file.

23 A Okay.

24 Q Are the same files on the disk that are printed on

1 that printout?

2 A Yes.

3 Q Okay. I am going to show you now what is marked as
4 Exhibit A. I am going to have you do the same thing here and
5 tell me if the files on that printout are included on this
6 disk, okay?

7 A Okay.

8 Q Okay. Have you had a chance to compare them?

9 A I have.

10 Q Are the files on the printout contained on that
11 disk?

12 A Yes.

13 Q Are there additional files on that disk that are not
14 on the printout though?

15 A Yes.

16 Q Now I am going to show you what has been marked and
17 admitted as Exhibit B.

18 THE COURT: I don't think it was admitted.

19 MR. BOGALE: Wasn't it at the last hearing, Your
20 Honor? It is my understanding they were.

21 THE COURT: They were just marked.

22 THE CLERK: For safekeeping.

23 MR. BOGALE: I am sorry about that.

24 THE COURT: Did you want to move they be admitted?

1 MR. BOGALE: I assume there is no objection because
2 the defendant provided them.

3 THE DEFENDANT: It is okay.

4 THE COURT: It is admitted. Do you want A and B?

5 MR. BOGALE: Yes.

6 THE COURT: A and B are admitted. No objection.

7 (Exhibits A and B admitted in evidence.)

8 BY MR. BOGALE:

9 Q Showing you marked and admitted as Exhibit B, can
10 you please again take a look at Exhibit D, the printout, and
11 see if those files on that are included on the disk marked as
12 Exhibit B.

13 A Yes.

14 Q Okay. Again, there are three additional files on
15 Exhibit B that aren't on the printout in D; is that correct?

16 A Correct.

17 Q Do you know if those are the same three files that
18 were additional on Exhibit A?

19 A Yes, they are.

20 Q Thank you. So Exhibit A and Exhibit B appear to
21 contain the exact same files; is that right?

22 A Yes.

23 Q Just to recap: The disk that has been admitted from
24 officer Reed contains the exact same files that are on that

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1 | printout on D, right?
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2	A	Yes.
---	---	------

3 Q And the files printed out on D are also contained on
4 Exhibits A and B, right?

5	A	Yes.
---	---	------

6 MR. BOGALE: No further questions.

7 THE COURT: Any questions?

8

9	CROSS-EXAMINATION
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10 BY THE DEFENDANT:

11 Q Can you tell by looking at either the screen shot or
12 the disks themselves if anything has been removed? Have any
13 files been deleted?

14	A	From the screen shot?
----	---	-----------------------

15 Q Either the screen shot or the disks themselves? You
16 said you looked at the disks themselves?

17	A	Yes.
----	---	------

18	Q	Can you tell if any files have been deleted?
----	---	--

19 | A By simply looking at the disk, no. Well, I can't.

20 THE DEFENDANT: That's all.

21 MR. BOGALE: No further questions.

22 THE COURT: Okay. Thank you. You can step down.

23 Counsel, do you have another witness?

24 MR. BOGALE: Court's indulgence for just a moment. At

1 this time, Your Honor, the State has no further witnesses.

2 THE COURT: Okay. Before lunch you said that you
3 were going to put on the risk manager from Wal-Mart to say
4 that he burned the new disks that had eight files on it and
5 somehow that was given to the D.A.'s office. You told us you
6 were going to call that witness. What happened?

7 MR. BOGALE: He's here, Your Honor. I thought my
8 presentation here with Ms. Bays covered the fact that we are
9 trying to undercover here which is the disk that officer Reed
10 booked was allegedly never given to the defendant. We just I
11 believe established that the files on Nick Reed's disk were
12 contained on the file that the defendant, himself, already
13 had.

14 THE COURT: Where did the other video clips come
15 from?

16 MR. BOGALE: They came from --

17 THE COURT: You told me something, but you didn't
18 have any testimony. When I asked you about it, you said this
19 is what the Wal-Mart man would say, and I said, well, he
20 didn't testify to that. You said I am going to put him on to
21 testify to it. You told me that the disk he brought today had
22 eight video clips on it.

23 MR. BOGALE: He didn't bring that today.

24 THE COURT: Well, you better call him. That is not

1 what he testified to. I am not sure when he brought it, but
2 that was the argument here, where are all these video clips
3 coming from, when were they prepared, who had control of them.
4 You know this issue here is either you and the State destroyed
5 evidence according to Mr. Schachter, or perhaps you failed to
6 collect evidence. But in the interim, you collected three
7 more video clips from what the officer had to what you
8 produced. So you haven't connected that up at all.

9 MR. BOGALE: We produced the three additional clips
10 to Mr. Schachter.

11 THE COURT: You did? Where did you get them? You
12 haven't connected where you got them, because the officer only
13 produced to you, supposedly, based on his testimony, five
14 video clips. That is what he said he got from Wal-Mart.

15 MR. BOGALE: I understand, Your Honor.

16 THE COURT: So you gave Mr. Schachter eight. You
17 told me verbally where you think the other three came from but
18 haven't put any evidence on as to that.

19 MR. BOGALE: I will recall Mr. Monroy.

20 THE COURT: That is what you had said you wanted to
21 call him for.

22 MR. BOGALE: I understand. Thank you.

23 THE COURT: Sir, you are still under oath. Please
24 retake the stand. Thank you.

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ALEJANDRO MONROY

Called as a witness, having been previously sworn,
Took the witness stand and testified as follows:

REDIRECT EXAMINATION

BY MR. BOGALE:

Q Welcome back Mr. Monroy. Before you testified that
you had burned a disk of the video surveillance at Wal-Mart;
is that correct?

A Yes.

Q Okay. Where did you get those files to burn on that
disk?

A From the investigation on our computer.

Q Okay. Did you ever give them to the State? Did you
ever give them to the District Attorney's office?

A I did. I handed them to you on the date of the
Preliminary Hearing.

Q Was that July 1st? Does that sound about right?

A Yes.

Q So you handed me a disk that you burned on July 1st;
is that correct?

A I actually burned the disk back in June.

Q But you gave me that disk?

A Correct, yes.

1 Q The 1st of July. Is that Exhibit C that you have
2 previously viewed?

3 A Correct.

4 Q Just, again, why did you select those eight files
5 that are on that disk?

6 A Just as shots of evidence of him being in the store.

7 Q Okay. Did you ever offer to give them to the Police
8 Department?

9 A No.

10 Q Why not?

11 A I was unaware that they needed the file. I thought
12 that was taken care of separately.

13 THE COURT: I am sorry, I couldn't hear you.

14 THE WITNESS: I thought that was taken care of
15 separately with Anna.

16 BY MR. BOGALE:

17 Q You took it upon yourself to bring a copy to me,
18 personally?

19 A Yes.

20 Q That was on July 1st?

21 A Correct.

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

23 THE COURT: Mr. Schachter.

24 ///

1 RE CROSS-EXAMINATION

2 BY THE DEFENDANT:

3 Q The videos you burned and gave the State,
4 Mr. Bogale, on the 1st, were those already selected by Ms.
5 Young or did you burn new ones?

6 A They are the ones that were already on the computer.
7 They had already been selected.

8 Q So there was nothing new. It should be the same as
9 what was on the ones given to the detective by Ms. Young on
10 the 10th?

11 A I am completely unaware what was given to the
12 detective on the 10th.

13 Q You didn't burn any new. You didn't take any new
14 video of the Wal-Mart security system that wasn't already
15 taken by Ms. Young?

16 MR. BOGALE: Objection, asked and answered, Your
17 Honor.

18 THE COURT: I think it was, but I will let the
19 question stand.

20 THE WITNESS: Yes.

21 THE DEFENDANT: That's all, Your Honor.

22 THE COURT: In your direct this morning you said,
23 maybe it was cross, you said that you did not select video of
24 Mr. Schachter before he picked up the backpack because you did

1 not think that video was relevant.

2 THE WITNESS: Correct.

3 THE COURT: Are you the person who selected the
4 video initially or is Anna Young the person who selected the
5 video, initially?

6 THE WITNESS: It would be Anna.

7 THE COURT: Why did it matter whether you thought it
8 was relevant? Did Anna collect the video of Mr. Schachter and
9 you picked out which things you thought were more relevant?

10 THE WITNESS: No. Basically, I just took what the
11 investigation -- looked at the video that was on the
12 investigation and burned that.

13 THE COURT: Who made the investigation?

14 THE WITNESS: Anna.

15 THE COURT: So why did you say you didn't do it?

16 THE WITNESS: Well because I could have gone back
17 and looked at more video and selected more to add to the
18 investigation but I didn't.

19 THE COURT: That is what you meant by not relevant?

20 THE WITNESS: Yes.

21 THE COURT: Do my questions cause any questions for
22 you, counsel?

23 MR. BOGALE: Just one question, Your Honor.

24 THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. BOGALE:

Q You could have added to the video files that you gave to me; is that correct?

A At that time, yes, I could have.

Q Is that because Wal-Mart has 24 hour surveillance?

A Correct.

Q You can just pick and choose what you think is relevant and what is not?

A Correct.

Q But you also personally observed the defendant in Wal-Mart, right?

A Correct.

Q So, based on your personal observations and based on your review of the files that Ms. Young had already picked, you didn't think-- you didn't think there needed to be anything else submitted, right?

A Correct.

MR. BOGALE: No further questions, Your Honor

THE COURT: Mr. Schachter.

RE-CROSS EXAMINATION

BY THE DEFENDANT:

Q So you didn't think video tape of the defendant

1 without the backpack was relevant in this case?

2 A I did not, no.

3 THE DEFENDANT: Thank you.

4 THE COURT: Sir, you observed the video this morning
5 that you showed, I think we played it as Exhibit 3.

6 THE WITNESS: Yes.

7 THE CLERK: C.

8 THE COURT: C. Third one. Exhibit C. And when the
9 video was being shown, the different clips, you commented on
10 when you saw Mr. Schachter and then you testified that you saw
11 Mr. Schachter pick up the video -- or pick up the backpack?

12 THE WITNESS: Yes.

13 THE COURT: Did you miss it or did you not show it
14 or is it not on the video clip?

15 THE WITNESS: There is no video shot of that
16 specific area in the store.

17 THE COURT: There is no video of Mr. Schachter
18 actually picking the backpack up?

19 THE WITNESS: Correct.

20 THE COURT: The first shot you had was when the
21 backpack was in the shopping cart?

22 THE WITNESS: Correct.

23 THE COURT: Any other questions?

24 ///

REDIRECT EXAMINATION

BY MR. BOGALE:

Q There is no video of him picking up the backpack because there is actually no video footage of that?

A There is no camera in the area.

Q It just isn't video you didn't just not select?

A Correct.

RECROSS-EXAMINATION

BY THE DEFENDANT:

Q So there is no video that you reviewed without me and the backpack together?

A Correct.

THE COURT: Anything else?

THE DEFENDANT: One more question.

BY THE DEFENDANT:

Q How many video cameras in the Wal-Mart?

A Seventy or so.

THE DEFENDANT: Okay. That's it.

THE COURT: Before we excuse this witness, there is also a motion with regard to the pictures and the physical evidence. Do you need any testimony from this witness in that regard?

MR. BOGALE: Yes, Your Honor.

1 THE COURT: I have got people here for my 1:30.

2 MR. BOGALE: I understand.

3 THE COURT: So we can put it off, but I didn't know
4 if you were ready.

5 MR. BOGALE: I am ready to, but it might take longer
6 than you have.

7 THE COURT: Okay. Now, Mr. Leslie, you have to be
8 gone by 2:00 or 2:30?

9 MR. LESLIE: I should leave by about 2:00 is my
10 guess. I have to be in the south end by 2:30.

11 THE COURT: Well we can keep Mr. Schachter here
12 until 1:45 and see if we are finished with my 1:30's by then
13 or ten to 2:00. That would give us about 20 minutes with this
14 witness.

15 MR. LESLIE: I am at your disposal until about 2:10.

16 THE COURT: I think we should try to continue to get
17 as much as we can get done while we have Mr. Schachter, and
18 the witness is already gone from wherever he wanted to be.
19 He's here with us. In your case we'll take a short recess and
20 proceed with the other cases.

21 MR. BOGALE: Okay. Thank you Your Honor.

22 THE COURT: You are welcome. You can probably just
23 move things to the edge of the table.

24 (Short recess taken from this matter.)

1 THE COURT: Thank you. Please be seated. Okay.

2 MR. BOGALE: State recalls Mr. Monroy.

3 THE COURT: Mr. Monroy, you are still under oath.
4 Please retake the stand.

5 THE COURT: Go ahead.

6

7 ALEJANDRO MONROY

8 Called as a witness, having been previously sworn,
9 took the witness stand and testified as follows:

10

11 REDIRECT EXAMINATION

12 BY MR. BOGALE:

13 Q Welcome back?

14 A Hello.

15 MR. BOGALE: May I approach the clerk?

16 THE COURT: You may.

17 THE CLERK: Exhibit F marked.

18 (Exhibit F marked for identification.)

19 MR. BOGALE: May I approach the witness?

20 THE COURT: You may.

21 BY MR. BOGALE:

22 Q Mr. Monroy, I am approaching you with what has been
23 marked as Exhibit F in this case. Do you recognize that?

24 A Yes, I do.

1 Q What is it?

2 A Those are the items recovered from Mr. Schachter.

3 Q Recovered meaning the items --

4 A He attempted to steal, yes.

5 Q When you had your confrontation with Mr. Schachter,
6 where were these items?

7 A They were on his person.

8 Q Were they in a backpack or in his hand?

9 A The backpack was over his shoulder.

10 Q And those items were in the backpack?

11 A Correct.

12 Q Do you know where that photo was taken?

13 A That was taken in our security office.

14 Q Were you present when that photo was taken?

15 A Yes, I was.

16 Q Did you take the photograph?

17 A I did.

18 MR. BOGALE: Your Honor, I move to admit Exhibit F.

19 THE COURT: Any objection?

20 THE DEFENDANT: What time was the picture taken?

21 MR. BOGALE: Objection, relevance. He said he was
22 present when the photo was taken.

23 THE COURT: I will allow some voir dire.

24 THE WITNESS: Approximately 1:00 o'clock.

1 THE COURT: Anything else?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Exhibit F is admitted. Counsel will you
4 return that exhibit to the Clerk?

5 (Exhibit F admitted in evidence.)

6 MR. BOGALE: Yes. I will take that back from you.

7 BY MR. BOGALE:

8 Q One more clarifying question. From what we talked
9 about earlier today as to the videos, did you ever modify,
10 delete, destroy any video files in this case?

11 A No, I did not.

12 Q You didn't destroy any files in this case?

13 MR. LESLIE: Asked and answered.

14 THE WITNESS: I did not.

15 MR. BOGALE: No further questions.

16 THE COURT: Is standby counsel getting anxious?

17 MR. LESLIE: After three hours, standby counsel
18 feels the need to intervene.

19 THE COURT: Mr. Schachter, do you still want to
20 represent yourself or Mr. Leslie?

21 THE DEFENDANT: As much as I appreciate that, I
22 still wish to represent myself.

23 THE COURT: All right. Cross-examination.

24 ///

1 RECROSS-EXAMINATION

2 BY THE DEFENDANT:

3 Q Just to save the Court time to run back and forth
4 with all the videos, can you explain why the video that
5 officer Reed put in evidence has less video files than the
6 video -- than the disks I received and that you gave to
7 Mr. Bogale on July 1st at the Preliminary Hearing?

8 MR. BOGALE: Objection. Calls for speculation.

9 THE COURT: Overruled. He asked if he could
10 explain. We'll see if it is speculation.

11 THE WITNESS: I couldn't tell you.

12 BY THE DEFENDANT:

13 Q But you testified earlier that you didn't make any
14 new -- you didn't pull any new video off the store hard drive
15 when you created the disk that you gave to Mr. Bogale before
16 the Preliminary Hearing, correct?

17 A This is correct.

18 Q Was there any other videos that you saw that I was
19 in the video but not that you felt was not relevant to the
20 case? Do you know what I mean?

21 A No.

22 Q When you reviewed the video of the date of the
23 incident?

24 A Yes.

1 Q Did you -- Was there any other video of me in the
2 store, but that you felt wasn't relevant to the case?

3 A No.

4 Q So every bit of video with me has been given to the
5 State; is that correct?

6 A Correct.

7 THE DEFENDANT: That's all Your Honor.

8 THE COURT: Okay. Are you talking about every bit
9 of video that is on the saved computer file?

10 THE WITNESS: Yes.

11 THE COURT: You are not talking about every bit of
12 video that might have been taken in the store?

13 THE WITNESS: Absolutely not, no.

14 THE COURT: Did you tell us it was Ms. Young who
15 copied it off the store video cameras on to the computer?

16 THE WITNESS: Correct.

17 THE COURT: That is what you reviewed?

18 THE WITNESS: Yes.

19 THE COURT: And do I understand correctly that
20 everything on the computer that you saved, data, Ms. Young
21 saved it on, everything that included Mr. Schachter's image
22 was provided to the State?

23 THE WITNESS: Yes, it was.

24 THE COURT: Based on my questions, any other

1 questions?

2 MR. BOGALE: Nothing from the State.

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Thank you. You may step down.

5 (Witness excused.)

6 THE COURT: Counsel do you have any other pictures
7 or is this the only picture you have, Exhibit F?

8 MR. BOGALE: That is the only picture that I have.

9 (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 September 11, 2014, at the hour of 9:00 a.m. of said day and
10 that 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- 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 14th day of September, 2014.
21
22

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

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Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Transcript - Partial

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3370

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

THE STATE OF NEVADA,

Plaintiff,

vs.

MARC PAUL SCHACHTER,

Defendants.

Case No. CR14-1044

Dept. No. 4

**ORDER DENYING DEFENANT'S MOTION TO DISMISS CASE ON GROUNDS THAT
THE STATE HAS LOST AND/OR DESTROYED MATERIAL EXCULPATORY
EVIDENCE**

On August 21, 2014, Defendant Marc Paul Schachter (hereinafter "Schachter") filed his *Motion to Dismiss Case on Grounds that the State has Lost and/or Destroyed Material Exculpatory Evidence*. The State of Nevada (hereinafter "the State") filed *Omnibus Opposition to Defendant's Pretrial Motions* on August 28, 2014. On September 11, 2014, the Court heard oral arguments on the Motion and took the matter under advisement.

The Nevada Supreme Court "has consistently held that in order to establish a due process violation resulting from the state's loss or destruction of evidence, a defendant must demonstrate either (1) that the state lost or destroyed the evidence in bad faith, or (2) that the loss unduly prejudiced the defendant's case and the evidence possessed an exculpatory value that was apparent before the evidence was destroyed." Sheriff, Clark County v. Warner, 112 Nev. 1234, 1239-1240 (1996) (citing State v. Hall, 105 Nev. 7, 9 (1989)). The burden to establish that loss

1 of evidence was prejudicial to the defendant lies with the defendant. Id., at 1240. The burden
2 requires "some showing that it could be reasonably anticipated that the evidence sought would be
3 exculpatory and material to appellant's defense. It is not sufficient that the showing disclose
4 merely a hoped-for conclusion from examination of the destroyed evidence, nor is it sufficient
5 for the defendant to show only the examination of the evidence would be helpful in preparing his
6 defense." Boggs v. State, 95 Nev. 911, 913 (1979). "Mere assertions by the defense counsel that
7 an examination of the evidence will potentially reveal exculpatory evidence does not constitute a
8 sufficient showing of prejudice." Warner, 112 Nev. 1234, 1242 (1996). Evidence must be
9 disclosed if "it provides grounds for the defense to attack the reliability, thoroughness, and good
10 faith of the police investigation or to impeach the credibility of the State's witnesses." Lay v.
11 State, 116 Nev. 1185, 1194 (2000); see Kyles v. Whitney, 514 U.S. 419, 442 n. 13, 445-451
12 (1995).

13 Schachter argues the State has lost or destroyed exculpatory evidence by failing to
14 produce the allegedly stolen backpack or any video evidence of him entering the store.
15 According to Schachter, the backpack he is alleged to have stolen was customized by him and on
16 his person when he entered the WalMart. Schachter argues the backpack itself and video footage
17 of him entering the store are exculpatory evidence because it would tend to show that he entered
18 the store with a backpack he customized and is now charged with having stolen.

19 The State argues there is no obligation upon the State to produce information which it
20 does not possess or of which it is unaware. The State argues they were never in possession of the
21 backpack or video which Schachter alleges to be exculpatory. Therefore, the State argues they
22 have no obligation to produce such evidence. Additionally, the State argues it is Schachter's
23 burden to produce evidence to show the State possessed or knew about material favorable to the
24 defense and failed to disclose it. The State argues Schachter has not met this burden. Lastly, the
25 State argues the actions of third party actors, WalMart asset protection employees, are not state
26 action and do not constitute the State's destruction of evidence.

1 Although Schachter characterizes the State's inaction as a failure to preserve the
2 evidence, his claim of error more accurately relates to the State's failure to collect the backpack
3 and video evidence from WalMart. Schachter argues that he could have proven he had the
4 backpack when he entered the store from the customization of the backpack and video of him
5 entering the store with the backpack. However, the backpack was re-stocked pursuant to
6 WalMart policy and the video evidence was not recorded by WalMart personnel.

7 In relying on case law involving failure to preserve evidence, Schachter fails to
8 distinguish between collection and preservation of evidence. Had the State gathered the
9 backpack and video evidence and then allowed it to be lost or failed to deliver it to Schachter, his
10 argument would be more appropriate. The State's failure to preserve potentially exculpatory
11 evidence may result in dismissal of the charges if the defendant can show "bad faith or
12 connivance on the part of the government" or "that he was prejudiced by the loss of the
13 evidence." Daniels v. State, 114 Nev. 261, 266-267 (1998); Howard v. State, 95 Nev. 580, 582
14 (1979).

15 In Daniels v. State the Nevada Supreme Court discussed a rule regarding the present
16 circumstances. The Nevada Supreme Court adopted an approach used by the New Mexico
17 Supreme Court, recognizing that "although police officers generally have no duty to collect all
18 potential evidence from a crime scene . . . this rule is not absolute," due to the injustices that
19 could arise from "the State's failure to gather evidence under certain circumstances." Daniels,
20 114 Nev. at 267. The Nevada Supreme Court developed a two-part test for circumstances where
21 the State has failed to gather evidence. Id. First, the defense must show that the "evidence was
22 'material,' meaning that there is a reasonable probability that, had the evidence been available to
23 the defense, the result of the proceedings would have been different." Id. (citation omitted).
24 Second, if the evidence was "material" the next determination is whether the failure to gather
25 evidence was "the result of mere negligence, gross negligence, or a bad faith attempt to prejudice
26 the defendant's case. Id. The Court next articulated a difference in outcome depending upon the

1 culpability of the State. “When mere negligence is involved, no sanctions are imposed, but the
2 defense can still examine the prosecution’s witnesses about the investigative deficiencies. When
3 gross negligence is involved, the defense is entitled to a presumption that the evidence would
4 have been unfavorable to the State. In cases of bad faith, we conclude that dismissal of the
5 charges may be an available remedy based upon an evaluation of the case as a whole.” Id.
6 (citations omitted).

7 The Nevada Supreme Court in Daniels v. State denied a defendant’s appeal because he
8 failed to establish that the blood evidence was likely to have been material to his defense of
9 involuntary intoxication, because he failed to establish that that State’s failure to gather the blood
10 evidence was attributable to negligence, gross negligence, or bad faith. 114 Nev. at 268. The
11 Court concluded that “whether the blood evidence would likely have prevented [the defendant’s]
12 conviction is pure speculation.” Id. In Leonard v. State the Nevada Supreme Court found the
13 standard for a failure to collect evidence does not apply when a state employee failed to make a
14 video tape, because he was not acting for the police or prosecuting authorities when he failed to
15 make a tape. 114 Nev. 639, 655 (1998).

16 First the Court will consider whether the backpack and video footage at issue were
17 “material.” “Evidence is material if there is a reasonable probability that the result would have
18 been different if the evidence had been disclosed.” Lay v. State, 116 Nev. 1185, 1194 (2000). A
19 reasonable probability is shown when “the nondisclosure undermines confidence in the outcome
20 of the trial.” Id. Schachter argues the video footage would prove he entered the WalMart with
21 the backpack he is alleged to have stolen. Additionally Schachter argues the backpack itself
22 would prove the backpack was customized and as a result it could not have been stolen on the
23 day in question. Unlike the blood evidence in Daniels, the nondisclosure of this evidence
24 undermines the confidence in the outcome of the trial because there is a reasonable probability
25 that these items may change the result of this trial. The Court finds that Schachter has met his
26 burden of proving these items of evidence are material.

1 Next the Court will consider whether the State's failure to collect this evidence was the
2 result of negligent, gross negligent or bad faith conduct. "The presence or absence of bad faith
3 by the [government actor] for the purposes of the Due Process Clause must necessarily turn on
4 the [government actor's] knowledge of the exculpatory value of the evidence at the time it was
5 lost or destroyed." Arizona v. Youngblood, 488 U.S. 51, 56 n * (1988). The Nevada Supreme
6 Court has found police action does not amount to bad faith when the police did not destroy
7 evidence in an attempt to make it unavailable to the defendant. See Warner, 112 Nev. at 1240.
8 In the instant case, the WalMart asset protection personnel did not copy the video evidence of
9 Schachter entering the WalMart, resulting in its destruction sixty (60) days later. Additionally,
10 the employees took only one photo of the backpack at issue before returning it to the store as
11 merchandise. The facts of this case show no indication that the failure to collect these items was
12 a result of any bad faith on the part of the State in an effort to make this evidence unavailable to
13 the defense. Facts of this case indicate the WalMart employees were simply acting pursuant to
14 store policies. However, the Court does find that actions of the State indicate negligence on
15 behalf of the State. The Court finds the actions by the State indicate the State made no effort to
16 collect the evidence at issue, or direct WalMart employees to collect the evidence. Therefore,
17 the Court finds the State has negligently failed to collect potentially exculpatory evidence.

18 The Court finds the State has failed to collect evidence, including the backpack and video
19 of Schachter entering the WalMart. The Court further finds that the State's failure to collect was
20 a result of negligence on the part of the State. Therefore, the Court finds Schachter's motion to
21 dismiss is denied. However, Schachter may examine the State's witnesses about these
22 investigative deficiencies at trial.

23 ///

24 ///

25 ///

26 ///

CERTIFICATE OF SERVICE

CASE NO. CR14-1044

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 11th day of September, 2014, I filed the **ORDER DENYING DEFENDANT'S MOTION TO DISMISS CASE ON GROUNDS THAT THE STATE HAS LOST AND/OR DESTROYED MATERIAL EXCULPATORY EVIDENCE** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

 X **I electronically filed with the Clerk of the Court, using the ECF which sends an immediate notice of the electronic filing to the following registered e-filers for their review of the document in the ECF system:**

NICKOLAS GRAHAM, ESQ. for STATE OF NEVADA

KELLY KOSSOW, ESQ. for STATE OF NEVADA

JOSEPH GOODNIGHT, ESQ. for MARC PAUL SCHACHTER

JAMES LESLIE, ESQ. for MARC PAUL SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF NEVADA

 X **Deposited in the Washoe County mailing system in a sealed envelope for postage and mailing with the United States Postal Service in Reno, Nevada:**

Marc Schachter, #14-09450
c/o Washoe County Detention Center
911 Parr Blvd.
Reno, NV 89512

 Placing a true copy thereof in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 11th day of September, 2014.



Return Of NEF**Recipients**

JAMES LESLIE, ESQ. - Notification received on 2014-09-16 08:49:00.548.

ZELALEM BOGALE, ESQ. - Notification received on 2014-09-16 08:49:00.502.

JOSEPH GOODNIGHT, ESQ. - Notification received on 2014-09-16 08:49:00.658.

KELLY KOSSOW, ESQ. - Notification received on 2014-09-16 08:49:00.626.

DIV. OF PAROLE & PROBATION - Notification received on 2014-09-16 08:49:00.704.

NICKOLAS GRAHAM, ESQ. - Notification received on 2014-09-16 08:49:00.736.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

09-16-2014:08:47:56

Clerk Accepted:

09-16-2014:08:48:31

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Ord Denying Motion

Filed By:

Judicial Asst. AKay

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The following people were served electronically:

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KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JOSEPH GOODNIGHT, ESQ. for MARC PAUL
SCHACHTER

JAMES B. LESLIE, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

1 CODE 2045
2 WASHOE COUNTY PUBLIC DEFENDER
3 CARL HYLIN, #2726
4 P.O. Box 11130
5 Reno, NV 89520-0027
6 775-337-4800
7 Attorney for Defendant

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

12 THE STATE OF NEVADA,

13 Plaintiff,

14 v.

Case No. CR14-1044

15 MARC PAUL SCHACHTER.

Dept No. 4

16 Defendant.
17 _____/

18 **NOTICE OF APPEARANCE**

19 PLEASE TAKE NOTICE that Washoe County Chief Deputy Public Defender, CARL
20 HYLIN, hereby enters appearance for the Washoe County Public Defender's Office in the
21 above-entitled case.

22 **AFFIRMATION PURSUANT TO NRS 239B.030**

23 The undersigned does hereby affirm that the preceding document does not contain the
24 social security number of any person.

25 DATED this 18th day of September, 2014.

26 JEREMY T. BOSLER
Washoe County Public Defender

/s/ CARL HYLIN
CARL HYLIN
Chief Deputy Public Defender

1 CODE 2610
Richard A. Gammick
2 #001510
P.O. 11130
3 Reno, NV. 89520
(775) 328-3200
4 Attorney for Plaintiff

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

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR14-1044

11 v.

Dept. No. 4

12 MARC PAUL SCHACHTER,

13 Defendant.

14 _____/

15 NOTICE OF WITNESS PURSUANT TO NRS 174.234

16 COMES NOW, the State of Nevada, by and through RICHARD A.
17 GAMMICK, District Attorney of Washoe County, and ZELALEM BOGALE,
18 Deputy District Attorney, and hereby gives notice of the name of the
19 witness intended to be called during the State's case-in-chief.

20 OFFICER ANTHONY DANIELS
Reno Police Department
21 455 E. 2nd St.
22 Reno, NV 89501

23 OFFICER NICHOLAS REED
Reno Police Department
24 455 E. 2nd St.
25 Reno, NV 89501

26 ///

///

1 OFFICER TERRY WEST
2 Reno Police Department
3 455 E. 2nd St.
4 Reno, NV 89501

5 ALEJANDRO MONROY
6 3250 Plumas St., Apt. 223
7 Reno, NV 89509

8 ANNA LISA YOUNG
9 195 Olympic Circle
10 Vacaville, CA 95687

11 MARK GROENING
12 643 University Terrace
13 Reno, NV 89503

14 MATTHEW HAND
15 220 Brenham Way
16 Reno, NV 89509

17 CORELEE BUNKER
18 2157 Barberry Way
19 Reno, NV 89512

20 CUSTODIAN OF RECORDS-WASHOE COUNTY JAIL
21 911 E. Parr Blvd.
22 Reno, NV 89512

23 CUSTODIAN OF RECORDS-RENO POLICE DEPARTMENT
24 455 E. 2nd St.
25 Reno, NV 89501

26 ///

///

///

///

///

///

///

///

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this 17th day of September, 2014.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By/s/ ZELALEM BOGALE
ZELALEM BOGALE
Deputy District Attorney

CERTIFICATE OF FORWARDING

I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I forwarded a true copy of the foregoing document, through the Washoe County interagency mail, addressed to:

MARC PAUL SCHACHTER #1409450
C/O WASHOE COUNTY SHERIFF
911 PARR BLVD
RENO, NV 89512

DATED this 17th day of September, 2014.

By:/s/KIM PACE
KIM PACE

Return Of NEF**Recipients**

JAMES LESLIE, ESQ. - Notification received on 2014-09-17 15:13:15.216.

ZELALEM BOGALE, ESQ. - Notification received on 2014-09-17 15:13:15.185.

JOSEPH GOODNIGHT, ESQ. - Notification received on 2014-09-17 15:13:15.731.

KELLY KOSSOW, ESQ. - Notification received on 2014-09-17 15:13:15.699.

CARL HYLIN, ESQ. - Notification received on 2014-09-17 15:13:15.824.

DIV. OF PAROLE & PROBATION - Notification received on 2014-09-17 15:13:15.762.

NICKOLAS GRAHAM, ESQ. - Notification received on 2014-09-17 15:13:15.793.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
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-

A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

09-17-2014:13:28:32

Clerk Accepted:

09-17-2014:15:12:43

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Notice of Appearance

Filed By:

Carl Hylin, Mr.

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NEVADA

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JOSEPH GOODNIGHT, ESQ. for MARC PAUL
SCHACHTER

JAMES B. LESLIE, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

CARL F. HYLIN, ESQ. for MARC PAUL
SCHACHTER

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

Return Of NEF**Recipients**

JAMES LESLIE, ESQ. - Notification received on 2014-09-17 15:13:55.372.

ZELALEM BOGALE, ESQ. - Notification received on 2014-09-17 15:13:55.341.

JOSEPH GOODNIGHT, ESQ. - Notification received on 2014-09-17 15:13:55.466.

KELLY KOSSOW, ESQ. - Notification received on 2014-09-17 15:13:55.435.

CARL HYLIN, ESQ. - Notification received on 2014-09-17 15:13:55.591.

DIV. OF PAROLE & PROBATION - Notification received on 2014-09-17 15:13:55.513.

NICKOLAS GRAHAM, ESQ. - Notification received on 2014-09-17 15:13:55.544.

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-

A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

09-17-2014:14:54:05

Clerk Accepted:

09-17-2014:15:13:19

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Notice of Witnesses

Filed By:

Zelalem Bogale

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KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JOSEPH GOODNIGHT, ESQ. for MARC PAUL
SCHACHTER

JAMES B. LESLIE, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

CARL F. HYLIN, ESQ. for MARC PAUL
SCHACHTER

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

1 CODE 2610
2 WASHOE COUNTY PUBLIC DEFENDER
3 CARL F. HYLIN, #2726
4 P.O. Box 11130
5 Reno, NV 89520-0027
6 775-337-4800
7 Attorney for Defendant

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10
11 IN AND FOR THE COUNTY OF WASHOE
12

13 THE STATE OF NEVADA,

14 Plaintiff,

15 v.

Case No. CR14-1044

16 MARC PAUL SCHACHTER.

Dept No. 4

17 Defendant.
18 _____/

19 **NOTICE OF WITNESSES PURSUANT TO NRS 174.234**

20 COMES NOW, the defendant, above-named, by and through standby counsel, CARL F.
21 HYLIN, ESQ., Chief Deputy Public Defender, and hereby gives notice of the names of the
22 witnesses intended to be called during the defense case-in-chief.

23 1. SCOTT YODER
24 Store Manager
25 Walmart Mae Ann Avenue
26 Reno, NV

2. ALL WITNESSES LISTED
by the State in this mater
Filed 9/17/14

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AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this 18th day of September, 2014.

JEREMY T. BOSLER
Washoe County Public Defender

/s/ CARL HYLIN
CARL HYLIN
Chief Deputy Public Defender

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office,
Reno, Washoe County, Nevada, and that on this date I forwarded a true copy of the attached
document through the Washoe County interagency mail, addressed to:

MARC PAUL SCHACHTER, #1409450
C/O WASHOE COUNTY SHERIFF
911 E. PARR BLVD.
RENO, NV 89512

DATED this 18th day of September, 2014.

By/s/ DEBBIE BRUNNER
DEBBIE BRUNNER

Return Of NEF**Recipients**

JAMES LESLIE, ESQ. - Notification received on 2014-09-18 08:08:51.074.

ZELALEM BOGALE, ESQ. - Notification received on 2014-09-18 08:08:51.043.

JOSEPH GOODNIGHT, ESQ. - Notification received on 2014-09-18 08:08:51.168.

KELLY KOSSOW, ESQ. - Notification received on 2014-09-18 08:08:51.137.

CARL HYLIN, ESQ. - Notification received on 2014-09-18 08:08:51.277.

DIV. OF PAROLE & PROBATION - Notification received on 2014-09-18 08:08:51.215.

NICKOLAS GRAHAM, ESQ. - Notification received on 2014-09-18 08:08:51.246.

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A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

09-18-2014:07:02:31

Clerk Accepted:

09-18-2014:08:08:24

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Notice of Witnesses

Filed By:

Carl Hylin, Mr.

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JOSEPH GOODNIGHT, ESQ. for MARC PAUL
SCHACHTER

JAMES B. LESLIE, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

CARL F. HYLIN, ESQ. for MARC PAUL
SCHACHTER

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CODE 1885

FILED

SEP 22 2014

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.

JURY INSTRUCTION READ TO THE JURY PRIOR TO COMMENCEMENT OF TRIAL

1 The defendant has decided to represent himself in this
2 trial, rather than being represented by an attorney. He has a
3 constitutional right to do so. His decision to proceed without an
4 attorney has no bearing on whether he is guilty or not guilty, and
5 you are not to draw any inference favorable or unfavorable to the
6 defendant from the exercise of his right to represent himself.

7 Carl Hylin, an attorney, will be seated at the counsel
8 table with the defendant. The defendant may at any time consult with
9 Mr. Hylin about his defense.

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25
26 Instruction No. _____

FILED

SEP 22 2014

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

CODE

Richard A. Gammick

#001510

P.O. Box 11130

Reno, NV 89520

(775) 328-3200

Attorney for Plaintiff

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. 4

MARC PAUL SCHACHTER,

Defendant.

TRIAL STATEMENT

The State of Nevada, by and through RICHARD A. GAMMICK, Washoe County District Attorney and ZELELEM BOGALE, Deputy District Attorney, hereby submits to the court this Trial Statement pursuant to the court's Pretrial Order filed on August 5, 2014.

A. PRACTICAL MATTERS

The State has no suggestions or special requests regarding the order of witnesses or evidence, or view of the premises. It is the State's understanding that audio/video equipment will be provided by the State for use by the State and Defendant.

///

///

1 B. VOIR DIRE

2 The following is the State's proposed voir dire questions, for
3 the court and/or counsel to ask of the jury:

- 4 1. Whether any member of the venire has a pre-planned trip out
5 of town with non-refundable airfare during the period of
6 time allotted for this trial?
- 7 2. Whether any member of the venire has a medical condition(s)
8 that would preclude him or her from serving as a juror in
9 this case?
- 10 3. Whether any member of the venire has special employment or
11 family-related obligations such that jury service in this
12 case would result in significant financial or personal
13 hardship?
- 14 4. Whether, and if so to what degree, any member of the venire
15 knows any of witnesses noticed in this trial, court staff,
16 law enforcement, personnel at the Washoe County District
17 Attorney's office, Defendant, or stand-by counsel?
- 18 5. Whether any member of the venire cannot serve as a fair and
19 impartial juror in this case based on their answers to the
20 juror questionnaire?
- 21 6. Whether any member of the venire would not want themselves
22 in their current state of mind to be a juror in their own
23 case?
- 24 7. Whether any member of the venire participates or has
25 participated in the hiring process at their place of
26 employment?

- 1 8. Whether any member of the venire does not understand that
2 the State has a right to a fair trial?
- 3 9. Whether any member of the venire has trouble following the
4 law as instructed and provided to them by the court?
- 5 a. Whether any member of the venire believes it is not
6 unlawful to drive 26 MPH in a 25 MPH zone?
- 7 b. Whether any member of the venire believes it is not
8 unlawful to take an item or items of insignificant
9 value from a commercial establishment without paying
10 for it?
- 11 c. Whether any member of the venire believes a defendant
12 who is charged with theft is less culpable because the
13 alleged stolen property was of little monetary value?
- 14 d. Whether any member of the venire believes significant
15 force or fear of death or substantial bodily harm must
16 be used to effectuate a robbery?
- 17 e. Whether any member of the venire believes every person
18 who happens to witness a crime must be called as a
19 witness at trial?
- 20 f. Whether any member of the venire believes more
21 evidence amounts to a higher probability of guilt, or
22 whether any member of the venire believes less
23 evidence amounts to lesser probability of guilt?
- 24 g. Whether any member of the venire believes physical
25 evidence carries more evidentiary value than
26 testimonial evidence?

- 1 h. Whether any member of the venire believes DNA evidence
2 is required to establish identity?
- 3 i. Whether any member of the venire believes direct and
4 circumstantial evidence carry different evidentiary
5 values?
- 6 j. Whether any member of the venire would have trouble
7 with definitions of legal concepts like "force" or
8 "intent"?
- 9 k. Whether any member of the venire believes conflicts in
10 evidence alone amount to evidence of innocence or
11 guilt?
- 12 l. Whether any member of the venire believes a defendant
13 in a criminal case is guilty because he is on trial?
- 14 m. Whether any member of the venire is sympathetic to a
15 defendant in a criminal case because he is on trial?

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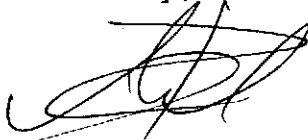
1 10. Whether, for whatever reason, any member of the venire
2 cannot serve as a fair and impartial juror in this trial?

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding
5 document does not contain the social security number of any person.

6 Dated this 22nd day of September, 2014.

7 RICHARD A. GAMMICK
8 District Attorney
9 Washoe County, Nevada

10 
11 By/s/ ZELALEM BOGALE
12 ZELALEM BOGALE
13 Deputy District Attorney

CODE

Richard A. Gammick
 #001510
 P.O. Box 11130
 Reno, NV 89520
 (775) 328-3200
 Attorney for Plaintiff

FILED

SEP 22 2014

JOE 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. 4

MARC PAUL SCHACHTER,

Defendant.

ADDENDUM TO TRIAL STATEMENT

The State of Nevada, by and through RICHARD A. GAMMICK, Washoe County District Attorney and ZELALEM BOGALE, Deputy District Attorney, hereby submits to the court this Addendum to the State's Trial Statement hand delivered to chambers yesterday.

The purpose of this Addendum is to ensure the court and the parties may ask the venire questions about Defendant's status as a pro per litigant. To that end, the State proposes the following questions:

1. Whether any member of the venire feels sympathetic towards a defendant who has chosen self-representation?

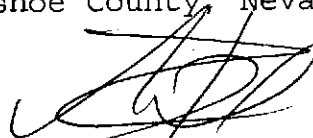
- 1 2. Whether any member of the venire will find a defendant
2 guilty or not guilty because of his status as a self-
3 representing party?
4 3. Whether any member of the venire will hold favorable or
5 unfavorable views of the defendant because of his status as
6 a self-representing party?

7 AFFIRMATION PURSUANT TO NRS 239B.030

8 The undersigned does hereby affirm that the preceding
9 document does not contain the social security number of any person.

10 Dated this 22nd day of September, 2014.

11 RICHARD A. GAMMICK
12 District Attorney
13 Washoe County, Nevada

14 

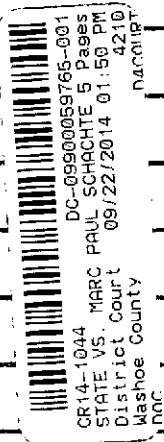
15 By/s/ ZELALEM BOGALE
16 ZELALEM BOGALE
17 Deputy District Attorney
18
19
20
21
22
23
24
25
26

CODE 4210
 MARC SCHACHTER
 #1409450
 911 PARK BLVD
 RENO, NV 89512
 IN PROPER

FILED

SEP 22 2014

JOBV. 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,

✓

MARC PAUL SCHACHTER,

DEFENDANT.

CASE NO: CR-14-11044

DEPT. NO: 4

TRIAL STATEMENT

1. THE DEFENSE REQUESTS THE ABILITY TO
 HAVE BOTH AUDIO AND VISUAL EQUIPMENT
 FOR THE SHOWING OF EVIDENCE CONTAINED
 ON A DVD AND A CD.

2. DEFENSE REQUESTS THE USE OF A
 DISPLAY RACK TO HOLD A ENLARGED
 LAYOUT OF THE WALMART STORE.

11

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11

VOIR DIRE QUESTIONS

WHAT IS YOUR OPINION OF SOMEONE WHO CHOOSES TO REPRESENT THEMSELVES RATHER THAN USE A PUBLIC DEFENDER?

DO YOU FEEL THE POLICE IN YOUR COMMUNITY DO A GOOD JOB?

DO YOU BELONG TO OR DO YOU VOLUNTEER AT ANY CHARITABLE GROUPS OR ORGANIZATIONS?

WHY DO SOME PEOPLE DECIDE TO GO TO TRIAL?

DO YOU UNDERSTAND THAT JUST BECAUSE SOMEONE HAS BEEN ARRESTED OF A CRIME DOESN'T MEAN THEY ARE GUILTY OF THAT CRIME?

ARE YOU MORE CONCERNED WITH THE LOSS OF PERSONAL PRIVACY OR PROTECTION AND SAFETY OF THE COUNTRY AS A WHOLE?

DOES ANYONE IN YOUR FAMILY WORK FOR WALMART?

HOW DO YOU FEEL ABOUT LOCAL GOVERNMENTS GIVING TAX BREAKS AND INCENTIVES TO LURE BUSINESS HERE LIKE TELSA?

- OR WOULD MONEY BE BETTER SPENT ON HIGHER EDUCATION AS A WELL EDUCATED WORK-FORCE WILL BRING BUSINESS HERE?

ARE LOW PRICES FOR EVERYDAY ITEMS MORE IMPORTANT THAN CUSTOMER SERVICE?

SHOULD THE STATE BE SPENDING MORE MONEY ON NEW PRISON CONSTRUCTION OR MORE MONEY ON REHABILITATION PROGRAMS?

IS THE RIGHT TO OWN A GUN AND TO BEAR ARMS IMPORTANT TO YOU?

- HOW DO YOU FEEL ABOUT GUN CONTROL LAWS?

WHAT PUBLICATIONS DO YOU SUBSCRIBE TO?

- FAVORITE WEBSITES?

IF YOU COULD TRAVEL TO ANY
PLACE ON EARTH WHERE WOULD
YOU GO? (AND WHY)

WHAT WAS THE BEST (OR LAST)
NON-FICTION BOOK YOU READ? FICTION?

ANYONE IN YOUR FAMILY IN THE
MILITARY?

DO POLITICS INTEREST YOU OR BORE
YOU?

HOW DO YOU FEEL ABOUT THE NEW
UNIVERSAL HEALTHCARE LAW?

AFFIRMATION PURSUANT TO
NRS 239B.030

THE UNDERSIGNED HEREBY DECLARES THAT
THIS DOCUMENT DOES NOT CONTAIN ANY
SOCIAL SECURITY NUMBER(S) OR ANY PERSON(S).

DATE Sept 19, 2024

Marc Schachter
MARC SCHACHTER

CR14-1044
STATE VS. MARC PAUL SCHACHTER
District Court
Washoe County
DC-09900099851-001
28 Pages
09/24/2014 09:30 AM
1885
narcislat

CODE 1885

FILED

SEP 24 2014

JOE 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.

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you, regardless of what you may think the law is or ought to be. On the other hand, it is your exclusive province to determine the facts in the case, and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law stated to you.

Instruction No. 1

1 If in these instructions, any rule, direction or idea is
2 stated in varying ways, no emphasis thereon is intended by me and
3 none must be inferred by you. For that reason, you are not to single
4 out any certain sentence, or any individual point or instruction, and
5 ignore the others, but you are to consider all the instructions as a
6 whole and to regard each in the light of all the others.

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26 Instruction No. 2

1 If, during this trial, I have said or done anything which
2 has suggested to you that I am inclined to favor the position of
3 either party, you will not be influenced by any such suggestion.

4 I have not expressed, nor intended to express, nor have I
5 intended to intimate, any opinion as to which witnesses are or are
6 not worthy of belief, what facts are or are not established, or what
7 inference should be drawn from the evidence. If any expression of
8 mine has seemed to indicate an opinion relating to any of these
9 matters, I instruct you to disregard it.

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26 Instruction No. 3

1 The defendant MARC PAUL SCHACHTER in this matter, is being
2 tried upon an Amended Information which was filed on the 14th day of
3 July, 2014, in the Second Judicial District Court, charging the said
4 defendant MARC PAUL SCHACHTER, with:

5 COUNT I. ATTEMPTED ROBBERY, a violation of NRS 193.330,
6 being an attempt to violate NRS 200.380, a felony, in the manner
7 following:

8 That the said defendant MARC PAUL SCHACHTER, on or about
9 the 9th day of June, 2014, and before the filing of this Information,
10 within the County of Washoe, State of Nevada, did willfully and
11 unlawfully attempt to rob loss prevention personnel at Walmart
12 located at 5260 West 7th Street with the use of force and violence,
13 in that the defendant used physical force upon said persons to retain
14 property he had just stolen from said location in order to facilitate
15 his escape.

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18 To the charge stated in the Amended Information, the
19 defendant, MARC PAUL SCHACHTER, pled "NOT GUILTY".
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26 Instruction No. 4

1 An Amended Information is a formal method of accusing a
2 defendant of a crime. It is not evidence of any kind against the
3 accused, and does not create any presumption or permit any inference
4 of guilt.

1 Every person charged with the commission of a crime shall
2 be presumed innocent unless the contrary is proved by competent
3 evidence beyond a reasonable doubt. The burden rests upon the
4 prosecution to establish every element of the crime with which the
5 defendant is charged beyond a reasonable doubt.

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26 Instruction No. 6

1 In every crime there must exist a union or joint operation
2 of act and intent.

3 The burden is always upon the prosecution to prove both act
4 and intent beyond a reasonable doubt.

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26 Instruction No. 7

1 A reasonable doubt is one based on reason. It is not mere
2 possible doubt, but is such a doubt as would govern or control a
3 person in the more weighty affairs of life. If the minds of the
4 jurors, after the entire comparison and consideration of all the
5 evidence, are in such a condition that they can say they feel an
6 abiding conviction of the truth of the charge, there is not a
7 reasonable doubt. Doubt to be reasonable, must be actual, not mere
8 possibility or speculation.

1 There are two types of evidence from which a jury may
2 properly arrive at a verdict. One is direct evidence, such as the
3 testimony of an eyewitness. The other is circumstantial evidence,
4 the proof of a chain of circumstances pointing to the commission of
5 the offense.

6 The law makes no distinction between direct and
7 circumstantial evidence, but requires that before convicting a
8 defendant, the jury be satisfied of the defendant's guilt beyond a
9 reasonable doubt from all the evidence in the case.

1 Intent may be proved by circumstantial evidence. It rarely
2 can be established by any other means. While witnesses may see and
3 hear and thus be able to give direct evidence of what a defendant
4 does or fails to do, there can be no eyewitness account of a state of
5 mind with which the acts were done or omitted, but what a defendant
6 does or fails to do may indicate intent or lack of intent to commit
7 the offense charged.

8 In determining the issue as to intent, the jury is entitled
9 to consider any statements made and acts done or omitted by the
10 accused, and all facts and circumstances in evidence which may aid
11 determination of state of mind.
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1 Nothing that counsel say during the trial is evidence in
2 the case.

3 The evidence in a case consists of the testimony of the
4 witnesses and all physical or documentary evidence which has been
5 admitted.

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Instruction No. 11

1 Neither the prosecution nor the defense is required to call
2 as witnesses all persons who may appear to have some knowledge of the
3 matters in question in this trial.
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Instruction No. 12

1 It is the duty of attorneys on each side of a case to
2 object when the other side offers testimony or other evidence which
3 counsel believes is not admissible.

4 When the court has sustained an objection to a question,
5 the jury is to disregard the question and may draw no inference from
6 the wording of it or speculate as to what the witness would have said
7 if permitted to answer.

1 To the jury alone belongs the duty of weighing the evidence
2 and determining the credibility of the witnesses. The degree of
3 credit due a witness should be determined by his or her character,
4 conduct, manner upon the stand, fears, bias, impartiality,
5 reasonableness or unreasonableness of the statements he or she makes,
6 and the strength or weakness of his or her recollections, viewed in
7 the light of all the other facts in evidence.

8 If the jury believes that any witness has willfully sworn
9 falsely, they may disregard the whole of the evidence of any such
10 witness.
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26 Instruction No. 14

1 Robbery is the unlawful taking of personal property from
2 the person of another, or in his or her presence, against his or her
3 will, by means of force or violence or fear of injury, immediate or
4 future, to his or her person or property, at the time of the taking.

5 A taking is by means of force or fear if force or fear is used to:

6 (a) Obtain or retain possession of the property;

7 (b) Prevent or overcome resistance to the taking; or

8 (c) Facilitate escape.

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10 The degree of force used is immaterial if it is used to
11 compel acquiescence to the taking of or escaping with the property.
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1 The crime of Robbery does not in any degree depend upon the
2 amount or value of the property taken and, the other elements of the
3 offense being present, the crime of Robbery is committed even though
4 the property taken is of slight value.
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Instruction No. 16

1 In the crime of robbery it is the fact of the taking of the
2 person's property which is an essential element, it is not the
3 distance the property was taken which is controlling. In other
4 words, any taking of another person's property, no matter how far it
5 was taken from the person, is sufficient to constitute the crime of
6 robbery if such taking was committed by means of force or violence.
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1 A thing is in the presence of a person, in respect to robbery,
2 which is so within his or her reach, inspection, observation or
3 control, that he or she could, if not overcome by violence or
4 prevented by fear, retain his or her possession of it.

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26 Instruction No. 18

1 An "attempt" is an act done with intent to commit a crime,
2 and tending but failing to accomplish it.

3 In an attempt to commit a crime, three elements are
4 involved:

- 5 1. The intent to commit the crime.
 - 6 2. Performance of some act toward its commission.
 - 7 3. Failure to consummate its commission.
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1 When a person has once committed acts which constitute an
2 attempt to commit a crime, he or she cannot avoid responsibility by
3 not proceeding further with his or her intent to commit the crime,
4 either by reason of voluntarily abandoning his or her purpose or
5 because of a fact which prevented or interfered with his or her
6 completing the crime.

1 To prove that Mr. Schachter is guilty of attempting to commit
2 Robbery, the State must prove beyond a reasonable doubt that Mr.
3 Schachter specifically intended to commit that crime, but failed to
4 do so.

5 If you find that the State has failed to prove beyond a
6 reasonable doubt that Mr. Schachter intended to commit Robbery, you
7 must find him not guilty.

1 The offense of Attempted Robbery includes the lesser offense of
2 larceny. You may find the defendant guilty of the lesser offense only
3 if some of you are not convinced beyond a reasonable doubt the
4 defendant is guilty of Attempted Robbery and all twelve of you are
5 convinced beyond a reasonable doubt the defendant is guilty of the
6 lesser offense.

1 Larceny is committed when a person intentionally steals, takes
2 and carries away personal goods or property owned by another person.
3 Petit larceny is committed when a person intentionally steals, takes
4 and carries away personal goods or property of another with a value
5 of less than Six Hundred and Fifty Dollars (\$650).
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Instruction No. 23

1 If the defendant tried to flee immediately after the crime was
2 committed, or after the defendant was accused of committing the
3 crime, that conduct may show that the defendant was aware of his or
4 her guilt. If you conclude that the defendant tried to flee, it is
5 up to you to decide the meaning and importance of that conduct.
6 Evidence that the defendant tried to flee, however, cannot prove
7 guilt by itself.

1 It is a constitutional right of a defendant in a criminal trial
2 that he or she may not be compelled to testify. You must not draw
3 any inference from the fact that he or she does not testify.
4 Further, you must neither discuss this matter nor permit it to enter
5 into your deliberations in any way.

1 Although you are to consider only the evidence in the case
2 in reaching a verdict, you must bring to the consideration of the
3 evidence your everyday common sense and judgment as reasonable men
4 and women. Thus, you are not limited solely to what you see and hear
5 as the witnesses testify. You may draw reasonable inferences which
6 you feel are justified by the evidence, keeping in mind that such
7 inferences should not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, passion,
9 prejudice, or public opinion. Your decision should be the product of
10 sincere judgment and sound discretion in accordance with these rules
11 of law.

1 It is your duty as jurors to consult with one another and
2 to deliberate, with a view of reaching an agreement, if you can do so
3 without violence to your individual judgment. You each must decide
4 the case for yourself, but should do so only after a consideration of
5 the case with your fellow jurors, and you should not hesitate to
6 change an opinion when convinced that it is erroneous. However, you
7 should not be influenced to vote in any way on any question submitted
8 to you by the single fact that a majority of the jurors, or any of
9 them, favor such a decision. In other words, you should not
10 surrender your honest convictions concerning the effect or weight of
11 evidence for the mere purpose of returning a verdict or solely
12 because of the opinion of the other jurors.

Upon retiring to the jury room you will select one of your number to act as foreperson, who will preside over your deliberations and who will sign a verdict to which you agree.

When all twelve (12) of you have agreed upon a verdict, the foreperson should sign and date the same and request the Bailiff to return you to court.

Connie J. Steinheimer
DISTRICT JUDGE

Instruction No. 28

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

[Signature]

FOREPERSON

CR14-1044
STATE VS. MARC PAUL SCHACHTER 1 Page
District Court 09/24/2014 11:30 AM
Washoe County 4235
nrc

COL 4245

FILED

SEP 24 2014 @ 11:30 am

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

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR14-1044

v.

Dept. No. D04

MARC PAUL SCHACHTER,

Defendant.

UnusedVERDICT

We, the jury in the above-entitled matter, find the
defendant, MARC PAUL SCHACHTER, NOT GUILTY OF COUNT I. ATTEMPTED
ROBBERY.

DATED this _____ day of _____, 20____.

FOREPERSON

1 CODE 4225

FILED

SEP 24 2014 @ 11:30 am

JOEY WINTERS, 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.

unused

VERDICT

We, the jury in the above-entitled matter, find the
defendant, MARC PAUL SCHACHTER, GUILTY of the lesser included offense
of PETIT LARCENY.

DATED this _____ day of _____, 20__.

FOREPERSON

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CODE 4225

FILED

SEP 24 2014 @ 11:30 am

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.

UnusedVERDICT

We, the jury in the above-entitled matter, find the
defendant, MARC PAUL SCHACHTER, NOT GUILTY of the lesser included
offense of PETIT LARCENY.

DATED this _____ day of _____, 20____.

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 BRENT ADAMS, 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.)

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16
17 TRANSCRIPT OF PROCEEDINGS

18 STATUS HEARING

19 TUESDAY, SEPTEMBER 23, 2014, 9:00 A.M.

20 Reno, Nevada

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22
23 Reported By: JUDITH ANN SCHONLAU, CCR #18
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
24 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: ZALALEM 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: MARILYN LABADIE

1 RENO, NEVADA; TUESDAY, AUGUST 21, 2014 A.M.

2 -oOo-

3 THE COURT: Mark Schachter. This is the time set for
4 a status hearing. Counsel, Wednesday pretrial motions set for
5 August 28th. I think those need to be moved to another date.

6 MR. LESLIE: Your Honor, please remember I am
7 standby counsel.

8 THE COURT: Yes.

9 MR. LESLIE: I had talked to Mr. Schachter about
10 that, told him that might be the Court's thought process. I
11 am here facilitating him being here for this status
12 conference. He had some issues to bring to the Court.

13 THE COURT: Okay. Go ahead, Mr. Schachter.

14 THE DEFENDANT: My motion to file today, I don't
15 have any copies, I didn't know if you were going to bring it
16 back. I don't have access to a copying machine.

17 THE COURT: You can give them to Mr. Leslie, then he
18 can see they get filed and served.

19 THE DEFENDANT: And I have the request for
20 stipulation of discovery. I hadn't signed it.

21 THE COURT: The request for reciprocal discovery?

22 THE DEFENDANT: No the stipulation that was in the
23 pretrial order. That is the one I am giving you.

24 THE COURT: Do you need a pen? We can get a pen.

1 MR. LESLIE: Your Honor, he's signing where it says
2 Public Defender's office, but since he's representing himself
3 that would be his signature.

4 THE COURT: Okay.

5 MR. LESLIE: Your Honor, I will hand that to the D.A.

6 THE COURT: Okay. That's correct.

7 THE DEFENDANT: The other issue I had was that one.
8 My motion is the DVD surveillance video part of discovery was
9 edited after it was in possession of the District Attorney or
10 in possession of the State. If they are not going to
11 stipulate that the video was edited, I am going to need a
12 court order for the sheriff to bring the DVD's with me when we
13 do the arguments.

14 THE COURT: Okay. So I think that makes sense anyway
15 for you to bring your legal documents and any discovery you
16 have to the hearing.

17 THE DEFENDANT: I would need a separate court order
18 for the sheriff in order to get to bring the DVD's. I don't
19 have custody of the DVD's.

20 THE COURT: Right. Okay. I am going to enter an
21 order all of his legal documents and discovery held by the
22 sheriff while he's representing himself be transported with
23 him to his hearing, the pretrial hearing, whenever that is
24 set. Okay. Anything else?

1 MR. LESLIE: Your Honor, we have got a trial date I
2 think on the 22nd of September. I am recalling in another pro
3 per case we had asked and the Court had granted that the State
4 be required to produce its proposed Jury Instructions a bit
5 earlier than usual just because of the logistics of him being
6 in custody and trying to come up with responsive Jury
7 Instructions of his own. So that was a discussion we had, and
8 I believe he's requesting that in this case.

9 THE DEFENDANT: Or in lieu of that, access to the
10 standard, one or the other.

11 THE COURT: In our district, Mr. Schachter, we don't
12 really have a stock set of Instructions. We have a lot of
13 Instructions we use all the time in the civil cases we do. In
14 criminal cases, we really don't have that that is an approved
15 book or anything like California has. So I don't know what my
16 pretrial Order--I think my pretrial Order requires the
17 Instructions be provided the Court by the Friday before trial.
18 I think it does make sense, Mr. Bogale, to go ahead and give
19 your proposed Instructions to the defendant sooner than that.

20 MR. BOGALE: I have no problem about that, Your
21 Honor. How much sooner?

22 THE COURT: Because of the logistics, it probably
23 would be best if you could get them to him by September 12th
24 then he has a whole week to work with Mr. Leslie in looking at

1 the Instructions.

2 MR. BOGALE: That is fine, Your Honor. I will make
3 sure I do that.

4 MR. LESLIE: If the State -- I am sure they will
5 provide me a copy that date, and I can review them and go up
6 and see Mr. Schachter as well.

7 THE COURT: Okay. Thank you.

8 MR. LESLIE: Your Honor, with regard to his motions,
9 do you want to file those in now or want my office to get
10 these filed today?

11 THE COURT: I think it would be better if your
12 office filed them today and make copies so you do actually do
13 the service.

14 MR. LESLIE: Okay.

15 THE COURT: The pretrial hearing set for the 28th is
16 going to be vacated, and we need to set a new date.

17 THE CLERK: Pretrial motions will be September 3rd
18 at 1:15.

19 MR. BOGALE: That is the hearing on the pretrial
20 motions?

21 THE COURT: Correct. We'll see you back at that
22 time. Is there anything else?

23 MR. LESLIE: Oh, Your Honor, Mr. Schachter had
24 requested some documents. I wanted to be clear on what those

1 were, and I am providing those to him. If I could just take a
2 moment, Your Honor. He had sent me a letter and asked for a
3 variety of things some of which I had already produced. But
4 in any event, I am now producing to him a copy of Chapter
5 205.060 through 205.295 inclusive. He had wanted some statutes
6 in there. So he has got that.

7 He had asked for the statute and statutory suggested
8 form for Guilty Plea Memorandum, NRS 174.063. I am providing
9 him a copy of that.

10 He had asked for Second Judicial District Court
11 Rules of Practice. He didn't specify, so I am providing him a
12 copy of the general Second Judicial Court Rules of Legal
13 Practice and Criminal Rules of Practice for our district.

14 Then he had asked for a variety of cases. I think
15 that, suffice it to say, I am providing him all of the U.S.
16 Supreme Court cases that he had requested on the third page of
17 his letter dated August 4th of this year.

18 And then, finally, Your Honor, he had asked for a
19 variety of supplies. I did provide him with a pad of lined
20 paper which is probably where he put together his written
21 motions. He had asked for a typewriter and pens. We don't
22 provide those. We have provided everything that we provide pro
23 per defendants when we are in standby capacity. So I just
24 wanted to let him know we are providing that to him today.

1 THE COURT: Okay.

2 THE DEFENDANT: I just had one question. So is the
3 deadline for any other motions going to be the 3rd or is
4 tomorrow the deadline?

5 THE COURT: Tomorrow is the deadline, still the
6 deadline.

7 THE DEFENDANT: Okay.

8 MR. LESLIE: Thank you, Your Honor.

9 MR. BOGALE: Just one point, Your Honor.

10 Mr. Schachter was referring to video or materials that were
11 edited or somehow changed. The only change the State made in
12 the discovery was to redact the Social Security numbers from
13 the file. Any other changes or modifications I am happy to
14 entertain from Mr. Schachter. But I have our investigator
15 here who actually served the discovery materials on him, and
16 he confirmed all that was redacted was the Social Security
17 numbers.

18 THE DEFENDANT: On the surveillance video?

19 MR. BOGALE: The Social Security numbers on the paper
20 material.

21 THE DEFENDANT: I'm talking about the surveillance
22 video was edited.

23 THE COURT: We'll just have to see.

24 THE DEFENDANT: Exactly.

1 MR. BOGALE: The State knows of no additions made to
2 the video.

3 THE COURT: Okay. That being said, we'll see you
4 back at your hearing.

5 THE DEFENDANT: Thank you, Your Honor.

6 THE COURT: You are welcome.

7 MR. BOGALE: Thank you, Your Honor.

8 (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 Tuesday,
9 September 23, 2014, at the hour of 9:00 a.m. of said day and
10 that 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 22nd day of September, 2014.

21
22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24

Return Of NEF**Recipients**

JAMES LESLIE, ESQ. - Notification received on 2014-09-29 11:16:12.737.

ZELALEM BOGALE, ESQ. - Notification received on 2014-09-29 11:16:12.706.

JOSEPH GOODNIGHT, ESQ. - Notification received on 2014-09-29 11:16:12.831.

KELLY KOSSOW, ESQ. - Notification received on 2014-09-29 11:16:12.8.

CARL HYLIN, ESQ. - Notification received on 2014-09-29 11:16:12.924.

DIV. OF PAROLE & PROBATION - Notification received on 2014-09-29 11:16:12.862.

NICKOLAS GRAHAM, ESQ. - Notification received on 2014-09-29 11:16:12.893.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

09-29-2014:11:15:04

Clerk Accepted:

09-29-2014:11:15:42

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Transcript

Filed By:

Judith Schonlau

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JOSEPH GOODNIGHT, ESQ. for MARC PAUL
SCHACHTER

JAMES B. LESLIE, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

CARL F. HYLIN, ESQ. for MARC PAUL
SCHACHTER

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CASE NO. CR14-1044

**TITLE: THE STATE OF NEVADA VS. MARC
PAUL SCHACHTER**

**DATE, JUDGE
OFFICERS OF**

PAGE ONE

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

9/22/14

JURY TRIAL - DAY ONE

HONORABLE

Chief Deputy District Attorney Cheryl Wilson, Esq., and Deputy District

CONNIE

Attorney Zelalem Bogale, Esq., represented the State. Defendant present

STEINHEIMER

representing himself. Chief Deputy Public Defender Carl Hylin, Esq.,

DEPT. NO.4

present as standby counsel.

M. Stone

9:50 a.m. Court convened outside the presence of the Jury.

(Clerk)

Motion for Leave to File Second Amended Information by State's Counsel

Molezzo

Bogale; presented argument; objection and argument by Defendant.

Reporters

COURT ENTERED ORDER denying Motion for Leave to File Second Amended Information.

(Reporter)

State's Counsel Bogale advised the Court of the last offer made to the Defendant through Standby Counsel Leslie. Defendant advised the Court that he did not know of such offer.

10:00 a.m. Court recessed.

10:16 a.m. Court reconvened with Respective Counsel and Defendant present.

State's Counsel Bogale advised the Court that the offer was conveyed to the Defendant during the recess. Defendant rejected such offer.

Motion to Dismiss Count II of the Amended Information by State's Counsel Bogale; presented argument; no objection by Defendant. **COURT ENTERED ORDER** dismissing Count II of the Amended Information.

Motion to Dismiss for Reasons of Prejudicial Delay by Defendant; presented argument. **COURT ENTERED ORDER** denying Motion as delay was caused by Defendant due to his self-representation and refusing to be represented by the Washoe County Public Defender's Office.

Standby Counsel Hylin advised the Court of the Defendant's issues with receiving a redacted version of the Jury Questionnaires. **COURT ENTERED ORDER** that the Defendant will not be provided with the Jurors' addresses as requested but the Court would inquire of each Juror as to their employment.

Defendant presented further argument regarding the Jury Questionnaires.

Motion to Suppress Evidence by Defendant; presented argument; objection and argument by State's Counsel Bogale; reply by Defendant. Although the photograph is not as good as the actual evidence, the use of a photograph does not rise to the level of suppression, therefore, **COURT ENTERED ORDER** denying Motion to Suppress.

Discussion ensued regarding the packet of Jury Instructions provided to the Court. **COURT** directed the State to correct the Jury Instructions as to the charging document to reflect the dismissal of Count II of the Amended Information.

Court advised the State and the Defendant which questions would be allowed during voir dire of the Jury.

CASE NO. CR14-1044

TITLE: THE STATE OF NEVADA VS. MARC PAUL SCHACHTERDATE, JUDGE
OFFICERS OF

PAGE TWO

COURT PRESENTAPPEARANCES-HEARINGCONT'D TO

9/22/14

JURY TRIAL - DAY ONE

Molezzo

Court reviewed the process of jury selection with the State and the Defendant.

Reporters

Based on stipulation between the State and Defendant, **COURT ENTERED**

(Reporter)

ORDER that the Defendant's also known as names listed in the Amended Information will not be presented to the Jury.

10:30 a.m. Court recessed.

10:50 a.m. Court reconvened with Respective Counsel and Defendant present.

Prospective Jurors present.

Court Personnel, Respective Counsel and Defendant introduced to the jury panel.

Roll called; all prospective Jurors present; State's Counsel Bogale and Defendant stipulated to the prospective Jury Panel as now constituted. Panel sworn as to their qualifications to serve as trial jurors and generally examined by the Court.

Twenty-Three names drawn (Moberly-Houston, Speech, Pissarro, Walden, Shawnee, Monte, Cozier, Royce, Michelson, Hurting, These, Be scup, Reis, Kelps, Ruff, Stricter, Kraemer, Hester lee, Bradfield, Weeks, Yarbrough, Argall, Setoff); seated and generally examined by Court.

Upon direction of the Court, State's Counsel Bogale specifically examined the prospective jury panel; passed for cause.

Upon direction of the Court, Defendant specifically examined the prospective jury panel; passed for cause.

Court thanked and excused unselected Jurors.

Prospective jury panel moved to another courtroom in order for the exercise of peremptory challenges.

State's first peremptory challenge was of juror Cozier.

Defendant's first peremptory challenge was of juror Hester lee.

State's second peremptory challenge was of juror Thiessen.

Defendant's second peremptory challenge was of juror Hartig.

State's third peremptory challenge was of juror Stichter.

Defendant's third peremptory challenge was of juror Moberly-Houston.

State's fourth peremptory challenge was of juror Specht.

Defendant's fourth peremptory challenge was of juror Yarbrough.

State's peremptory challenge of alternate jurors was of juror Weeks.

Defendant's peremptory challenge of alternate jurors was of juror Saathoff.

Jury returned to the Courtroom and Court Clerk called names of selected Jurors as follows:

DATE, JUDGE
OFFICERS OF

PAGE THREE

COURT PRESENTAPPEARANCES-HEARINGCONT'D TO

9/22/14

JURY TRIAL - DAY ONEMolezzo
ReportersRita Isparo
Mliss Monte
Joy Bescup
Maureen RuffRachel Walden
Tom Roice
David Reis
Bonnie KraemerAshvin Sawhney
Stephen Mikkelson
Amanda Klepps
Debra Bradfield

Alternate: Noel Argall

Court thanked and excused unselected Jurors.

Court advised the selected jury panel of roll during these proceedings.

12:19 p.m. Selected Jury Panel sworn to try this case.

Court Clerk read the Amended Information aloud and indicated that the Defendant previously entered a plea of not guilty to the charge set forth therein.

12:26 p.m. Jury admonished and excused; said admonishment administered prior to each recess for the duration of trial. Court recessed.

1:41 p.m. Court reconvened outside the presence of the jury with Respective Counsel and Defendant present.

State's counsel Bogale provided the Court with the Jury Instruction to be provided to the Jury prior to commencement of evidence based on the Defendant's self-representation.

Rule of Exclusion invoked.

Motion to Exclude the term "R.O.P." Detective by defendant; presented argument. **COURT ENTERED ORDER** granting Motion.

Discussion ensued regarding Exhibits 10 and 11 referencing the Defendant being in custody at the Washoe County Jail. **COURT** directed the State and Defendant that no mention of the custody status of the Defendant shall be made by any witness without a hearing outside the presence of the Jury prior.

1:48 p.m. Jury entered. State's Counsel Bogale and Defendant stipulated to the presence of the jury.

Jury Instruction regarding self-representation read aloud to the Jury.

EXHIBITS 1 – 15 previously marked.

State's Counsel Bogale presented opening statement.

Defendant presented opening statement.

Alejandro Monroy called by State's Counsel Bogale, sworn and testified.

EXHIBIT 7 offered by State's Counsel Bogale; objection by Defendant; ordered admitted into evidence over objection.

Witness Monroy further direct examined.

***Witness identified the Defendant for the record.

Witness Monroy further direct examined.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

PAGE FOUR

APPEARANCES-HEARING

CONT'D TO

9/22/14

JURY TRIAL – DAY ONE

Molezzo

Reporters

(Reporter)

EXHIBIT 16 marked by State's Counsel Bogale.

Witness Monroy further direct examined.

EXHIBIT 16 offered by State's Counsel Bogale; objection by Defendant.

Jury admonished and excused in order for objection to be put on the record. Defendant set forth objection to Exhibit 16. Defendant examined Witness Monroy as to contents of video. Court examined Witness Monroy.

Court directed the State to play the video for the Defendant.

Defendant advised the Court that the video is the same as the video he received through the discovery process.

Defendant further examined witness Monroy.

2:31 p.m. Jury entered. State's Counsel Bogale and Defendant stipulated to the presence of the Jury.

EXHIBIT 16 ordered admitted into evidence over objection.

Witness Monroy further direct examined.

EXHIBIT 8 offered by State's Counsel Bogale; objection by Defendant; objection sustained, admission denied.

Jury admonished and excused. Outside the presence of the Jury, the Court instructed both the State and Defendant not to argue with the Court.

Court further directed the State to review Exhibit 8 as to relevance during the recess.

2:58 p.m. Court recessed.

3:18 p.m. Court reconvened outside the presence of the Jury with Respective Counsel and Defendant present.

State's Counsel Bogale set forth offer of proof as to Exhibit 8. **COURT** advised State's Counsel Bogale that the testimony presented fails to connect the property taken to the "training receipt" and advised State's Counsel Bogale that the person who created the "training receipt" would be needed in order for Exhibit 8 to be admitted.

3:23 p.m. Jury entered. State's Counsel Bogale and Defendant stipulated to the presence of the Jury.

EXHIBIT 17 marked by the State during recess.

Court instructed the Jury to disregarding the previous testimony regarding Exhibit 8.

Witness Monroy further direct examined.

EXHIBIT 17 offered by State's Counsel Bogale; objection by Defendant;

**DATE, JUDGE
OFFICERS OF
COURT PRESENT**

PAGE FIVE

APPEARANCES-HEARING

CONT'D TO

9/22/14

JURY TRIAL – DAY ONE

Molezzo

ordered admitted into evidence over objection.

Reporters

(Reporter)

Witness Monroy further direct examined.

EXHIBIT 18 marked by State's Counsel Bogale.

Witness Monroy further direct examined; cross-examined by Defendant.

EXHIBIT 18 offered by Defendant; no objection by State's Counsel Bogale; ordered admitted into evidence.

Witness further cross-examined; redirect examined; recross-examined; excused, subject to recall.

Matthew Hand called by State's Counsel Bogale.

*** Witness identified the Defendant for the record.

Witness Hand further direct examined.

4:58 p.m. Jury admonished and excused. Outside the presence of the Jury, Court advised State of modification to the packet of Jury Instructions as to gender neutrality made by the Court.

Court further directed the State to modify the Charging Instruction. Further the Court directed each side to remove the Instructions regarding Burglary from their packets.

State's Counsel Bogale presented objection to Exhibit 14 which is the 911 call as it has numerous calls recorded. **COURT ENTERED ORDER** that Exhibit 14 will be admitted of the limited purpose of the 911 call by Matthew Hand. The Exhibit will not be produced to the Jury during deliberations unless specifically requested at which time Court will reconvene for the limited purpose of playing the 911 call by Matthew Hand only.

State's Counsel Bogale advised the Court and Defendant of the schedule of witness for the next day.

Discussion ensued regarding the Jury Instructions. Defendant advised Court that Standby Counsel Hylin will presented the arguments regarding the Jury Instructions on behalf of the Defendant.

Defendant advised the Court that the defense will be calling 1 witness which the Washoe County Public Defender's Office is coordinating.

COURT canvassed the Defendant as to his rights against self-incrimination.

Discussion ensued regarding discovery production.

At the request of Defendant, **COURT** directed the Clerk to mark an Inmate Grievance Form by the Defendant as an exhibit.

EXHIBIT 19 marked by Defendant.

5:10 p.m. Court recessed. Defendant remanded to the custody of the Sheriff.

9/23/14

9:00 a.m.

Ongoing
Jury Trial

Return Of NEF**Recipients**

JAMES LESLIE, ESQ. - Notification received on 2014-10-22 14:40:36.782.

ZELALEM BOGALE, ESQ. - Notification received on 2014-10-22 14:40:36.751.

JOSEPH GOODNIGHT, ESQ. - Notification received on 2014-10-22 14:40:37.063.

KELLY KOSSOW, ESQ. - Notification received on 2014-10-22 14:40:36.844.

CARL HYLIN, ESQ. - Notification received on 2014-10-22 14:40:37.546.

DIV. OF PAROLE & PROBATION - Notification received on 2014-10-22 14:40:37.297.

NICKOLAS GRAHAM, ESQ. - Notification received on 2014-10-22 14:40:37.515.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

10-22-2014:14:39:22

Clerk Accepted:

10-22-2014:14:40:04

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

***Minutes

Filed By:

Court Clerk MTrabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JOSEPH GOODNIGHT, ESQ. for MARC PAUL
SCHACHTER

JAMES B. LESLIE, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

CARL F. HYLIN, ESQ. for MARC PAUL
SCHACHTER

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CASE NO. CR14-1044

**TITLE: THE STATE OF NEVADA VS. MARC
PAUL SCHACHTER**

**DATE, JUDGE
OFFICERS OF**

PAGE ONE

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

9/23/14

JURY TRIAL - DAY TWO

HONORABLE
CONNIE
STEINHEIMER
DEPT. NO.4

Chief Deputy District Attorney Cheryl Wilson, Esq., and Deputy District Attorney Zelalem Bogale, Esq., represented the State. Defendant present representing himself. Deputy Public Defender Carl Hylin, Esq., present as standby counsel.

M. Stone
(Clerk)
Molezzo
Reporters
(Reporter)

9:01 a.m. Court convened outside the presence of the Jury.
COURT advised counsel that Juror Sawney recognized Det. Reed as somebody she had knowledge of. Deputy Butler set forth for the record the communication she had with Juror Sawney. State's Counsel Bogale advised the Court that the State does not intend to call Det. Reed. Defendant waived any conflict with Juror Sawney remaining on the panel.
State's Counsel Bogale presented the Court with the modification to the Jury Instructions as requested by the Court. State's Counsel Bogale further advised the Court that should the Defendant specifically request a Jury Instruction regarding his right not to testify, the State has one available.
Discussion ensued regarding the possibility of giving the Jury lessor included instructions.
Defendant set forth for the record his grievance outlined in Exhibit 19. Standby Counsel Hylin advised the Court that the Defendant has all the discovery received by the Washoe County Public Defender's Office.
9:25 a.m. Court recessed.
9:41 a.m. Court reconvened with Respective Counsel and Defendant present. State's Counsel Bogale and Defendant stipulated to the presence of the Jury.

Witness Hand, heretofore sworn, resumed stand and was further cross-examined by Defendant; redirect examined; excused.

Anna Young called by State's Counsel Bogale, sworn and testified.

***Witness identified the Defendant for the record.

Witness Young further direct examined.

EXHIBIT 8 offered by State's Counsel Bogale; no objection by Defendant; ordered admitted into evidence.

Witness Young further direct examined; cross-examined by Defendant; redirect examined; recross-examined; excused.

Coralee Bunker called by State's Counsel Bogale, sworn and testified.

10:36 a.m. Jury admonished and excused. Outside the presence of the Jury, discussion ensued regarding the chain of custody of Exhibit 6.

CASE NO. CR14-1044

TITLE: THE STATE OF NEVADA VS. MARC PAUL SCHACHTER**DATE, JUDGE
OFFICERS OF****PAGE TWO****COURT PRESENT****APPEARANCES-HEARING****CONT'D TO**

9/23/14

JURY TRIAL - DAY TWO

Molezzo

Witness Bunker excused from Courtroom.

Reporters

State's Counsel Bogale presented additional offer of proof as to Exhibit 6.

(Reporter)

Defendant presented objection.

10:40 a.m. Court recessed.

10:50 a.m. Court reconvened outside the presence of the Jury with respective counsel and Defendant present.

State's Bogale advised the Court that no resolution was achieved as to the chain of custody of Exhibit 6.

State's Counsel Bogale requested that the items contained in Exhibit 6 be marked individually. Defendant presented objection.

COURT ENTERED ORDER overruling objection and directed the Clerk to mark each item contained in Exhibit 6 individually.**EXHIBITS 6A, 6B, 6C and 6D** marked by State's Counsel Bogale.

Witness Bunker, heretofore sworn resumed stand and was examined as to the offer of proof of Exhibit 6C.

EXHIBIT 6C offered by State's counsel; no objection by Defendant; ordered admitted into evidence.

11:21 a.m. Jury entered. State's counsel Bogale and Defendant stipulated to the presence of the Jury.

COURT advised the Jury that Exhibit 6C was admitted into evidence during hearing outside the presence of the Jury.

Witness Bunker was further direct examined.

***Witness identified the Defendant for the record.

Witness Bunker was further direct examined; cross-examined by Defendant; redirect examined; recross-examined; excused.

Terry West called by State's Counsel Bogale, sworn and testified; cross-examined by Defendant.

EXHIBIT 20 marked by Defendant.

Witness West further cross-examined.

EXHIBIT 20 offered by Defendant; no objection by State's Counsel Bogale; ordered admitted into evidence.

Witness West further cross-examined; redirect examined.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

PAGE THREE

APPEARANCES-HEARING

CONT'D TO

9/23/14

JURY TRIAL - DAY TWO

Molezzo

Reporters

EXHIBIT 21 marked by State's Counsel Bogale.

Witness West further redirect examined; recross-examined; excused.

12:06 p.m. Jury admonished and excused. Outside the presence of the Jury, State's Counsel Bogale advised the Court of the schedule of witnesses. Defendant advised the Court that he does not believe he will testify. Defendant requested clarification of the scope of testimony of Officer Keisha Ellis.

12:10 p.m. Court recessed.

1:26 p.m. Court reconvened with Respective Counsel and Defendant present. State's Counsel Bogale and Defendant stipulated to the presence of the Jury.

Keisha Ellis called by State's Counsel Bogale, sworn and testified.

EXHIBIT 22 marked by State's Counsel Bogale.

Witness Ellis further direct examined.

EXHIBIT 22 offered by State's Counsel Bogale; no objection by Defendant; ordered admitted into evidence.

Witness Ellis further direct examined; cross-examined by Defendant; excused.

State rested.

Phillip Yoder called by Defendant, sworn and testified; cross-examined by State's Counsel Bogale; redirect examined; excused.

1:57 p.m. Jury admonished and excused. Outside the presence of the Jury, discussion ensued regarding the Jury Instructions. Defendant specifically requested the lessor included Jury Instructions and Verdict Forms.

2:00 p.m. Court recessed.

2:14 p.m. Court reconvened outside the presence of the Jury with Respective Counsel and Defendant present.

Defendant advised the Court that Officer West will not be called as a Witness on behalf of the defense. Defendant further advised the Court that he invokes his rights against self-incrimination and request a Jury Instruction be given to the Jury stating his rights.

State's Counsel Bogale advised the Court that the State has no rebuttal case to present.

2:20 p.m. Jury entered was admonished and excused for the day.

Outside the presence of the Jury, discussions ensued regarding the Jury Instructions.

DATE, JUDGE
OFFICERS OF

PAGE FOUR

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

9/23/14

JURY TRIAL – DAY TWO

Molezzo

Based on no objections being made, **COURT ENTERED ORDER** removing

Reporters

Jury Instruction 23A from packet and modifying Jury Instruction 23B to

(Reporter)

remove Grand Larceny as an option. Once modification made, that

instruction will be marked Jury Instruction 23.

State's counsel presented objection to Jury Instruction 21. Standby Counsel

Hylin presented argument in favor of Jury Instruction 21. The Court having

reviewed Crawford in totality, finds that if the Defendant requests instruction

then it must be given.

Discussion ensued regarding the forms of Verdict.

State's Counsel Bogale and Standby Counsel Hylin had no further

objections to offer and no further instructions to offer. State's Counsel

Bogale and Standby Counsel Hylin had no objections to the forms of

Verdict.

Court advised Respective Counsel and Defendant that Jury Instructions 1-28

would be given to the Jury.

State's Counsel Bogale and Defendant stipulated to the reading of the Jury

Instructions prior to arguments.

2:37 p.m. Court recessed. Defendant remanded to the custody of the Sheriff.

9/24/14

9:30 a.m.

Ongoing
Jury Trial

Return Of NEF**Recipients**

JAMES LESLIE, ESQ. - Notification received on 2014-10-23 09:46:30.444.

ZELALEM BOGALE, ESQ. - Notification received on 2014-10-23 09:46:30.413.

JOSEPH GOODNIGHT, ESQ. - Notification received on 2014-10-23 09:46:30.537.

KELLY KOSSOW, ESQ. - Notification received on 2014-10-23 09:46:30.506.

CARL HYLIN, ESQ. - Notification received on 2014-10-23 09:46:30.631.

DIV. OF PAROLE & PROBATION - Notification received on 2014-10-23 09:46:30.569.

NICKOLAS GRAHAM, ESQ. - Notification received on 2014-10-23 09:46:30.6.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

10-23-2014:09:45:22

Clerk Accepted:

10-23-2014:09:45:59

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

***Minutes

Filed By:

Court Clerk MTrabert

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NEVADA

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JOSEPH GOODNIGHT, ESQ. for MARC PAUL
SCHACHTER

JAMES B. LESLIE, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

CARL F. HYLIN, ESQ. for MARC PAUL
SCHACHTER

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CASE NO. CR14-1044

**TITLE: THE STATE OF NEVADA VS. MARC
PAUL SCHACHTER**

**DATE, JUDGE
OFFICERS OF**

PAGE ONE

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

9/24/14

JURY TRIAL - DAY THREE

HONORABLE

Chief Deputy District Attorney Cheryl Wilson, Esq., and Deputy District

CONNIE

Attorney Zelalem Bogale, Esq., represented the State. Defendant present

STEINHEIMER

representing himself. Deputy Public Defender Carl Hylin, Esq., present as

DEPT. NO.4

standby counsel.

M. Stone

9:39 a.m. Court convened outside the presence of the Jury.

(Clerk)

State's Counsel Bogale and Defendant advised the Court that they are ready

Molezzo

to proceed and have no issues to resolve.

Reporters

9:40 a.m. Jury entered. State's counsel Bogale and Defendant stipulated to

(Reporter)

the presence of the Jury.

Court read the Jury Instructions aloud.

State's Counsel Bogale presented opening argument.

Defendant presented answering argument.

State's Counsel Bogale presented closing argument.

Upon agreement of counsel, Alternate Juror Argall excused to return to normal daily activities, subject to recall.

10:28 a.m. Bailiff and Law Clerk sworn.

Outside the presence of the Jury, Court advised respective counsel and Defendant that a "clean" computer has been received from the District Attorney's Office for the Jury's use during deliberation. Defendant had no objection to such procedure.

Court further advised Respective Counsel and Defendant that Exhibit 14 would not be presented to the Jury for use in the jury room until specifically requested then Court would reconvene in order to present the Exhibit in its limited capacity.

10:31 a.m. Court recessed awaiting Jury.

11:29 a.m. Court reconvened.

Clerk called roll of the jury panel.

Jury returned the following verdict:

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.

(sgd) Tom Roice
FOREPERSON

DATE, JUDGE
OFFICERS OF

PAGE TWO

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

<p>9/24/14 Molezzo Reporters (Reporter)</p>	<p><u>JURY TRIAL – DAY THREE</u> Court inquired of the jurors as a whole if the verdict as read was the verdict to which they agreed and there were no negative responses. Upon request of Defendant, COURT ORDERED jury polled. To the Question “Is this your verdict as read?” posed to each juror individually, there were no negative responses. Court thanked and excused the jury. COURT ORDERED the matter referred to Probation Department for PSI and continued for entry of judgment, consideration of probation report and imposition of sentence. Defendant advised the Court that he may withdraw his request for self-representation for the purposes of sentencing. COURT set a status hearing in 1 week for Defendant to decide whether or not he would like counsel appointed for sentencing purposes. Based on the dismissal of Count II of the Amended Information, COURT ENTERED ORDER reducing the Defendant’s bail to \$20,000.00 bondable. 11:43 a.m. Court recessed. Defendant remanded to the custody of the Sheriff.</p>	<p>10/2/14 9:00 a.m. Status Hearing</p> <p>12/4/14 3:00 p.m. Sentencing</p>
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Exhibits

Title: **THE STATE OF NEVADA VS. MARC PAUL SCHACHTER**

PLTF: **THE STATE OF NEVADA** PATY: **ZELALEM BOGALE, ESQ.**

DEFT: **MARC P. SCHACHTER** DATY: **PRO PER**

Case No: **CR14-1044**

Dept. No: **4**

Clerk: **M. Stone**

Date: **9/3/2014**

Exhibit No.	Party	Description	Marked	Offered	Admitted
A.	Defendant	CD – “Disc 1; DA 14-12219; Schachter, Marc; 7/24/14 KP”	9/3/14		
B.	Defendant	CD - “Disc 2; DA 14-12219; Schachter, Marc; 7/24/14”	9/3/14		
B1.	State	Computer PrintPage of CD File Contents (JustWare5)	9/11/14	No Objection	9/11/14
C.	State	CD- “Case #14-10834; Schachter, Marc; Disc on JW 6-26-14”	9/11/14	No Objection	9/11/14
D.	State	Computer PrintPage of CD File Content (DVD RW Drive (D:) Export Media	9/11/14	Objection Overruled	9/11/14
E.	State	CD – “14-10837 Schachter, M.”	9/11/14		
F.	State	Photograph – Backpack and Contents	9/11/14	No Objection	9/11/14
1.	State	Evidence Envelope containing CD Depicting Incident at Walmart ***Admitted for 9/11/14 Pre-Trial Motions Hearing then marked for Trial purposes	9/11/14		

Exhibits

Title: **THE STATE OF NEVADA VS. MARC PAUL SCHACHTER**

PLTF: **THE STATE OF NEVADA** PATY: **ZELALEM BOGALE, ESQ.**

DEFT: **MARC P. SCHACHTER** DATY: **PRO PER**

Case No: **CR14-1044**

Dept. No: **4** Clerk: **M. Stone**

Date: **9/3/2014**

Exhibit No.	Party	Description	Marked	Offered	Admitted
1A.	State	CD – Depicting Incident at Walmart ***Admitted for 9/11/14 Pre-Trial Motions Hearing then marked for Trial purposes	9/11/14		
1B.	State	Computer PrintPage of CD Content (JustWareWebService) (1A) ***Admitted for 9/11/14 Pre-Trial Motions Hearing then marked for Trial purposes	9/11/14		
2.	State	Prior Conviction – Second Judicial District Court case no. CR09-1429	9/11/14		
3.	State	Prior Conviction – Ninth Judicial District Court case no. 06-CR-00052-DC	9/11/14		
4.	State	Prior Conviction – Santa Clara Municipal Court case no. E9171929	9/11/14		
5.	State	Prior Conviction – Suffolk County Court case no. CC#86-863893	9/11/14		

Exhibits					
Title: THE STATE OF NEVADA VS. MARC PAUL SCHACHTER					
PLTF: THE STATE OF NEVADA		PATY: ZELALEM BOGALE, ESQ.			
DEFT: MARC P. SCHACHTER		DATY: PRO PER			
Case No: CR14-1044		Dept. No: 4	Clerk: M. Stone	Date: 9/3/2014	
Exhibit No.	Party	Description	Marked	Offered	Admitted
6.	State	Clear Plastic Evidence Envelope – Contents from Property Obtained from Marc Schachter	9/22/14		
6A.	State	Box of Hair Color contained in Exhibit 6	9/23/14		
6B.	State	Solar Garden Light contained in Exhibit 6	9/23/14		
6C.	State	Original Walmart Receipt contained in Exhibit 6	9/23/14	No Objection	9/23/14
6D.	State	Receipt – Washoe County, Nevada Office of the District Attorney dated 9/19/14	9/23/14		
7.	State	Diagram of Walmart	9/22/14	Objection Overruled	9/22/14
8.	State	Walmart Receipt #00009052 – Invalid Receipt – Training	9/22/14	No Objection	9/23/14
9.	State	Copy of Receipt – 00001423 – Solar Light and Haircolor	9/22/14		
10.	State	Tiburon Print Screen – Personal Property Tab - Schachter, Marc Paul	9/22/14		
11.	State	CD – Jail Calls for Schachter, Marc	9/22/14		
12A- H.	Defendant	Photographs - Walmart	9/22/14		
13.	Defendant	Diagram – Floor Plan of Walmart	9/22/14		

Exhibits

Title: **THE STATE OF NEVADA VS. MARC PAUL SCHACHTER**

PLTF: **THE STATE OF NEVADA** PATY: **ZELALEM BOGALE, ESQ.**

DEFT: **MARC P. SCHACHTER** DATY: **PRO PER**

Case No: **CR14-1044**

Dept. No: **4** Clerk: **M. Stone**

Date: **9/3/2014**

Exhibit No.	Party	Description	Marked	Offered	Admitted
14.	Defendant	CD – 911 Calls	9/22/14	Objection Overruled	9/23/14 – Limited Admission
15.	Defendant	Walmart – Performance Evaluation for Anna Young	9/22/14		
16.	State	CD - “Disc 2; DA 14-12219; Schachter, Marc; 7/24/14”	9/22/14	Objection Overruled	9/22/14
17.	State	Photograph - Backpack and Contents (Same as Exhibit f)	9/22/14	Objection Overruled	9/22/14
18.	State	RPD – Statement of Alejandro Monroy case no. 14-10834	9/22/14	No Objection	9/22/14
19.	Defendant	Inmate Grievance Form dated 9/8/14 from Inmate Schachter, M	9/22/14		
20.	Defendant	Arrest Report and Declaration of Probable Cause case no. 14-10834 by T. West	9/23/14	No Objection	9/23/14
21.	State	RPD – Report dated 6/9/14 by West, Terry	9/23/14		
22.	State	Washoe County Sheriff’s Office Detention Property Record Form for Schachter, Marc	9/23/14	No Objection	9/23/14

Return Of NEF**Recipients**

JAMES LESLIE, ESQ. - Notification received on 2014-10-23 10:28:29.1.
ZELALEM BOGALE, ESQ. - Notification received on 2014-10-23 10:28:29.069.
JOSEPH GOODNIGHT, ESQ. - Notification received on 2014-10-23 10:28:29.194.
KELLY KOSSOW, ESQ. - Notification received on 2014-10-23 10:28:29.162.
CARL HYLIN, ESQ. - Notification received on 2014-10-23 10:28:29.287.
DIV. OF PAROLE & PROBATION - Notification received on 2014-10-23 10:28:29.225.
NICKOLAS GRAHAM, ESQ. - Notification received on 2014-10-23 10:28:29.256.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

10-23-2014:10:27:23

Clerk Accepted:

10-23-2014:10:27:59

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

***Minutes

- **Continuation

Filed By:

Court Clerk MTrabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JOSEPH GOODNIGHT, ESQ. for MARC PAUL
SCHACHTER

JAMES B. LESLIE, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

CARL F. HYLIN, ESQ. for MARC PAUL
SCHACHTER

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CASE NO. CR14-1044

**TITLE: THE STATE OF NEVADA VS. MARC
PAUL SCHACHTER**

**DATE, JUDGE
OFFICERS OF**

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

10/2/14

STATUS HEARING REGARDING SELF-REPRESENTATION

HONORABLE

Deputy District Attorney Zelalem Bogale, Esq., represented the State.

11/20/14

CONNIE

Defendant present representing himself. Chief Deputy Public Defender

9:00 a.m.

STEINHEIMER

James Leslie, Esq., present as standby counsel.

Sentencing

DEPT. NO.4

Defendant requested guidance from the Court as to what his sentence would be. **COURT** advised the defendant that the Court does not make a determination of sentence until the presentence investigation report is received and all sentencing arguments are presented.

M. Stone

Defendant advised the Court that he wishes to remain self-represented at this time.

(Clerk)

State's counsel advised the Court that there are 7 prior convictions alleged in the Habitual Criminal charge and further advised the defendant of the possible penalty.

J. Schonlau

COURT encouraged the Defendant to have the Public Defender's Office appointed to represent him for sentencing purposes.

(Reporter)

Motion for Trial Transcripts at Public Expense provided to standby counsel for filing.

COURT advised the defendant of his appeal rights.

Defendant provided a list of legal materials needed to standby counsel.

Defendant advised the Court that he has had a presentence investigation report prepared in the last 5 years and requests waiver of new report.

State's counsel invoked right to a presentence investigation report.

COURT directed standby counsel to advise the defendant of his rights during the presentence investigation interview.

Sentencing to remain as previously scheduled.

Defendant remanded to the custody of the Sheriff.

Return Of NEF**Recipients**

JAMES LESLIE, ESQ. - Notification received on 2014-10-24 16:29:15.638.

ZELALEM BOGALE, ESQ. - Notification received on 2014-10-24 16:29:15.606.

JOSEPH GOODNIGHT, ESQ. - Notification received on 2014-10-24 16:29:15.731.

KELLY KOSSOW, ESQ. - Notification received on 2014-10-24 16:29:15.7.

CARL HYLIN, ESQ. - Notification received on 2014-10-24 16:29:15.825.

DIV. OF PAROLE & PROBATION - Notification received on 2014-10-24 16:29:15.762.

NICKOLAS GRAHAM, ESQ. - Notification received on 2014-10-24 16:29:15.794.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

10-24-2014:16:28:10

Clerk Accepted:

10-24-2014:16:28:45

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

***Minutes

Filed By:

Court Clerk MTrabert

You may review this filing by clicking on the following link to take you to your cases.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

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NEVADA

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JOSEPH GOODNIGHT, ESQ. for MARC PAUL
SCHACHTER

JAMES B. LESLIE, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

CARL F. HYLIN, ESQ. for MARC PAUL
SCHACHTER

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

1 CODE 1250
2 WASHOE COUNTY PUBLIC DEFENDER
3 JIM LESLIE, SBN #4464
4 P.O. BOX 11130
5 RENO, NV 89520-0027
6 (775) 337-4800
7 ATTORNEY FOR: DEFENDANT

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10
11 IN AND FOR THE COUNTY OF WASHOE
12

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

Case No. CR14-1044

16 MARC PAUL SCHACHTER,

Dept. No. 4

17 Defendant.
18
19
20
21
22
23
24
25
26

APPLICATION FOR SETTING

27 TYPE OF ACTION: Criminal
28 MATTER TO BE HEARD: Review / Status Hearing
29 DATE OF APPLICATION: 10/28/2014
30 COUNSEL FOR PLAINTIFF: Kristin A. Erickson, DDA
31 COUNSEL FOR DEFENDANT: Jim Leslie, DPD
32 CUSTODY STATUS: In Custody

Setting at 9:00 AM, on the 13th day of November, 2014.

Return Of NEF**Recipients**

JAMES LESLIE, ESQ. - Notification received on 2014-11-12 16:10:23.645.

ZELALEM BOGALE, ESQ. - Notification received on 2014-11-12 16:10:23.614.

JOSEPH GOODNIGHT, ESQ. - Notification received on 2014-11-12 16:10:23.801.

KELLY KOSSOW, ESQ. - Notification received on 2014-11-12 16:10:23.77.

CARL HYLIN, ESQ. - Notification received on 2014-11-12 16:10:23.879.

DIV. OF PAROLE & PROBATION - Notification received on 2014-11-12 16:10:23.833.

NICKOLAS GRAHAM, ESQ. - Notification received on 2014-11-12 16:10:23.848.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

11-12-2014:16:01:52

Clerk Accepted:

11-12-2014:16:09:53

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

PSI - Confidential

Filed By:

Div. of Parole & Probation

You may review this filing by clicking on the following link to take you to your cases.

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-

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NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JOSEPH GOODNIGHT, ESQ. for MARC PAUL
SCHACHTER

JAMES B. LESLIE, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

CARL F. HYLIN, ESQ. for MARC PAUL
SCHACHTER

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CODE 2035
MARC SCHACHTER
#14094510
911 PARK BLVD
RENO, NV 89512
PRO PER

FILED
Electronically
2014-11-18 02:24:16 PM
Cathy Hill
Acting Clerk of the Court
Transaction # 4701171 : mcholino

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

STATE OF NEVADA,
PLAINTIFF,

v.

CASE NO.: CR-14-1044

MARC PAUL SCHACHTER,
DEFENDANT,

DEPT. NO.: 04

MOTION FOR CLARIFICATION OF PRE-TRIAL ORDER


THE DEFENDANT, MARC SCHACHTER, IN PRO PER, COMES
NOW AND MOVES THIS COURT FOR CLARIFICATION
OF ORDER DENYING DEFENDANT'S MOTION TO DISMISS CASE
ON GROUNDS THAT STATE HAS LOST/DESTROYED MATERIAL
EXCULPATORY EVIDENCE DATED 9-16-14.

AFTER FINDING THE DEFENDANT, SCHACHTER, HAD MET
HIS BURDEN OF PROVING THE LOST EVIDENCE WAS
MATERIAL (SEE ORDER PAGE 4 LINE 25), THE
DISTRICT COURT CONSIDERS WHETHER THE FAILURE
TO COLLECT THE EVIDENCE WAS THE RESULT OF
NEGLIGENT, GROSS NEGLIGENCE OR BAD FAITH
CONDUCT. (PAGE 5-LINE 1-2). WHILE THE COURT

MAKES A FINDING THAT THERE WAS NO INDICATION OF "BAD FAITH" (PAGE 5-LINES 11-12), THE COURT FAILS TO ELABORATE OR EXPLAIN AS TO WHY THE LOSS WAS THE RESULT OF NEGLIGENCE AND NOT GROSS NEGLIGENCE.

IN ADDITION, THE DEFENDANT DESIRES TO KNOW IF THE DISTRICT COURT'S ORDER ALLOWING DEFENDANT, SCHACHTER, TO EXAMINE STATE'S WITNESSES AT TRIAL (PAGE 5-LINE 21-22) ALLOWS THE DEFENDANT TO ASK THE COURT FOR PERMISSION TO RECONSIDER THE MOTION TO DISMISS IN LIGHT OF THE TESTIMONY OF OFFICER WEST AND ANNA YOUNG AT DEFENDANT'S TRIAL.

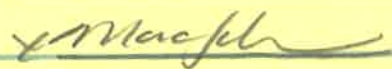
DATE: NOVEMBER 10, 2014


MARC SCHACHTER, IN PROPER

AFFIRMATION PURSUANT TO NRS 29B.030

THE UNDERSIGNED AFFIRMS THAT THE PRECEDING DOCUMENT DOES NOT CONTAIN ANY SOCIAL SECURITY NUMBER(S) OF ANY PERSON(S).

DATE 11/10/14


MARC SCHACHTER, IN PROPER

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada; that on this 18th day of November, 2014, I electronically filed the foregoing documents with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

ZELALEM BOGALE
DEPUTY DISTRICT ATTORNEY

/s/ DEBBIE BRUNNER
DEBBIE BRUNNER

CODE 3870
MARC SCHACHTER
#1409450
911 PARK BLVD
RENO, NV 89512

IN PRO PER

FILED
Electronically
2014-11-18 02:24:16 PM
Cathy Hill
Acting Clerk of the Court
Transaction # 4701171 : mcholino

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

THE STATE OF NEVADA,
PLAINTIFFS,

v.

MARC PAUL SCHACHTER,
DEFENDANT.

CASE NO: CR-14-1044

DEPT. NO. 04

REQUEST FOR CASE FILE OF STAN-BY COUNSEL
INCLUDING ALL WORK-PRODUCT

THE DEFENDANT IN THE ABOVE CAPTIONED CASE,
MARC SCHACHTER, IN PRO PER, HEREBY RESPECTFULLY
REQUESTS THE DISTRICT COURT ORDER THE WASHOE
COUNTY PUBLIC DEFENDER'S OFFICE PROVIDE THE
DEFENDANT WITH A COPY OF THE ENTIRE CASE
FILE OF CASE NO. CR-14-1044. THIS SHALL BE
INCLUSIVE OF ALL MATERIALS REFERRING THIS
MATTER IN ANY FASHION SINCE THE PUBLIC DEFENDER
FIRST APPEARANCE IN RENO JUSTICE COURT, DEPT. 1
BEFORE HON. JUSTICE LYNCH ON JUNE 23, 2014 AND
UP TO AND THROUGH THE DATE OF THIS
PLEADING. THE MATERIAL TO BE PROVIDED SHALL

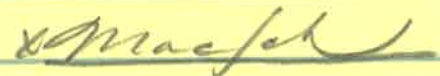
INCLUDE BUT NOT LIMITED TO DOCUMENTARY MATERIAL FILED AND UNFILED, ENCOMPASSING ANY AND ALL WORK PRODUCT OF ATTORNEY JAMES LESLIE, ATTORNEY CARL HYLIN, INVESTIGATOR LARRY CARLSON AND ANY OTHER EMPLOYEE OF THE WASHOE COUNTY PUBLIC DEFENDERS OFFICE.

IT SHALL INCLUDE ANY AND ALL ELECTRONIC MEDIA, E-MAILS TO AND FROM ANY PARTY, CASE NOTATIONS, PERSONAL CALENDAR NOTATIONS, MEMORANDUMS, ELECTRONIC AND PAPER CORRESPONDENCE OF ANY FORM. IT SHALL ALSO INCLUDE RESEARCH MATERIALS ENCOMPASSING ELECTRONIC SEARCH REQUESTS AND ANY MATERIALS NOTED OR GENERATED BY THOSE SEARCH REQUESTS.

THIS REQUEST SHALL BE ONGOING AND INCLUDE PAST CURRENT AND FUTURE MATERIAL INCLUDING MATERIAL DERIVATIVE OF THIS REQUEST ITSELF.

DELIVERY OF THIS MATERIAL SHALL BE ACCOMPLISHED AT THE COURT'S DISCRETION.

DATE: NOVEMBER 10, 2014



MARC SCHACHTER, PRO PER

AFFIRMATION PURSUANT
TO NRS. 239B.030

THE UNDERSIGNED HEREBY AFFIRMS THAT
THE PRECEDING DOCUMENT DOES NOT
CONTAIN THE SOCIAL SECURITY NUMBER
OF ANY PERSON.

DATE 11/10/14

Marc Schachter
Marc Schachter, Pro Per

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada; that on this 18th day of November, 2014, I electronically filed the foregoing documents with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

ZELALEM BOGALE
DEPUTY DISTRICT ATTORNEY

/s/ DEBBIE BRUNNER
DEBBIE BRUNNER

CODE 2230
MARC SCHACHTER
#1409450
911 PARK BLVD
RENO, NV 89512
IN PRO PER

FILED
Electronically
2014-11-18 02:24:16 PM
Cathy Hill
Acting Clerk of the Court
Transaction # 4701171 : mcholino

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

THE STATE OF NEVADA,
PLAINTIFF

v.

MARC PAUL SCHACHTER,
DEFENDANT.

CASE NO: CR14-1044
DEPT. NO: 4

MOTION FOR TRIAL TRANSCRIPTS AT PUBLIC
EXPENSE

THE DEFENDANT, MARC SCHACHTER, IN PRO PER, COMES
NOW AND MOVES THIS COURT TO PROVIDE
THE DEFENDANT THE TRANSCRIPTS OF THE
ABOVE CAPTIONED CRIMINAL CASE TRIAL THAT
TOOK PLACE IN DEPARTMENT FOUR FROM
SEPTEMBER 22, 2014 THRU SEPTEMBER 24, 2014.

THE DEFENDANT REMAINS INDIGENT AND WITHOUT
FUNDS AND THEREBY REQUESTS THE TRANSCRIPTS
BE PROVIDED AT PUBLIC EXPENSE.

THIS MOTION IS MADE PURSUANT TO THE
1)

NEVADA REVISED STATUTES (NRS) AND
ESTABLISHED CASE LAW. [NOTE: BECAUSE
DEFENDANT LACKS ACCESS TO LAW LIBRARY
HE APOLOGIZES TO THE COURT FOR THE LACK OF
SPECIFIC CASE CITATION.]

AFFIRMATION PURSUANT TO NRS 239B.030

THE UNDERSIGNED AFFIRMS THAT THIS DOCUMENT
DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER
OF ANY PERSON.

DATE: September 29, 2011

X Marc J. M.

MARC SCHACHTER

IN PRO PER

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada; that on this 18th day of November, 2014, I electronically filed the foregoing documents with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

ZELALEM BOGALE
DEPUTY DISTRICT ATTORNEY

/s/ DEBBIE BRUNNER
DEBBIE BRUNNER

CODE 3585
MARC SCHACHTER
1409450
911 PARK BLVD.
RENO, NV 89512
IN PRO PER

FILED
Electronically
2014-11-18 02:24:16 PM
Cathy Hill
Acting Clerk of the Court
Transaction # 4701171 : mcholino

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

MARC PAUL SCHACHTER,
PETITIONER,

V.

CASE NO: CR-14-1044

SHERIFF, WASHOE COUNTY, NV.

DEPT. 04

STATE OF NEVADA,

RESPONDENTS.

PETITION FOR WRIT OF HABEAS CORPUS

PETITIONER, MARC SCHACHTER, IN PRO PER, COMES NOW TO
PETITION THIS COURT TO ISSUE A WRIT OF HABEAS
CORPUS TO SHOW CAUSE. PETITIONER DECLARES
HIS RIGHT TO SELF-REPRESENTATION GUARANTEED
UNDER THE SIXTH AMENDMENT OF THE U.S.
CONSTITUTION BY AND THROUGH THE FOURTEENTH
AMENDMENT OF THE U.S. CONSTITUTION IS BEING
DENIED).

BACKGROUND: ON JUNE 9, 2014, PETITIONER WAS
ARRESTED FOR ATTEMPTED ROBBERY NRS SECTION

193,330 AND 200,380. THE WASHOE COUNTY PUBLIC DEFENDER'S OFFICE WAS APPOINTED ON JUNE 23, 2014, RELIEVED ON JULY 1, 2014 AND RE-APPOINTED AS STAND-BY COUNSEL ON JULY 24, 2014. FOLLOWING A JULY TRIAL PETITIONER WAS CONVICTED OF ATTEMPTED ROBBERY ON SEPTEMBER 24, 2014. THERE ARE CURRENTLY NO HOLDS, WARRANTS OR DETAINERS KNOWN BY THE PETITIONER. SENTENCING IS SET FOR DECEMBER 4, 2014. THERE HAVE BEEN NO PREVIOUS APPEALS OR COLLATERAL ATTACKS AGAINST THE CONVICTION.

GROUND: PETITIONER IS BEING DENIED HIS RIGHT TO SELF-REPRESENTATION GUARANTEED UNDER THE U.S. CONSTITUTION SIXTH AND FOURTEENTH AMENDMENTS.

SUPPORTING FACTS: ON JULY 24, 2014, FOLLOWING A SECOND CANVASS IN REGARDS TO MY RIGHT TO SELF-REPRESENTATION THE DISTRICT COURT HON. C.J. STEINHEIMER (HEREINAFTER THE "COURT") APPOINTED THE WASHOE COUNTY PUBLIC DEFENDER'S OFFICE AS STAND-BY COUNSEL. (SEE COURT-ORDER DATED 7-30-14).

ON JULY 31, 2014, PETITIONER OBJECTED TO THE APPOINTMENT OF CHIEF PUBLIC DEFENDER JAMES LESUE AS STAND-BY COUNSEL. PETITIONER ARGUED THAT THE

APPOINTMENT OF A CHIEF TRIAL COUNSEL WHO WAS SCHEDULED TO BE IN A MURDER TRIAL THE SAME WEEK AS PETITIONER'S TRIAL WAS AN INAPPROPRIATE SUBSTITUTE FOR PETITIONER'S LACK OF ACCESS TO A LAW LIBRARY. PETITIONER ALSO VOICED HIS CONCERNS ABOUT HIS LACK OF TRUST AND FAITH IN MR. LESLIE'S ABILITIES TO REPRESENT PETITIONER COMPETENTLY, HAVING JUST FIRED HIM IN JUSTICE COURT.

DURING PRE-TRIAL PREPARATIONS, MR. LESLIE REFUSED TO FILE MOTIONS FOR PETITIONER, OFFERED UNSOLICITED INCOMPETENT ADVICE REGARDING THE BURGLARY COUNT (SEE LETTER DATED JULY 25, 2014 PAGE ONE - PARAGRAPH 3), OFFERED TO ARRANGE GUILTY PLEA NEGOTIATIONS AND RECOMMENDING PETITIONER TAKE 5 YEARS IN PRISON DESPITE PETITIONER'S CONTINUED CLAIM OF INNOCENCE (SEE LETTER DATED JULY 28, 2014 - PAGE 2 PARAGRAPH 1) [NOTE: DURING OUR I-WEB VISIT ON 8-12-14 MR. LESLIE ACKNOWLEDGED THESE ISSUES.]

IN A LETTER DATED AUGUST 12, 2014, MR. LESLIE ASKS PETITIONER TO WAIVE TIME TO ALLOW PETITIONER'S CASE TO BE SET ACCORDING TO MR. LESLIE'S TRIAL CALENDAR. PETITIONER'S SPEEDY TRIAL RIGHT AND DESIRE TO HAVE A SPEEDY TRIAL WERE WELL-KNOWN

TO THE COURT AND THE PUBLIC DEFENDER. (SEE LETTER DATED 8/12/14).

ON AUGUST 20, 2014, WASHOE COUNTY PUBLIC DEFENDERS OFFICE INVESTIGATOR LARRY CARLSON CAME TO THE JAIL TO VISIT PETITIONER. PETITIONER REQUESTED THAT INVESTIGATOR OBTAIN CRIMINAL AND WORK FILES FOR MR. MONROY AND MS. YOUNG. PETITIONER ALSO ASKED FOR STATUS OF SUBPOENAS CONCERNING VIDEO EVIDENCE PREVIOUSLY REQUESTED. WITH THE EXCEPTION OF MS. YOUNG'S EMPLOYEE EVALUATION (SEE TRIAL EXHIBIT #15), THE INVESTIGATOR FAILED TO PROVIDE PETITIONER WITH THESE PROMISED ITEMS. (SEE ALSO PRETRIAL MOTION TO DISMISS DUE TO PREJUDICIAL DELAY AS TO PENDING VIDEOS).

IN A MEMORANDUM FROM THE PUBLIC DEFENDERS OFFICE DATED 8/23/14 MR. LESLIE STATES, "I WILL SET UP AN I-WEB VISIT WITH YOU SOON TO SEE IF YOU NEED ANYTHING ELSE." (THAT VISIT NEVER HAPPENED). HE THEN GO ON TO STATE, "ALSO PLEASE FEEL FREE TO COMMUNICATE ANY SUCH NEEDS TO MR. CARLSON WHEN HE DELIVERS THIS MEMORANDUM AND ATTACHMENTS TO YOU, BUT PLEASE UNDERSTAND HE'S NOT IN A POSITION TO PROVIDE ANSWERS, BUT TO RELAY YOUR QUESTIONS/REQUESTS TO ME." (SEE MEMORANDUM DATED 8/23/14).

WHEN INVESTIGATOR LARRY CARLSON DELIVERED ABOVE REFERENCED MEMORANDUM ON 8/25/14, PETITIONER REQUESTED MR. CARLSON OBTAIN A DUPLICATE BACKPACK (AS THE ONE THE STATE ALLEGED PETITIONER STOLE) FOR USE AT THE SEPTEMBER 3, 2014 EVIDENTIARY HEARING. THE BACKPACK WAS NEVER PROVIDED TO THE PETITIONER.

DURING THE PRE-TRIAL EVIDENTIARY HEARING ON SEPTEMBER 11, 2014, THE COURT QUESTIONED MR. LESUE ABOUT THE RETURN DATES OF THE ISSUED SUBPOENAS. MR. LESUE TOLD THE COURT HE COULD NOT LOCATE THE SUBPOENAS IN THE FILE. ON 10/2/14, PETITIONER REQUESTED COPIES OF ALL SUBPOENAS FILED ON PETITIONER'S BEHALF (SEE REQUEST FOR LEGAL MATERIALS AND SUPPLIES DATED 9/28/14) IN A LETTER DATED 10/8/14, THE PUBLIC DEFENDER AGAIN FAILS TO LOCATE THE SUBPOENAS (SEE LETTER DATED 10/8/14 PAGE 2.)

CHIEF, PUBLIC DEFENDER CARL HYUN (WHO WAS PETITIONER'S STAND-BY COUNSEL AT TRIAL) TOOK UNSOLICITED PHOTOGRAPHS OF THE WALMART. THESE PHOTOS WERE OF THE WRONG ENTRANCE AND THE WRONG SECTION INSIDE THE STORE AS WELL (SEE TRIAL EXHIBIT 12-A-H).

IN A LETTER DATED 10/8/14, MR. LESLIE STATES, "WE CANNOT PROVIDE ANYTHING MORE THAN WHAT THE JAIL PROVIDES." (SEE LETTER DATED 10/8/14 PAGE 1 PARAGRAPH 8) THE PUBLIC DEFENDER OFFERS THE SERVICE OF A MITIGATION SPECIALIST, HOWEVER PETITIONER REQUIRES DIRECT ACCESS (THROUGH PHONE AND MAIL) TO FAMILY AND FRIENDS PRIOR TO ANY OUTSIDE SPECIALIST FOR APPROVAL. (SEE 10/8/14 LETTER PAGE 1 PARAGRAPH 8)

ADDITIONALLY, PETITIONER HAS ON NUMEROUS OCCASIONS TRIED TO CONTACT MR. LESLIE AND MR. CARLSON BY PHONE WITHOUT SUCCESS. PETITIONER REQUIRES NUMEROUS CASES AND SUPPLIES FOR UPCOMING SENTENCING AND THE PUBLIC DEFENDER'S OFFICE HAS FAILED TO RESPOND.

ON OCTOBER 2, 2014, THE COURT DIRECTED MR. LESLIE TO DISCUSS THE PRE-SENTENCE INVESTIGATION PROCESS WITH THE PETITIONER. MR. LESLIE FAILED TO DISCUSS THE MATTER WITH PETITIONER AND PRE-SENTENCE INTERVIEW WAS CONDUCTED ON 10/23/14.

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POINTS/AUTHORITIES:

THE UNITED STATES SUPREME COURT HELD THAT AN ACCUSED HAS A SIXTH AMENDMENT RIGHT TO CONDUCT HIS OWN DEFENSE (FARETTA V. CALIFORNIA, 422 U.S. 806) "UNDER THAT AMENDMENT IT IS THE ACCUSED, NOT COUNSEL WHO HAS THE RIGHT TO CONFRONT WITNESSES, AND WHO MUST BE ACCORDED COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR. THE COUNSEL CLAUSE ITSELF, WHICH PERMITS THE ACCUSED TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE, IMPLIES A RIGHT IN THE DEFENDANT TO CONDUCT HIS OWN DEFENSE WITH ASSISTANCE AT WHAT, AFTER ALL, IS HIS, NOT COUNSEL'S TRIAL." (MCKASIKER V. WIGGINS, 465 U.S. 168 (1984)). "IN DETERMINING WHETHER A DEFENDANT'S FARETTA RIGHTS HAVE BEEN RESPECTED, THE PRIMARY FOCUS MUST BE ON WHETHER THE DEFENDANT HAD A FAIR CHANCE TO PRESENT HIS CASE IN HIS OWN WAY." (SUPRA). "THE PRO SE DEFENDANT IS ENTITLED TO PRESERVE ACTUAL CONTROL OVER THE CASE HE CHOOSES TO PRESENT TO THE JURY" (SUPRA AT 951) "THIS IS THE CORE OF THE FARETTA RIGHT. IF STAND-BY COUNSEL'S PARTICIPATION OVER THE DEFENDANT'S OBJECTION EFFECTIVELY ALLOWS COUNSEL TO MAKE OR SUBSTANTIALLY INTERFERE WITH ANY SIGNIFICANT TACTICAL DECISIONS, OR TO CONTROL THE QUESTIONING

OF WITNESSES, OR TO SPEAK INSTEAD OF THE DEFENDANT ON ANY MATTER OF IMPORTANCE, THE FARETTA RIGHT IS ERODED." (SEE SUPRA.)

A TRIAL JUDGE WHO RECEIVES A DEFENDANT'S FARETTA REQUEST AND SUPERVISES THE PROTECTION OF THE RIGHT THROUGHOUT THE TRIAL, MUST BE CAPABLE OF DIFFERENTIATING THE CLAIMS PRESENTED BY A PRO SE DEFENDANT FROM THOSE PRESENTED BY STAND-BY COUNSEL. DISAGREEMENTS BETWEEN COUNSEL AND THE PRO SE DEFENDANT ARE TO BE RESOLVED IN THE DEFENDANT'S FAVOR, WHENEVER THE MATTER IS ONE THAT WOULD NORMALLY BE LEFT TO THE DISCRETION OF COUNSEL. "EQUALLY IMPORTANT, ALL CONFLICTS BETWEEN WIGGINS AND COUNSEL WERE RESOLVED IN WIGGINS' FAVOR." (SUPRA AT 952).

WRITING FOR THE DISSENT IN MCKASKLE, JUSTICE WHITE WROTE, "WE OF COURSE HAVE NO WAY OF KNOWING THE EXTENT TO WHICH WIGGINS' DEFENSE WAS SUBTLY UNDERMINED OR ADVERSELY AFFECTED BY COUNSEL'S EXTENSIVE UNSOLICITED PARTICIPATION. THE COURT OF APPEALS HAD LITTLE TROUBLE CONCLUDING THAT COUNSEL'S CONDUCT, EXPRESSLY AND TACITLY APPROVED BY THE TRIAL COURT, PREVENTED WIGGINS FROM CONDUCTING HIS OWN DEFENSE." (SUPRA AT 958).

JUSTICE WHITE WENT ON TO WRITE, "BUT MANY DISAGREEMENTS WILL NOT PRODUCE DIRECT CONFLICTS REQUIRING A TRIAL COURT TO CHOOSE ONE POSITION OVER ANOTHER." (SUPRA AT 959.)

"A DEFENDANT HAS THE MORAL RIGHT TO STAND ALONE IN HIS HOUR OF TRIAL AND TO EMBRACE THE CONSEQUENCES OF THAT COURSE OF ACTION." CHAPMAN V. U.S., 553 F.2d 886, 891 (CA5 1977), AS IS THE CASE WHEN THE TRIAL COURT COMPLETELY DENIES A DEFENDANT'S RIGHT OF SELF-REPRESENTATION, APPLICATION OF THE RESULT-ORIENTED HARMLESS-ERROR STANDARD TO CASES LIKE THIS ONE, WHERE THE DEFENDANT WAS ALLOWED TO PROCEED PRO SE BUT THE CONDUCT OF HIS APPOINTED STAND-BY COUNSEL INHIBITED HIS ABILITY TO DO SO, WOULD RESULT THE DENIGATION OF THE RIGHT." (McKASKIE V. WIGGINS, 465 U.S. 168 (1984) AT DISSENT FOOTNOTE #6), "THE RIGHT IS EITHER RESPECTED OR DENIED; ITS DEPRIVATION CANNOT BE HARMLESS." (SUPRA AT DISSENT FOOTNOTE #8)

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DECLARATION: THE UNDERSIGNED HEREBY DECLARES THAT THE FOREGOING FACTS AND STATEMENTS CONTAINED IN THIS PETITION FOR WRIT OF HABEAS CORPUS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF NEVADA.

DATE: NOVEMBER 10, 2014

X Marc Schachter
MARC SCHACHTER, PROPER

AFFIRMATION PURSUANT TO NRS 239B.030

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEDING DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.

DATE 11/10/14

X Marc Schachter
MARC SCHACHTER, PROPER

INDEX OF EXHIBITS

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MOTIONS AND EXHIBITS REFERENCED IN PETITION
ARE ALREADY ON FILE IN DISTRICT COURT.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada; that on this 18th day of November, 2014, I electronically filed the foregoing documents with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

ZELALEM BOGALE
DEPUTY DISTRICT ATTORNEY

/s/ DEBBIE BRUNNER
DEBBIE BRUNNER

EXHIBIT 1

EXHIBIT 1



Washoe County Public Defender

Jeremy T. Bosler / Public Defender

Standard of Excellence Since 1969
Attorneys at Law

July 25, 2014

MARC PAUL SCHACHTER
WASHOE COUNTY JAIL
911 E. PARR BLVD.
RENO, NV 89512

Re: CR14-1044

Dear Mr. Schachter:

As you know, pursuant to order of Judge Steinheimer, our office has been appointed as Stand By Counsel in your case CR14-1044. Since I was the assigned public defender before Judge Lynch relieved us pursuant to your request for self-representation, I am sending you the statutes we discussed earlier. Thus, enclosed please find the Habitual Criminal Statutes, consisting of NRS 207.010 to 207.016. Also enclosed is a copy of the Amended Information, which alleges felony charges of Attempted Robbery, Burglary, and Being an Habitual Criminal.

The Attempted Robbery charge is a felony. I am enclosing NRS 200.380, defining Robbery and its classification and punishment range, along with NRS 193.330, which covers punishments for attempts. Under the two statutes, Attempted Robbery is a Category B felony punishable by 1-10 years in prison.

Regarding Burglary, I am enclosing NRS 200.060, which defines burglary and includes what is called an enhancement, whereby under subsection (2) a person with a prior burglary conviction is not allowed probation or suspended sentence. Note that the language states: "A person who is convicted of burglary and who has previously been convicted of burglary or another crime involving the forcible entry or invasion of a dwelling must not be released on probation or granted a suspension of sentence." In Count II of the Amended Information, you are alleged to have a prior conviction for Grand Larceny. You might have an issue for a motion against the enhancement if the prior Grand Larceny does not involve "forcible entry or invasion of a dwelling". Additionally, the allegations of prior convictions under the Habitual Criminal Count I do not appear to reflect a prior Burglary. Assuming that you do not have a prior Burglary or "another crime involving the forcible entry or invasion of a dwelling", there's a chance we could get the enhancement stricken. It's not quite that simple but it's an issue to look at.

Finally, regarding Count III, on Habitual Criminal, they are alleging six prior felonies and one misdemeanor. Please review the Chapter 207 statutes I am enclosing, which reflect a potential sentence up to 10 years to life or even life without parole based on the allegation of three or more prior felonies. Obviously, that is a serious allegation and you should consider that before continuing to reject possible plea bargain settlement. I'm not sure what the State has offered you since I was relieved from the case, but I believe you mentioned in Court, before our office was

NOT FOR PREVENTING

STATE PROSECUTES PRIOR FOR NY PER 207.060 3(b)

- "NO SHORTCUT" (RETAIL STORE) UNLESS PRIOR FELONY

HP - Defendant may not want to strike prior
because 207.06(2) - NO prior used in
underlying - primary charge can be used
for Habitual. (Trial use)

NOT FOR PREVENTING "SUSPENDED SENT/PROB"

Marc Paul Schachter
July 25, 2014
Page 2

even if I'm not guilty?

appointed as Stand By Counsel, that they had offered to settle all the charges for one felony carrying 1-5 years in prison. You should seriously consider that offer and I frankly recommend you take it.

There are several motions you should consider filing, including without limitation, motion to strike enhancement in Count II, motion for disclosure of and exclusion of alleged prior bad acts, motion to restrict your prior convictions as impeachment during the jury trial, motions regarding jury selection, motion to restrict State from referring to alleged victims as "victims" during trial, motion to compel discovery, motion to strike misdemeanor conviction from Habitual Criminal allegations. There are probably other motions worth looking into but these are the ones that come to mind.

Please understand that as Stand By Counsel I'm not in a position to file motions for you. I happen to agree with the Court that representing yourself or having only Stand By Counsel is not a wise way to proceed, especially given the grave consequences if you are convicted and subjected to Habitual Criminal Adjudication, which appears to be entirely possible and probably based on your alleged criminal record. I am not trying to get more cases, I have enough; however, your best course is to allow the Public Defender to represent you and to cooperate with a view toward either settling the case for a reasonable settlement that protects you from long incarceration, or, if you choose, preparing a good defense. While I recommend you seriously consider accepting the 1-5 year settlement, based on what I know about the case at this point in time, if you turn that offer down after being reasonably informed and after consultation with counsel, I would do my best for you at trial. My policy is to try to get the best settlement offer I can, make sure the client understands it, and if the client understands the risk and still wants to go to trial I do my best.

Finally, please understand, as I'm sure you do, that waiver of the 60 day trial would be best if you decide to go to trial with counsel, since we would want to take the time to thoroughly investigate the case and prepare any motions that might reasonably help your case. But I would do my best even without the additional time.

I will attend the next hearing, which is scheduled for 7/31/14.

Sincerely,



JAMES L. SLIE
CHIEF DEPUTY PUBLIC DEFENDER

JL/db
Encl

THE GRAND LARCENY CONVICTION ALLEGED IN THE BURGLARY COUNT (C#2) IS NOT AN ENHANCEMENT (PER 205.060(2)) IT IS AN ALLEGATION PURSUANT TO 205.060(5)(b) - NOT A BURGLARY "IN AN OPEN COMMERCIAL ESTABLISHMENT DURING BUSINESS HRS. W/ INTENT TO COMMIT PETIT LARCENY UNLESS..." PERSON HAS BEEN CONVICTED OF A FELONY."

BUT

EVEN IF MISTOOK IT FOR AN ENHANCEMENT AS MR. LESUE DOES - A COMPETENT ATTORNEY WOULD NEVER MOVE TO STRIKE THAT PRIOR WHEN THE ALLEGATION OF THAT PRIOR FOR THE BURGLARY COUNT, PREVENTS THE STATE FROM USING THE GRAND LARCENY CONVICTION ON THE HABITUAL COUNT (#3) PURSUANT TO 207.016(2) - "NO CONVICTION MAY BE AWDED TO ON TRIAL OF PRIMARY OFFENSE." (DUAL USE)

KEEPING IN MIND, OF ALL THE ASPECTS OF MY CASE - MR. LESUE ~~CHOOSE~~ THAT ONE ISSUE SPECIFICALLY - TO OFFER HIS UNSOLICITED LEGAL OPINION AND IS WHOLLY INCOMPETENT IN THAT OPINION.

=

WOODWARD V. COLLINS, 898 F.2d. 11027 (5th Cir. 1990)

100 WHEN LAWYER ADVISES CLIENT TO PLEA BARGAIN TO AN OFFENSE, WHICH ATTY. HAS NOT INVESTIGATED ALWAYS UNREASONABLE

EXHIBIT 2

EXHIBIT 2



Washoe County Public Defender

Jeremy T. Bosler / Public Defender

*Standard of Excellence Since 1969
Attorneys at Law*

August 12, 2014

Marc Paul Schachter
Washoe County Jail
911 E. Parr Blvd.
Reno, NV 89512

Re: CR14-1044

Dear Mr. Schachter:

Per our I-Web discussion on 8/12/14, enclosed please find several items, all per your request:

First, a pad of yellow lined paper, without the cardboard backing, so you can write motions. Second, a copy of the Big Pond case, 128 Nev. Adv. Op. 10, which summarizes "prior bad act" evidence. Third, a form copy of a "prior bad act" motion I recently did in another case. Fourth, a copy of the Table of Contents of Chapter 205 of NRS. Please understand that the form motion is provided as a sample and that as self-representing you will exercise final judgment in whether to file that motion or any other motions.

Also, as we discussed, I have a murder trial beginning in another courtroom on 9/22/14, and so I am unavailable for your trial date. I will raise this issue at the status conference I set up at your request. As we discussed, you should give consideration to waiving the 60 day trial right, which would allow your case to be set for trial on my calendar. You also raised the possibility of doing the trial without Stand By Counsel. If you sincerely wish to proceed in that fashion, you can advise the judge of that as well, but that is your choice.

Thank you.



JAMES LESLIE
CHIEF DEPUTY PUBLIC DEFENDER

JL/db
Encl.

EXHIBIT 3

EXHIBIT 3

MEMORANDUM

To: Marc Schachter
CR14-1044
PD 159529
From: Jim Leslie
Chief Dep. Public Defender
Re: Transmittal/Return of Documents
Date: 8/23/14

Dear Mr. Schachter:

By delivery hereof by my investigator Larry Carlson, we are returning to you the handwritten documents/motions which you had at our last court appearance asked to be able to file into the record. Please recall the Court had our office do the filing and asked us to return your originals to you. By this transmittal we do so.

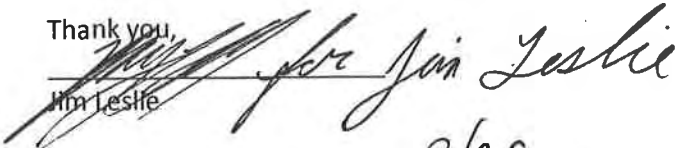
We are also hereby transmitting a copy of the stipulate and order for discovery which you signed in court at our last appearance. Please note that I notated your signature to reflect that it was the Defendant Pro Per signing, since someone not knowing your signature might mistake the signature for that of an attorney in our office. Please also note that the original of that document was transmitted back to the DA's office per customary practice, and that we are hereby returning to you a copy of the original.

Finally, we are also hereby transmitting file-stamped copies of your various documents/motions which were filed at your request, reflecting filing date of 8/22/14 and also containing certificates of service to opposing counsel.

Logistically, please recall that the court ordered that the state produce their proposed jury instructions earlier than usually required. Please let me know as soon as you receive your packet, and per my request the State should also serve me a copy of them, so I can come up and answer any questions you have about jury instructions.

I will set up an iweb visit with you soon to see if you need anything else. Also, please feel free to communicate any such needs to Mr. Carlson when he delivers this memorandum and attachments to you, but please understand he's not in a position to provide answers but to relay your questions/requests to me. I'll make a point of getting back to you. Please also recall I am going into a two week trial as of 9/22/14. I may also be busy with pretrial hearings the week before that. I again suggest you consider waiving your 60 day speedy trial, especially given that you are facing possible habitual adjudication. The additional time would give you more opportunity to prepare, to assess what additional motions you might wish to file, and to consider having our office represent you (I would certainly work with you to put your theory of the case forward at trial). However, please understand that you do not have to waive the 60 days, rather it is your option regardless of my advice.

Thank you,


Jim Leslie

Date Delivered to Client at Jail: 8/25, 2014, by Larry Carlson.

REQUESTED BACKPACK BE BROUGHT
TO HEARING? OTHER ITEMS ON T.R.

EXHIBIT 4

EXHIBIT 4

9/28/14

MARC SCHMIDTKE

CASE # CR-14-1044

PRO PER

DEPT. NO. 4

REQUEST FOR LEGAL MATERIALS
AND SUPPLIES

- ✓ 1. NRS 207.010 - 207.016 (HABITUAL FELON)
 WITH "NOTES TO DECISIONS, OPINIONS AND
 RESEARCH REFERENCES."
- ✓ 2. NRS 174.063 - NOTES TO DECISIONS ONLY
 - LOOKING FOR CASE REGARDING PLAIN LANGUAGE
 DOCTRINE IN NON-GENERIC PLEA AGREEMENTS.
- ✓ 3. COMPLETE CHAPTER OF NRS PERTAINING TO
 SENTENCING OF FELONS.
- ✓ 4. 94 A.L.R. 3d. 824; 94 A.L.R. 3d. 357;
 7 A.L.R. 3d. 8 (EVIDENCE)
- ✓ 5. DANIELS V. STATE, 114 Nev. 261 (1998)
 LAY V. STATE, 116 Nev. 1185 (2000)
~~STATE V. SHERIFF~~, CLARK COUNTY V. WARNER, 112 Nev.
 1234 (1996)

ADDITIONALLY DEFENDANT REQUESTS
POSTAGE AND ACCESS TO TELEPHONE
IN ORDER TO CONTACT FAMILY IN
OTHER STATES AND IN MILITARY
ALONG WITH OTHER MITIGATING
FACTORS.

LEGAL PADS / PAPER

COPIES OF ALL SERVED SUBPOENAS

SUBMITTED
Y. Maciel
MARK SCHACHTEL
PRO PER

EXHIBIT 5

EXHIBIT 5



Washoe County Public Defender

Jeremy T. Bosler / Public Defender

*Standard of Excellence Since 1969
Attorneys at Law*

October 8, 2014

Marc Paul Schachter
Washoe County Jail
911 E. Parr Blvd.
Reno, NV 89512

Re: CR14-1044

Dear Mr. Schachter:

In response to your two page handwritten Request for Legal Materials and Supplies dated 9/28/14, we provide and response as follows:

As to item 1, NRS 207 regarding Habitual Felon, we have already provided those materials under our cover letter to you dated July 25, 2014. However, an additional copy of the statutes along with the notes of decisions is enclosed herewith.

As to item 2, NRS 174.063, enclosed herewith please find a copy of that status and the notes of decisions.

As to item 3, which reads "Complete chapter of NRS pertaining to sentencing of felons", please understand that your request is so broad and undefined that I'll need a more specific request in order to try to meet your request. Several chapters of the NRS pertain to the sentencing of felons. If you could try to be more specific, I can try to meet the request.

174/175?

As to item 4, requesting three A.L.R. articles, I have enclosed herewith those specified articles.

As to item 5, you requested the Daniels, Lay, and Warner cases (all Nevada cases), and I enclose herewith copies of each of them.

On page two of your request, you request various supplies. We provide herewith what we are able: another pad of legal yellow lined paper.

You also request telephone and postage access to be able to contact family for mitigation purposes. We cannot provide anything more than what the jail provides. However, as has been discussed, we can provide a mitigation specialist who would interview you to ascertain names and contact information for possible family and other mitigation witnesses (either for live presentation at sentencing or to provide letters of support), and who can subpoena and otherwise obtain records pertaining to your schooling, military service, medical and mental health issues, and other matters which might provide mitigation to help avoid a life sentence. Please let me

Marc Paul Schachter
October 8, 2014
Page 2

know if you wish to have us utilize a mitigation specialist in this case, but please understand that the more you delay in requesting such assistance, the less able we are to provide timely and effective assistance in that area.

→ You have also requested copies of subpoenas, which I believe we have already provided, or at least reported on to the Court. However, I will, again, go through the file and pull those when I have additional time next week.

Please recall that your sentencing is 12/4/14. The state is seeking the "large habitual" which carries a possible maximum sentence of life in prison with either no parole or parole after at least ten years is served. Your representation to the Court and counsel at the 9/22/14 status hearing is that notwithstanding the lack of success you had at trial you wish to represent yourself at the sentencing. The Court cautioned against doing so, but you insisted on doing so. If you change your mind, please let me know as soon as possible so I can devote time to working up your case to avoid a life sentence if possible.

Thank you.



James Leslie
Chief Deputy Public Defender

JL/db
Enc.

Return Of NEF**Recipients**

JAMES LESLIE, ESQ. - Notification received on 2014-11-18 15:52:53.317.

ZELALEM BOGALE, ESQ. - Notification received on 2014-11-18 15:52:53.285.

JOSEPH GOODNIGHT, ESQ. - Notification received on 2014-11-18 15:52:53.41.

KELLY KOSSOW, ESQ. - Notification received on 2014-11-18 15:52:53.379.

CARL HYLIN, ESQ. - Notification received on 2014-11-18 15:52:53.504.

DIV. OF PAROLE & PROBATION - Notification received on 2014-11-18 15:52:53.441.

NICKOLAS GRAHAM, ESQ. - Notification received on 2014-11-18 15:52:53.473.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

11-18-2014:14:24:16

Clerk Accepted:

11-18-2014:15:52:18

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Mtn Clarification of Ord
Request
Motion
Pet Writ Habeas Corpus
- **Continuation
- **Continuation
- **Continuation
- **Continuation
- **Continuation

Filed By:

James B. Leslie

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JOSEPH GOODNIGHT, ESQ. for MARC PAUL
SCHACHTER

JAMES B. LESLIE, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

CARL F. HYLIN, ESQ. for MARC PAUL
SCHACHTER

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

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

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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

 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 COUR: 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.

21
22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24