

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

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Apr 28 2022 11:45 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 7 OF 10

DOCUMENTS

APPELLANT

Marc Schachter #91445
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RESPONDENT

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4
5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

8 --o0o--

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR14-1044

11 vs.

Dept. No. 4

12 MARC P. SCHACHTER,

13 Defendant.

14 _____/
ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS

15 JURY TRIAL

16 Tuesday, September 23, 2014

17 APPEARANCES:

For the State:

ZELALEM BOGALE, ESQ.

CHERYL WILSON, ESQ.

18 Deputy District Attorneys

One South Sierra Street

19 Reno, Nevada

20 For the Defendant:

IN PROPER PERSONA

CARL F. HYLIN, ESQ.

21 Deputy Public Defender

350 S. Center Street

22 Reno, Nevada

23 The Defendant:

MARC P. SCHACHTER

24 Reported by:

EVELYN J. STUBBS, CCR #356

1 RENO, NEVADA; TUESDAY, SEPTEMBER 23, 2014; 9:00 A.M.

2 --o0o--

3
4 THE COURT: We were just waiting. I can do something
5 before we get back. I can take another recess and the clerk can
6 work with you.

7 At the end of the day yesterday, when our jurors were
8 leaving one of the jurors saw witnesses sitting out on the bench
9 and recognized them. So she reported that to the bailiff
10 immediately. And what she reported, it's juror number two,
11 Rachel wall den. What she reported is that she recognized
12 Detective Reid. He was sitting out on the bench she reported to
13 the bailiff that she didn't really know him very well, but she
14 felt she needed to notify.

15 We can, when she gets here have her come in, put it on
16 the record, have you ask her any questions you might want to
17 about her knowledge about Detective Reed or you could take, we
18 can have the bailiff tell you exactly what she said, if you're
19 comfortable with that.

20 Yes, Mr. Schachter?

21 MR. SCHACHTER: You weren't going going to call Reed,
22 from what I understand.

23 MR. BOGALE: I haven't decided whether or not we're
24 going to call Detective Reed.

1 THE COURT: So do you want to hear. Do you want to
2 hear what she told the bailiff? And we'll start there.

3 Deputy.

4 THE BAILIFF: She called to let me know that she is a
5 speech therapist, that she did work with Detective Reed's son
6 about five years ago. And that's all she really knows about him.
7 She said that she has no personal relationship. She doesn't
8 really know him too well, except that she worked with his son and
9 that doesn't change her impression of this trial.

10 THE COURT: So you can inquire personally of her or you
11 can accept that.

12 MR. BOGALE: And and, Your Honor, just to be clear.
13 He's on standby that's why he was outside yesterday. But the
14 State doesn't intend to call him as a witness. But he was on
15 standby because we hadn't made the decision.

16 MR. SCHACHTER: I don't have a problem.

17 THE COURT: Staying.

18 MR. SCHACHTER: I don't have a problem.

19 THE COURT: So nobody wants to inquire personally of
20 the juror?

21 MR. BOGALE: Not the State.

22 THE COURT: Okay. So thank you Mr. Schachter.

23 So we will -- we're ready the jury was called as you
24 know for 9:30. I think the clerk was probably gathering up some

1 things from you.

2 Why don't we talk about the 911 call. Do you want more
3 time to discuss the discovery issue with regard to 911 amongst
4 yourselves or do you want to put something on the record?

5 MR. BOGALE: Mr. Schachter and I have discussed it and
6 we've reached an impasse. We don't agree on the admissibility of
7 the calls.

8 THE COURT: You want to put the witnesses on the stand.
9 The 911 call on?

10 MR. SCHACHTER: Exactly.

11 THE COURT: Why is it, were are you objecting?

12 MR. BOGALE: The objection, Your Honor, if he was to
13 play the call, the disk would need to be admitted first. And
14 there are more than one. There are four calls on on the disk.
15 So if he's going to play one call from the disk, the whole disk
16 needs to be admitted and the jury would get the disk. And
17 therefore, have access to the three other calls that weren't
18 admitted.

19 THE COURT: Well, can you pull up just that one call?

20 MR. BOGALE: It's on one file and so it's -- they're
21 not in different files.

22 THE COURT: Well, the logistics of technology is not a
23 reason to exclude evidence, especially with a pro se, who does
24 not have access to the ability to modify the disk, which we would

1 expect a lawyer on the other side do have done. So what I'm
2 going to order is that that inquiry can be made, the disk can be
3 played. It's my understanding that the foundation of the disk is
4 not in dispute. So we can admit that telephone call
5 conversation, that 911 conversation of the disk. The disk will
6 be admitted for that limited purpose, and it will not go to the
7 jury. If the jury wants to hear it again, then we'll have to be
8 in session and queue it back up.

9 MR. BOGALE: It depends which call Mr. Schachter plans
10 on using in terms of foundation. The State would object to
11 foundation depending on who he's planning, which call he's
12 planning on playing. And I just don't know.

13 THE COURT: You're going to object to the foundation
14 that was recorded by the State through the dispatch?

15 We're talking about a dispatch 911 call, right?

16 MR. BOGALE: Correct.

17 THE COURT: What's wrong with the foundation with that?

18 MR. BOGALE: Well, if he's playing a call from a
19 witness who's not here.

20 THE COURT: Absolutely, but he wanted to play the
21 witness who is on the stand 911 call.

22 All right. So for the limited purpose what disk is it?

23 MR. BOGALE: I think it's Exhibit No. 14.

24 THE COURT: Okay. So would you for purpose of this

1 process, Exhibit 14 is admitted only as to the 911 call made by
2 Matthew Hand. And it will not go to the jury and if the jury
3 requests it we will come back in session and just that call will
4 be played. Okay.

5 MR. BOGALE: Is everyone comfortable with that.

6 MR. BOGALE: So this court don't want to the State to
7 like pull that call off the disk and make a new disk so the jury
8 can take it back.

9 THE COURT: That would be the best thing but we don't
10 center time for that I suspect this case did going to go to the
11 jury today or first thing in the morning so what I would like you
12 do right now is queue up Exhibit 14 into the machine.

13 (Discussion held off the record.)

14 MR. SCHACHTER: According to this it's 1154. And it's
15 that's where his starts.

16 (Disk being played.)

17 MR. SCHACHTER: He's probably the third one in there I
18 think.

19 THE COURT: You can just play it then stop it where
20 we're supposed to be.

21 MR. BOGALE: Okay.

22 THE COURT: Could you turn the volume down.

23 (Playing disk.)

24 THE COURT: That volume would be great for when the --

1 MR. BOGALE: So just to be clear, is this all the call
2 Mr. Schachter?

3 MR. SCHACHTER: Yes.

4 THE COURT: Oh, was that Mr. Hand?

5 MR. BOGALE: On this disk it starts around 135 or
6 something.

7 MR. SCHACHTER: I don't know.

8 MS. WILSON: Can't quite see that on the screen.

9 MR. BOGALE: That's what I'm trying to find out.

10 So it starts around 135.

11 THE COURT: Back it up so it's, "911, what's the nature
12 of your emergency."

13 (Disk being played)

14 MR. BOGALE: Was that okay, Judge?

15 THE COURT: I want it backed up so when you play it for
16 the jury it's, "911, what's the nature of your emergency."

17 THE COURT: Stop.

18 No, you need to start with the words, "911 what's the
19 nature of your emergency disk 11 hours fifth minutes.

20 That's good. Just stop. So we're all cued up ready to
21 go when the witness comes.

22 MR. BOGALE: And we'll just stop it when he's done
23 speaking.

24 THE COURT: Yeah, whenever the end of the emergency

1 call.

2 MR. SCHACHTER: Are you planning an calling the --

3 THE COURT: If you two are talking to each other --

4 MR. SCHACHTER: I'm sorry.

5 THE COURT: You may, but it's not on the record with
6 the court reporter. If you want it on the record with the court
7 reporter, speak up and talk to me.

8 MR. BOGALE: Mr. Schachter, was asking me if I plan an
9 calling any other callers from the 911 call. I don't intend on
10 calling them and to that point just to give the Court an idea,
11 yesterday I advised the Court we would call probably two more.
12 When this is witness including Mr. Hand. After discussing the
13 case a little bit for the and decided to call five, including
14 discussing.

15 So it will be Mr. Hand next will be Anna Young. Next
16 will be Corelee who cashed out Mr. Schachter. And then Officer
17 West who is the arresting officer from RPD and the booking
18 sheriff's deputy, Keisha Ellis.

19 THE COURT: All right. So jury instructions. So
20 you've provided some instructions to the Court; is that correct?
21 Mr. Schachter requested one yesterday and do you have any
22 objections to that one?

23 MR. BOGALE: Your Honor, the only thing I would point
24 out I do have an objection, I think it's duplicative it's covered

1 by the attempt instruction. We have an instruction that
2 describes what attempt is. We also have a reasonable doubt
3 instruction. And I think you've already given that instruction
4 to the jury, that the State needs to prove each and every element
5 beyond a reasonable doubt. We have a robbery instruction. I
6 think it's duplicative.

7 THE COURT: Yes, Mr. Hylin.

8 MR. HYLIN: Do you mind, Your Honor if I handle it.

9 THE COURT: I don't.

10 MR. HYLIN: The reason I want to handle it is because
11 it has to do with the case law in the Crawford case that
12 authorizes the -- and that is the exact same reason that was
13 given in the Crawford case for denying the defendant's negative
14 instruction. I think it's on very dangerous grounds appellant
15 wise to eliminate that Crawford instruction or reject it, solely
16 for the reason it's duplicative.

17 What it does is it informs the jury of the specific
18 attempt nature of an attempted crime, that of the attempted
19 robbery, which is not a portion of the original instruction on
20 the robbery elements themselves. So that's why we would proffer
21 that as a negative instruction so that the jury has to
22 specifically find beyond a reasonable doubt that he intended to
23 perform a robbery.

24 Thank you.

1 THE COURT: I have reviewed the Crawford case and the
2 language therein, and I do find that this instruction would be
3 justified and appropriate, and should be given if it's requested
4 by the defendant. Therefore, I am going to be giving this
5 instruction.

6 MR. BOGALE: May the State add one suggestion perhaps.

7 THE COURT: Yes.

8 MR. BOGALE: Since Your Honor is going to admit it, it
9 might be more clear to have the first paragraph read as follows.

10 To prove that Mr. Schachter is guilty of attempting to
11 commit robbery the State must prove beyond a reasonable doubt
12 that Mr. Schachter specifically intended to commit that crime,
13 but failed to do so, because that's what attempted robbery is. I
14 think it's a little bit unfair to say he just attempted to commit
15 robbery.

16 THE COURT: Any objection, Mr. Hylin?

17 MR. HYLIN: Yes, Your Honor. I think that's essentially
18 what our instruction says, so what we're going to do is have two
19 paragraphs that say the same thing with slightly altered
20 language.

21 THE COURT: No. He's just suggesting that intended,
22 and yours says specifically intended to commit that crime, and
23 he's suggesting adding the words, but failed to do so.

24 MR. HYLIN: Oh, well I don't have any objection to

1 that. I'm sorry.

2 THE COURT: Correct. Okay. So that will be the way
3 we'll give the instruction. Then I see that Mr. Schachter is
4 there's an instruction it is a Constitutional Right of the
5 defendant in a criminal trial that he may be -- not compelled to
6 testify. That I have this, so if you request it, I have this
7 instruction available, you just have to tell me you want to use
8 it.

9 MR. SCHACHTER: Okay.

10 THE COURT: Okay. With regard to -- I've been handed
11 the new attempted robbery instruction that reads, the defendant
12 in this matter is being tried on an amended information. That is
13 going to be substituted for the old four. It will be tentatively
14 the fourth instruction. Then we have two new instructions from
15 the State. And I don't know if you've had a chance to review
16 those yet, Mr. Schachter, with Mr. Hylin, did you just get them
17 this morning?

18 MR. SCHACHTER: I did, Your Honor.

19 THE COURT: Have you all had a chance to look at them?

20 MR. HYLIN: Yes, Your Honor.

21 MR. SCHACHTER: I don't have any objection to, even to
22 the flight one? Nothing.

23 THE COURT: You don't have an objection to either one
24 being added to the packet?

1 MR. SCHACHTER: No, Your Honor.

2 THE COURT: Okay. Now I have -- there is one that was
3 submitted by the State with regard to larceny. The State
4 submitted a larceny instruction. And I didn't -- I assumed they
5 did that because they determined that larceny is a lesser
6 included of attempted robbery. So I've reviewed that. It does
7 appear that larceny is a lesser included of attempted robbery,
8 and we have not instructed as to petit and grand larceny.

9 So if we were to instruct as to a lesser included it
10 would be larceny and then we'd have to define petit and grand or
11 an attempted larceny. So that's the question I have for you all.
12 Is that what you were thinking, what do you want, why do you want
13 larceny in there, was it because it was a lesser included and
14 Mr. Schachter, are you requesting the lesser included of larceny?

15 MR. SCHACHTER: To be honest, I hadn't give it a
16 thought. I was assuming it was behind the burglary charge, not
17 the robbery charge.

18 THE COURT: You and Mr. Hylin talk about it, the State
19 should talk about it. If we're going to give a lesser included,
20 I do have a lesser included transitional instruction that says
21 there's a lesser included. We have kind of prepared on with on
22 grand and petit. So I've got some instructions that we could put
23 together quickly. I am not sure that I don't have sua sponte to
24 offer to the jury a lesser included of larceny, whether you all

1 are giving it to me or not. Obviously, I would be glad to hear
2 from both sides on that issue.

3 So that being said, we are pretty close to settling
4 instructions. I think I've received everything and we're getting
5 pretty close to having a packet that we can work with.

6 Now we have Mr. Hand on the stand when we come back at
7 9:30, and we have your cross-examination ready to go with your
8 911 call queued up and ready.

9 Is there any other business that we need to resolve
10 this morning before we bring in the jury in?

11 MR. BOGALE: Yes, Your Honor. Yesterday Mr. Schachter
12 submitted a grievance at the jail. I don't know how you wanted
13 to resolve that. Whether you wanted to hear the State's position
14 on that.

15 THE COURT: I think we marked that as an exhibit.

16 THE CLERK: It is Exhibit 19.

17 MR. HYLIN: I'll get it.

18 THE CLERK: I can get it.

19 THE COURT: Does everyone have a copy of Exhibit 19?
20 Did you all read this over, Mr. Bogale, last night?

21 MR. BOGALE: Yes, I did, Your Honor.

22 THE COURT: Okay. So you've now though, for purposes
23 of trial, you've had a chance to look at the 911 call CD, and I
24 kind of heard you giving him direction. Sounds like you know the

1 911 call almost better than Mr. Bogale.

2 MR. SCHACHTER: Yes.

3 THE COURT: So what pretrial motions do you want to
4 file?

5 MR. SCHACHTER: No. No. At the time that this was
6 given to me I didn't have the 911 call. Remember we discussed
7 that in the hearing.

8 THE COURT: Right.

9 MR. SCHACHTER: And so when the jail came back to me
10 and said it had already been in custody that whole time, they
11 accused me of lying here in the hearing, saying that I got
12 discovery that I never got that they actually had a separate part
13 of jail. So when I complained about that, they suddenly told me
14 that they had possession of the -- the disk in classification in
15 IMU.

16 And I said, in addition to the court order that they
17 bring all the discovery to that original hearing, that was your
18 order, they didn't tell me that they had it. So I didn't even
19 know that it was here so obviously. I wouldn't have made the
20 motion for additional discovery if I knew it was in there. And
21 their response was we're not telling you about discovery, I have
22 to get it from -- I have to be informed through cocounsel of
23 discovery from the State that they don't give me.

24 THE COURT: Okay. And you say they should share.

1 MR. SCHACHTER: Right.

2 THE COURT: So is there any discovery that Mr. Hylin
3 has gotten that you haven't been notified of.

4 MR. SCHACHTER: Not that I know of.

5 MR. HYLIN: I think pretty much everything that
6 Mr. Schachter has we've sent -- he's got everything that I've got
7 in our file up there.

8 THE COURT: He's gotten to see it all now?

9 MR. HYLIN: Yes.

10 THE COURT: So this is something that you might to want
11 to complain that the sheriff didn't do right, but right now for
12 the trial you've got it.

13 MR. SCHACHTER: As far as I know. As far as -- that's
14 why I asked Mr. Bogale yesterday, and he said their
15 responsibility is once they give it to the sheriff that was my
16 issue.

17 THE COURT: Okay. Well, if there's an issue with the
18 sheriff's office, there's an issue. I don't know if Mr. Bogale
19 is responsible for that.

20 MR. SCHACHTER: It was my point that that was the whole
21 issue of discovery, so that I could see it.

22 THE COURT: Right.

23 MR. SCHACHTER: And if I can't get a chance to see it
24 then it's not discovered to me.

1 THE COURT: But right know we have it all. It's going
2 good. Mr. Bogale, did you want to add something to that?

3 MR. BOGALE: No, I did not. I just want to bring it
4 up.

5 THE COURT: Okay. So now we have about five or
6 six minutes before we're going to bring the jury in to you all
7 can get ready to go. Then as soon as the jury comes in, I will
8 ask you to proceed and you can call Mr. Hand back to the stand.
9 Or we can have Mr. Hand on the stand. Is he here?

10 Whatever. Just let the clerk know and the bailiff will
11 let us know when all the jurors are here. And we'll just start
12 back up with Mr. Hand.

13 Okay. Is there nothing else for me right now?

14 MR. BOGALE: Nothing right now.

15 THE COURT: Thank you, everyone. Court's in recess.

16 Recess taken.

17 Those proceedings were outside the presence of the jury.

18 THE COURT: Deputy, do we have the jury back?

19 THE BAILIFF: We do, Your Honor.

20 THE COURT: Okay: Please bring them in.

21 Counsel, will you stipulate to the presence of the
22 jury?

23 MR. BOGALE: Yes, Your Honor.

24 THE COURT: Thank you. Mr. Schachter?

1 MR. SCHACHTER: Yes, Your Honor.

2 THE COURT: Thank you. Please be seated. Good
3 morning, ladies and gentlemen of the jury.

4 Was it really a piece of paper on the floor, did you
5 trip over a piece of paper or a step?

6 55: I don't know what it was, but it was big.

7 THE COURT: I know we just want to make sure that I
8 inform the management if there was any stubbed toes or anything.

9 55: I'm almost 70, Your Honor. That's why you don't
10 ask the elder people to stay on the jury.

11 THE COURT: No. No. I wanted to let you know that
12 we're ready to continue to hear the case today. I do believe it
13 will be tomorrow morning that you'll be in deliberations, not
14 later tonight. Something could change, but I suspect we will
15 just be hearing evidence most of the day today and then closing
16 arguments and deliberating tomorrow morning.

17 Now we were in the middle of the testimony with
18 Mr. Hand. We were beginning cross-examination. Mr. Hand,
19 welcome back.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: You're still under oath. You may finish
22 your cross-examination.

23 BY MR. SCHACHTER:

24 Q Just a brief question. You testified yesterday that

1 you were in your car when you called 911, is that correct?

2 THE WITNESS: Yes.

3 MR. SCHACHTER: That is the -- Your Honor, can we play
4 the --

5 THE COURT: You'd like to play the call that he made?

6 MR. SCHACHTER: Exactly.

7 THE COURT: Okay. Appreciate the State's help
8 assisting with that.

9 MR. BOGALE: And, Your Honor, I'm just going to stand
10 here so I can stop it.

11 THE COURT: That's fine.

12 So Mr. Schachter, you would like the witness to listen
13 to what you're playing and you want him to identify that?

14 MR. SCHACHTER: Yes.

15 THE COURT: Okay.

16 MR. SCHACHTER: I think it's better if they just play
17 the whole thing so everybody hears it. Then we don't have to
18 stop and start it.

19 Disk, 991, what is the address of your emergency?

20 It's the Walmart an Mae Anne and McCarran.

21 The Seventh Street Walmart?

22 Yes, ma'am.

23 Okay. And what's -- is it inside and outside the
24 Walmart?

1 He's outside. It's our security. He's trying to get
2 someone.

3 Walmart in the parking lot then?

4 Yes, ma'am.

5 Do you know what where it's at in the parking lot?

6 It's home goods store on the garden side.

7 A It's on the garden side.

8 Q Okay. Do you think there's a fight going on?

9 A Yeah, our security has someone and he's trying to get
10 away.

11 Q You can tell it's security for sure?

12 A Yeah, I work here.

13 Q Oh, you're an employee. Okay.

14 A Yes, ma'am.

15 Q And are they fighting with him?

16 A Yeah, he's trying to get away.

17 Q Is it a male subject?

18 A Yes, ma'am.

19 Q Okay. Black, white or Hispanic or Asian?

20 A He looks Hispanic. A little older maybe in his 50s.

21 Q Hold on. Hold on. How tall does he look?

22 A He's of about 5-8 5-9.

23 Q Medium or heavy build?

24 A Medium. Gray hair.

1 Q And go ahead with what color shirt he was wearing.

2 A Gray and it's plaid, square.

3 Q And a gray plaid shirt. What color pants?

4 A Black.

5 Q And did you see any weapons or anything?

6 A He doesn't seem to have any weapons. He seems like he
7 might be under the influence of.

8 Q Of drugs or alcohol?

9 A Alcohol, maybe.

10 Q Okay. And what's your last name?

11 A Matthew Hand. H-A-N-D.

12 Q And what's your call back number Matthew?

13 A 5305750086.

14 Q Okay. Does it appear anyone needs any sort of medical
15 attention?

16 A No, ma'am.

17 Q We have help on the way already. Okay.

18 A Thank you.

19 Q You're welcome bye-bye.

20 BY MR. SCHACHTER:

21 Q So what made you believe that the person that
22 Mr. Monroy was fighting was trying to get away? What led you to
23 that?

24 A The person I had seen was trying to go to the exit of

1 Walmart, and then the loss prevention, Alex, was in front of him
2 stopping him to getting to the exit. So it was kind of like he
3 was trying to get around, you know.

4 Q And why the under the influence of description?

5 A He was stumbling, trying -- exertion, I guess.

6 Q And did you go into Walmart and request any extra help?

7 A I didn't.

8 Q Or security?

9 A No.

10 Q And why was that?

11 A I'm not with Walmart. I'm with the salon. We're just
12 contracted through them. So it wouldn't be my position to go to
13 their security.

14 Q It was your position to call 911, but you didn't think
15 that maybe he needed help?

16 A Well there was another AP on the scene at the time.

17 Q What was she doing?

18 A She was okaying as well.

19 Q She wasn't helping or actively preventing --

20 A No.

21 Q The fleeing?

22 A No she was on her phone.

23 Q No?

24 A No.

1 Q And was there anybody else any other Walmart employees
2 helping?

3 A No.

4 Q And did you discuss any of this after with Mr. Monroy?

5 A No I hadn't seen him and then seemed like they switched
6 history on us.

7 Q Because of this do you know?

8 A I'm not sure.

9 MR. SCHACHTER: Nothing further, Your Honor.

10 THE COURT: Redistrict.

11 BY LEFT1:

12 Q Yes, Your Honor. Just a couple questions.

13 Did the defendant look like he needed help?

14 A No.

15 Q What did it seem like he was doing?

16 A It seemed like he was trying to get away.

17 MR. BOGALE: No further questions Your Honor.

18 THE COURT: Anything further.

19 MR. SCHACHTER: No. He can be excused.

20 THE COURT: May this witness be excused.

21 You may step down you are excused.

22 Go ahead and call your next witness.

23 MR. BOGALE: The State calls Anna Young.

24 THE BAILIFF: Go ahead. Stand right here face the

1 clerk.

2 THE COURT: Please raise your right hand.

3 Witness sworn.

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

5 BY MR. BOGALE:

6 Q Once you get comfortable go ahead and spell your name
7 and state your last name, please.

8 A A-N-N-A Y-O-U-N-G, young.

9 Q Good morning, Ms. Young.

10 A Good morning.

11 Q Where were you employed in June of this year?

12 A Walmart on Seventh Street in Reno.

13 Q And what was your position there?

14 A I was asset protection associate.

15 Q Okay. Why don't you just describe briefly when an
16 asset protection associate is?

17 A Basically what he do is we are undercover or none and
18 formed personnel that, how would I put this, like security or
19 internal and external theft of assets and good at the store.

20 Q Okay. And how experienced were you as an asset
21 protection associate in June of this mass year or this year?

22 A I was about ten months in. Very well experienced.

23 Q Did you receive any training as part of becoming an
24 asset protection associate?

1 A Yes.

2 Q What sort of training?

3 A I received a four and a half week training through
4 various other stores and lead associates that have had anywhere
5 from between three to five years experience on the job.

6 Q And did that include like going out on the floor?

7 A Yes.

8 Q Okay. Were you trained sort of to detect behavior?

9 A Yes.

10 Q What sorts of behavior do you look for?

11 A We were trained to detect body language, to notice,
12 suspicious behavior as like certain tells, people looking for
13 cameras, we call them camera watchers. Ducking in and out of
14 aisles, thing likes that. Looking around watching associates,
15 just through general suspicious behavior. Also as well as coming
16 in with backpacks, large purses, abnormal clothing for the
17 ambient weather, say very heavy jackets in the summer time.
18 That's another suspicious activity.

19 Q As far as cameras, does Walmart have cameras in the
20 store?

21 A Yes.

22 Q Do you as an asset protection associate use those?

23 A Absolutely.

24 Q How do you use the cameras?

1 A We access the cameras through next too far have a, it
2 is an online that goes through our CCTCDVR system it's all
3 24-hour live feed recorded every time.

4 Q And are you pretty good at operating that system?

5 A Yes.

6 Q Let's go to June 9th of this past -- or of this year
7 about three months ago. Were you employed at Walmart?

8 A Yes.

9 Q As an asset protection associate?

10 A Yes.

11 Q Was anyone else working with you as an asset protection
12 associate?

13 A Yes.

14 Q Who?

15 A My partner Alex Monroy.

16 Q Do you recall being involved in an incident with an
17 individual named mark Schachter. Yes?

18 Q First of all, do you see mark character here in the
19 courtroom today?

20 A Yes, sir.

21 Q And could you point at him and describe an article of
22 closing he's wearing?

23 A Blue colored shirt.

24 MR. BOGALE: Your Honor, may the record reflect

1 identification of this defendant by this witness?

2 THE COURT: Can you be more specific?

3 THE WITNESS: Blue colored shirt, dark slacks, black
4 shoes and a designed tie.

5 MR. BOGALE: Is he wearing a jacket?

6 THE WITNESS: No.

7 THE COURT: Record will so reflect.

8 BY MR. BOGALE:

9 Q Let's go through what you remember step by step. Okay.
10 So did you conduct personal surveillance of him?

11 A No.

12 Q Do you know if anybody else did?

13 A Yes.

14 Q Who?

15 A Alex Monroy.

16 Q And how do you know that?

17 A Alex was on the floor. I was on a 15-minute break. I
18 was in my office reviewing CCTV for any suspicious activity while
19 Alex was also on the floor. He called me from his cell phone on
20 our office phone explaining that he had a subject that he had
21 selection of certain merchandise, and he had him tearing open the
22 packages and placing that merchandise in a backpack.

23 MR. SCHACHTER: Your Honor --

24 THE WITNESS: In our garden administrator.

1 MR. SCHACHTER: Objection.

2 THE COURT: Okay.

3 MR. BOGALE: What's the basis?

4 THE WITNESS: I think it's hearsay of what Alex said to
5 her.

6 MR. BOGALE: The State is offering this for the effect
7 upon the hearer and the response.

8 THE COURT: I think you can probably get around that
9 for that purpose and not for the truth of matter asserted.

10 MR. BOGALE: Okay.

11 BY MR. BOGALE:

12 Q Did you do anything in response to this call from Alex?

13 A Yes.

14 Q What do you do?

15 A I pulled up that section of CCT camera to see if I
16 could personally surveil by our surveillance system what the
17 subject in question was doing.

18 Q And by personally surveilling, you mean looking at the
19 video cameras?

20 A Yes.

21 Q Okay. Were you able to pull a camera of this
22 individual that Mr. Monroy was talking about?

23 A Not with any good indicator of what actually was
24 happening.

1 Q Where was the defendant and where was Alex when this
2 was happening?

3 A Alex was over in the HVA area with is our health and
4 beauty section and the subject in question was over in our garden
5 center seasonal in one of the aisles.

6 Q So what did you do next?

7 A From not be able to gain any visual from overhead CCTV
8 Alex told me in a he was starting to head out towards --

9 MR. SCHACHTER: Objection, Your Honor.

10 MR. BOGALE: Effect on the hearer again.

11 THE COURT: I'm not sure it's necessary. So I'm going
12 to sustain the objection as to hearsay. If it appears that we
13 need more information, I'll allow you to inquire.

14 BY MR. SCHACHTER:

15 Q Okay. Did you leave your office?

16 A Yes.

17 Q Okay. Where did you go?

18 A I went through the front of the store, exited the GM
19 doors out around through the outside of the garden center.

20 Q Why did you do that?

21 A I was going to cut off the subject in question.

22 Q Okay. Were you so okay so you're outside. What
23 happened next?

24 A I did not immediately see the subject exit our gather

1 center exited so I held back a little bathe wait by the propane
2 tanks that we have out there waited for him to come out. He
3 departments come out for a little bit so I assumed either my
4 partner, Alex was spotted or he was kind of hanging back a little
5 bit watching for security which sometimes does happen or perhaps
6 he was purchasing something.

7 Q Now how do you know who to look for you count pull any
8 camera, right?

9 A I got an accurate description from my partner Alex.

10 Q Did Alex describe like clothing or something?

11 A Yes.

12 Q Did he describe his height?

13 A Yes.

14 Q Did you ultimately confront the defendant?

15 A Personally?

16 Q Well did the defendant ever come out the doors?

17 A Yes.

18 Q Okay. Where were you?

19 A I was still held back a little bit. I was actually
20 quite a bit of distance as from the door to the exit of the
21 garden center to where I was was probably about 60 to 75 feet
22 away.

23 Q Was Alex near the defendant?

24 A Yes. As Schachter exited the garden center,

1 immediately after Alex Monroy came around him to make the
2 apprehension.

3 Q Now what was the defendant carrying? Did he have
4 anything on him?

5 A Yes.

6 Q What dove?

7 A He had a black plastic type gray backpack with also a
8 white plastic Walmart bag.

9 Q Were there any items that you could see in the white
10 plastic Walmart bag?

11 A Yes.

12 Q Okay. Having worked there what did that indicate to
13 you that bag?

14 A It indicated to me that there was a possibility that he
15 paid for those merchandise inside the bag.

16 Q Okay. So do you as much -- so do you and Alex confront
17 the defendant outside?

18 A Yes. Alex initially first and I did second.

19 Q Describe how that happened.

20 A Alex came around and once I saw Schachter and Alex
21 outside he was making the apprehension I immediately started
22 running up to my partner to give him at least relieve him of back
23 up. He was going over the see if of Walmart asset protection, I
24 want to ask you about the merchandise in the bag. And Schachter

1 held up his white bags, and said I paid for this stuff.

2 Alex said no I'm not talking about that. I'm talking
3 about the stuff you but in the backpack. Kind of went on, I
4 don't know what your talking about.

5 MR. SCHACHTER: Objection, Your Honor.

6 THE WITNESS: This is my bag.

7 THE COURT: What are you objecting to.

8 MR. SCHACHTER: Again, hearsay as to what I said.

9 THE COURT: Overruled as to what you said. Your
10 statements aren't hearsay.

11 BY MR. BOGALE:

12 Q You can continue your answer.

13 A Where was I.

14 Q I think you had been cut off where you were describing
15 that the defendant held up the plastic bag saying it was his.

16 A Yes.

17 Q But you guys just had asked no, were concerned about
18 the backpack.

19 A Yes. I had presented my Walmart security badge, which
20 we are always supposed to do when we're apprehending somebody
21 because we're undercover. And Schachter, Alex and I were moving
22 further out into the parking lot and the drive area. So we
23 stayed in front of him, trying to keep him boxed. He still had
24 possession of the backpack over his left shoulder, still had

1 possession of the white bag as well.

2 Schachter got kind of aggressive, I'd like to say, in a
3 sense that he was antagonizing Alex to swing first.

4 MR. SCHACHTER: Objection.

5 MR. BOGALE: Let me stop --

6 THE COURT: You want to.

7 MR. BOGALE: What was the basis for the objection?

8 MR. SCHACHTER: Calls for a conclusion as to --

9 THE COURT: Sustained.

10 BY MR. BOGALE:

11 Q What did he -- what did the defendant say, if you
12 recall?

13 A He said get out of my way. Get out of my way. And
14 what are you going to do, go ahead swing, hit me. Hit me. Alex
15 kept saying, I'm not going to hit you. I kept having his hands,
16 you know, trying to keep him boxed and I'm standing on the left
17 side and right side of Alex, moving back around trying to keep
18 him boxed in as well.

19 Q Was there ever physical contact?

20 A Yes.

21 Q Who initiated the physical contact?

22 A Marc Schachter.

23 Q How did he do that?

24 A He shoved Alex in the chest.

1 Q Okay. Did he ever drop the backpack?

2 A Not until later.

3 Q Okay. Did he ever drop the plastic bag?

4 A Yes.

5 Q So he dropped the plastic bag, right, but he never
6 dropped the backpack?

7 A Not until I said, far later during the altercation.

8 Q Now as Alex and the defendant are kind of in a
9 confrontation what are you doing like, what's your role at this
10 time?

11 A My whole role basically is just to act as a witness to
12 the apprehension or anything that happens to or could possibly en
13 sue in the situation. And to just mentally and visually keep
14 note of everything.

15 Q Did you call 911?

16 A I did.

17 Q Okay.

18 A Well, actually I did not call 911. I called police
19 dispatch.

20 Q What's the difference?

21 A Police dispatch is a different line in the dispatch
22 office, where 911 is a direct line to the emergency.

23 Q The dispatch is like a non-emergency line?

24 A Um-hum.

1 Q Do you recall observing when the backpack changed
2 hands?

3 A In the heat of the moment I was on my phone. I had
4 possession of the subject's white plastic bag, as they were in
5 their altercation during the shoving match he dropped it, and I
6 gained possession of it. So at that point I picked up my phone,
7 called for dispatch, and it kept ringing. At some point during
8 that Alex had slight possession of the bag. It was still on
9 Schachter's shoulder, and he had it on this side kind of like in
10 a tug of war about it until it kind of moves further on down in
11 the parking lot.

12 Q Did you ever here the defendant say stop, this is my
13 backpack?

14 A Not that I recall no.

15 Q Did he ever tell you it was his backpack?

16 A No.

17 Q I'm going to show you a video, what's been marked as
18 Exhibit 16 in this case. Do you recognize the video?

19 A Yes.

20 Q How?

21 A I burned this video personally.

22 Q And by -- okay. Well what does it show?

23 A It shows Marc Schachter exiting the garden center with
24 the unpaid merchandise in his backpack, Alex coming up for the

1 apprehension, myself running from the left side to the middle of
2 the screen as back up and as witness. I'm getting into a
3 physical altercation. My possession of Schachter' bag once it's
4 dropped, and then continuing to get into an altercation.

5 Q I just paused it there. Can you point out yourself on
6 this video if you can see your --

7 A I'm very small. Right here.

8 Q Okay. And does this video depict, does this video
9 depict accurately what you observed that day?

10 A Yes.

11 Q Okay. Now what direction is the defendant trying to go
12 in?

13 A He's pretty much just trying to get around us,
14 basically probably line of sight is over to the west Seventh
15 Street exit is to where the direct your attention of the left to
16 right traffic is headed.

17 Q Okay. Pause it right there. So did the police
18 ultimately arrive?

19 A Yes.

20 Q What did they do when they arrived?

21 A When they arrived the two vehicles pulled up. We had
22 Schachter kind of boxed in at that point they got out of their
23 vehicle addressed Schachter and told him to sit.

24 Q Did you speak to the cops?

1 A Not immediately, no.

2 Q What do you do immediately?

3 A I had still possession of Schachter white paid for
4 merchandise bag. Alex was kind of giving the officers a rundown
5 of the situation, what had happened, the altercation, and I kind
6 gave them my little bit of witness portions to it as Alex was a
7 little bit out of breath.

8 Q So you had the white plastic bag. Who had the
9 backpack?

10 A Alex had the backpack.

11 Q Do you remember how Alex gained possession of the
12 backpack?

13 A During the altercation the bag shifted from Schachter,
14 came to the ground, and Alex took possession of the bag.

15 Q Okay. What did you do with the plastic bag next?

16 A I remained possession of it until Schachter was in
17 custody then I gave the bag over to the officers.

18 Q And why did you give the bag to the officers?

19 A Because it's not our property. It's not our
20 merchandise, it's paid for. It is technically his.

21 Q You confirmed it was paid for?

22 A Yes.

23 Q How did you that, was there a receipt?

24 A There was a receipt.

1 Q So what happened what happens to the backpack?

2 A Alex and I maintained possession of it.

3 Q What --

4 MR. SCHACHTER: Objection, Your Honor. Two people
5 may --

6 THE COURT: You can inquire in cross.

7 MR. SCHACHTER: Okay.

8 THE COURT: Overruled.

9 BY MR. BOGALE:

10 Q So you can answer what happened to the backpack?

11 A We maintained possession of it and took it back inside
12 the store.

13 Q Okay. And did you ever have possession of the
14 backpack?

15 A I had possession of the backpack for a short portion of
16 the time while Alex was addressing the officers about the
17 situation. I had the bag open and taking out the merchandise
18 that was concealed.

19 Q Okay. Did you ever take the backpack inside the store?

20 A Yes.

21 Q What did you do with the backpack inside the store?

22 A We took it through the garden center exit where this
23 altercation happened, went back over to the section where
24 Schachter was concealing the merchandise to look for any other

1 evidence of packaging or anything like that. And then once we
2 found a few things, took those up to our office.

3 Q Okay. And then did you do anything else with the
4 backpack?

5 A We laid the backpack out on our security bench, which
6 is in front of our CCT camera and took out the merchandise, laid
7 it up with all of the labels out, so it would be easily read for
8 evidence and took an evidence photo.

9 Q Did you do anything else with the backpack? Did you
10 ever -- did Alex ever ask you to do anything else as part of
11 investigation?

12 A I took the backpack and the merchandise up to customer
13 service as to inquire a nine action.

14 Q What's a nine action?

15 A A nine action is an itemized training receipt that we
16 use to get a description of the merchandise as well as a dollar
17 amount of the merchandise in question that could have either been
18 damaged in the event or that was concealed and thought to be or
19 that was attempt to be stolen at that time.

20 Q So you got the training -- you got this nine action
21 what you called it, right?

22 A Yes.

23 Q I'm going to show you what's been marked -- Your Honor
24 may I approach the witness?

1 THE COURT: You may.

2 BY MR. BOGALE:

3 Q Show you what's been marked as Exhibit 8 in this case.
4 Take a look at that.

5 Q Do you recognize what that is?

6 A Yes.

7 Q What is it?

8 A This is an itemized training nine action receipt.

9 Q How do you know that?

10 A It says invalid receipt training on the bottom.
11 Something that's very common with only nine actions.

12 Q Is there O date on there?

13 A There is a date. June 9th, 2014. At the time that we
14 had the altercation settled Schachter was in custody around the
15 time that I was taking it up to customer service as well as the
16 case number provided why the officer.

17 Q Okay. And without telling us what's on the actual
18 paper, are there itemized is there a list of items on there?

19 A Yes.

20 Q Do those items match the items that you had possession
21 of?

22 A Yes.

23 Q The backpack and the items in the backpack?

24 A Um-hum, yes.

1 Q Your Honor, the State moves to admit Exhibit 8.

2 THE COURT: Any objection?

3 MR. SCHACHTER: No, Your Honor.

4 THE COURT: Exhibit 8 is admitted.

5 MR. BOGALE: I'll retrieve that from you.

6 Your Honor, may I publish?

7 THE COURT: You may.

8 BY MR. BOGALE:

9 Q Just going to put it up on the screen here so we can
10 all see it. So just walk us through it here. What is does it
11 say at the very stop.

12 A Very top is icy hot.

13 Q Well the very, very stop?

14 A The very, very top in wall yes.

15 A The very, very top Walmart.

16 Q And we kind of move down is there an address on there?

17 A Yes.

18 Q That's the west Seventh Street address?

19 A Yes.

20 Q And then we start looking at the itemized stuff. So
21 what's on there?

22 A Has the icy hot, the heating pad a box of hair dye, and
23 the backpack used to conceal the merchandise.

24 Q Okay. And to generate this receipt, how does that

1 work?

2 A We have to scan the UPC's or the barcodes on the
3 merchandise.

4 Q Okay. So those are scanned and you get a value?

5 A Um-hum.

6 Q Okay. And do you see on this receipt the ultimate
7 value of all these items combined?

8 A Yes.

9 Q What is that?

10 A The subtotal before tax is \$99.61.

11 Q Okay. And is that so just to be clear, the backpack is
12 \$34.97?

13 A The backpack is \$34.97.

14 Q And the hair dye is how much?

15 A Hair dye is 5.92.

16 Q The heating pad?

17 A \$29.84.

18 Q And the icy hot?

19 A \$28.88.

20 Q Now let's talk about the video just for a moment. You
21 testified earlier that Walmart has video surveillance constant
22 24/7, right?

23 A Yes.

24 Q Did you select the video feeds from all that have raw

1 footage to put in the very long tariff file for this case?

2 A Yes.

3 Q Okay. How did you go about selecting which video to
4 put in and whatnot to put in?

5 A I am highly capable with your CCTV cameras, more so
6 than most of your team. So when it came Tom the point of being
7 able to identify which cameras or what angles I already knew
8 which ones to pull up.

9 Since we were in the garden center parking lot where
10 the altercation happened, there were only two to three cameras.
11 I rolled two or three cameras and found the two best cameras for
12 that long distance shot that caught everything from the overhead,
13 outside altercation, as well as the camera shots that we have of
14 Schachter selecting the merchandise that was concealed, as well
15 as him with the concealed merchandise in the backpack walking
16 out. Things like that.

17 Q Now did you have any reason to look for video of him
18 entering the store?

19 A No.

20 Q On June 9th?

21 A No.

22 Q Why not?

23 A Because at that point with the backpack being part of
24 Walmart merchandise and as as far as my knowledge him never once

1 every saying that the backpack was his personal possession, I
2 never had a reason to go back and find whether he walked into it
3 or not.

4 Q Okay. Now what owned up happening to all the property?

5 A All the prompt.

6 Q And specifically the backpack the highcy hot and
7 heating bad and the hair dye we saw on the training receipt?

8 A If the items are not damaged in any way they are
9 returned to the sales floor.

10 Q And they're restocked on the shelves?

11 A Yes.

12 Q For sale?

13 A Yes.

14 Q Okay. And they all worked?

15 A Um-hum.

16 Q And that's because they were in new condition?

17 A Yes.

18 Q Now, I'm going to fast-forward to about a week later.
19 Okay. Did you ever have an occasion to go back to Walmart
20 surveillance video and look for more video?

21 A Yes.

22 Q What triggered you to do that?

23 A As it was right before my shift from a 4:00 p.m. to
24 1:00 a.m. shift, Alex was there for the dayshift and our crosses

1 overlaps. He was already reviewing the CCTV when I came in from
2 my shift and he said that he had received a call from Schachter's
3 attorneys saying that he was contesting the charges, saying that
4 the backpack was his, so we need to roll video to see if he had
5 entered the store with it.

6 Q Okay. And so that's that's what Alex was doing when
7 you came into work?

8 A Um-hum.

9 Q Did you end up doing the same thing?

10 A Yes. Alex had issues saying that he wasn't able to
11 find him with the videos that he had pulled up or certain cameras
12 that he had just pulled up, just of the entrances. So I told him
13 get back out on the floor. You still have a few hours let. Let
14 me kind of work my magic kind of thing. See what I can do.

15 Initially what I if was instead of rolling cameras from
16 the entrances which has many cameras just for the entrances which
17 is a little more difficult. I actually took the camera shots
18 that I had from the altercation and rolled backwards replaying
19 everything in reverse moving, through the store and unfortunately
20 I lost him as he was serpentining throughout our store in certain
21 areas.

22 Q You send Alex back onto the floor. Is that because
23 you're more technically proficient with the --

24 A Yes.

1 Q With the camera?

2 Q And you mentioned that you played it in reverse and the
3 defendant was serpentine. Are you making reference to a snake?

4 A Yes.

5 Q What does that mean?

6 A He was moving back and forth throughout the aisles,
7 ducking between aisles kind of thing. Irregular shopping
8 patterns.

9 Q Did you look for video of him entering the store?

10 A Yes.

11 Q Did you find any?

12 A No. I spent almost an hour and a half trying to find
13 him enter the store with unfortunately, nothing.

14 Q Do you have -- or do you know how many people enter
15 that store every day?

16 A On average from between a thousand to 2500.

17 Q Is it easy to identify everyone coming in and out?

18 A If you know what you're looking for, yes, but given if
19 you don't know what time one particular person actually entered
20 the store, you can wait a lot of time trying to find it and it's
21 very difficult during peak period of time which at of this
22 incident was a peak period of time in the morning lots of people
23 why going through your entrances.

24 Q And you didn't have an idea as to what specific time

1 frame to look for?

2 A No.

3 Q So you were just looking for raw video footage?

4 A I was just looking through raw video footage to see if
5 I could possibly get a miracle, for him to pop up on a camera and
6 I could go through there, but unfortunately backtracking I found
7 nothing.

8 Q Just a couple more questions for you, Ms. Young. I
9 didn't show you actually, the actual disk that I just played a
10 video file from.

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

12 THE COURT: You may.

13 BY MR. BOGALE:

14 Q Is your handwriting anywhere on that disk?

15 A No.

16 Q So can I take it back. So you said earlier that you
17 burned this did you mean you?

18 A I burned the original initial file.

19 Q So by burn what do you exactly mean?

20 A Copy the live CCT camera file onto the recorded file.

21 Q Okay. So is that all -- was that have all internal on
22 like Walmart's hard drive or something?

23 A Yes.

24 Q So correct me if I'm wrong, but is it correct to say

1 that you took raw video files and he had at this time them and
2 saved those edited video files off and on to a hard drive is?

3 A Yes.

4 Q Is that what you mean by burn?

5 A Yes.

6 Q Okay. How many cameras in the store?

7 A Not that I have couldn't, but we have quite a few.

8 Q Could you ballpark it perhaps?

9 A I would probably say anywhere upwards of maybe 150,
10 175.

11 Q Okay. And do those cameras, to the best of your
12 knowledge, cover every square inch of the store?

13 A For the most part, yes.

14 Q But are there areas that they don't cover?

15 A Yes.

16 Q And when as you received the call from an electronics
17 telling you to get involved in this investigation, was the
18 defendant visit I believe on surveillance individual?

19 A Not to any major identifiers, no.

20 Q No further questions Your Honor.

21 THE COURT: Cross-examination.

22 MR. SCHACHTER: Yes.

23 BY MR. SCHACHTER:

24 Q You just testified that most of the stores is covered

1 by surveillance?

2 A Yes.

3 Q Are there specific, do you know of specific
4 responsibilities that aren't covered?

5 A Yes.

6 Q And give us a few of those if you would?

7 A Give you a few of the areas that are not covered by
8 surveillance.

9 Q That you know of personally?

10 A Some aisles of our housewares.

11 Q And that's it?

12 A Some aisles of housewares, some aisles of back portion
13 of sporting goods departments, grocery, the majority of grocery.

14 Q And that's all you're aware of?

15 A Everything else pretty much has a view.

16 Q Okay. And so you testified that my attorney had
17 requested video footage?

18 A I was informed by Alex that a call had been received by
19 him.

20 Q Okay.

21 A That was your attorney or some of the Court system
22 something like that. I wasn't exactly questioning the kind of
23 thing.

24 Q Okay. And do you remember what date or approximately

1 what date that was?

2 A I'm sorry.

3 Q What date, when it was?

4 A Not exactly sure on the date, 100 percent but it was
5 average three to five days after you were taken into custody.

6 Q So sometime in that --

7 A Sometimes in the first we can you were taken.

8 Q But definitely within the month of June, right?

9 A Yes.

10 Q Okay. And to you don't remember -- you don't remember
11 who specifically Alex said was requesting?

12 A No.

13 Q Just someone from --

14 A Just someone from the court or your attorney in
15 representing me.

16 A Yeah.

17 Q Okay. Let's go back to the altercation outside the
18 garden center. You testified that Mr. Monroy identified himself?

19 A ID um-hum.

20 Q And what did he say exactly?

21 A He should have said what we all say.

22 Q What did he say that's the question?

23 A I wasn't next to him when he approached you.

24 Q You didn't hear him identify himself?

1 A I didn't hear the first portion of it, but I did hear
2 the last portion of it.

3 Q And what was that?

4 A The portion where he said -- questioning the
5 merchandise in the bag. And you said, this stuff is mine I paid
6 for it. And he said, no I'm talking about the stuff in your
7 backpack.

8 Q And did he have anything in his hand, Mr. Monroy?

9 A I made no account of it.

10 Q Did he ask you to call 911?

11 A No.

12 Q And you called not 911 but you testified you called
13 dispatch?

14 A Yes dispatch.

15 Q Non-emergency dispatch. So you didn't think it was an
16 emergency?

17 A Our non-emergency dispatch reacts faster than the 911
18 so that's what we are trained to call.

19 Q Doesn't player what kind of emergency you're trained
20 just to call, somebody gets shot not parking lot or whatever?

21 A Obviously if someone gets shot parking lot yes we will
22 call 911.

23 Q Go ahead?

24 A During the investigation portion for an apprehension we

1 don't bother 911.

2 Q So what about instances over robbery?

3 A Over robbery there are certain procedures that we take,
4 but normally upper management are the ones that make the final
5 call for that.

6 Q So in the middle of a robbery you have to discuss it
7 with management on whether you should call 911 or non-emergency?

8 A Well, pertaining to after robbery we are the least
9 notified person. So we actually don't really know that a
10 robbery is happening until all of upper management has already
11 made a call and they were aware of a situation, we are provided
12 as a backup.

13 Q So you didn't feel that Mr. Monroy was being robbed is
14 that what you're saying?

15 A No.

16 Q Okay.

17 MR. SCHACHTER: Nothing further, Your Honor.

18 THE COURT: Anything further?

19 MR. BOGALE: Yes, Your Honor.

20 BY MR. BOGALE:

21 Q Why did you call non-emergency dispatch?

22 A That is part of your training for an apprehension.

23 Q And there was an apprehension taking place in this
24 case?

1 A Yes.

2 Q Why was there an apprehension taking place?

3 A Because Alex Monroy was in the process of questioning,
4 investigating a subject that he had personally watched, select,
5 conceal, and past the last point of sale, not purchasing or
6 failing to purchase any of the merchandise in question.

7 Q Did the defendant have any weapons on him?

8 A Notice that I can could tell, no.

9 Q He didn't have a gun or anything?

10 A No.

11 Q So had there been a weapon, would you have called 911?

12 A Yes.

13 Q Okay. Top was it your understanding that the defendant
14 hadn't paid for the merchandise?

15 A Yes.

16 Q And that he was trying to walk away from it?

17 A Yes.

18 Q Was it your understanding that he used violence and
19 force?

20 MR. SCHACHTER: Objection, Your Honor. Leading.

21 THE COURT: Sustained.

22 BY MR. BOGALE:

23 Q What was your understanding as to what was happening?

24 A My understanding as to what was happening was that Marc

1 Schachter had selected, concealed and failed to purchase the
2 concealed merchandise while providing a ruse of actually paying
3 for some merchandise and not --

4 MR. SCHACHTER: Your Honor --

5 BY MR. BOGALE:

6 Q Did you witness him use force?

7 A Yes.

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

9 THE COURT: Mr. Schachter.

10 BY MR. SCHACHTER:

11 Q Did you witness myself steal any items?

12 A No.

13 MR. SCHACHTER: That's all, Your Honor.

14 THE COURT: May this witness be excused?

15 MR. BOGALE: He yes, Your Honor, she may.

16 MR. SCHACHTER: Subject to recall.

17 THE COURT: You may step down, but you're not excused.

18 THE WITNESS: Thank you.

19 THE COURT: Call your next witness.

20 MR. BOGALE: State calls Corelee Bunker.

21 THE CLERK: Thank you, please be seated at the witness
22 stand.

23 (Witness Sworn)

24 THE COURT: You may proceed.

1 BY MR. BOGALE:

2 Q Good morning.

3 A Morning.

4 Q Please, for us, state your name and spell your last
5 name for the court reporter.

6 A Corelee Bunker, B-U-N-K-E-R.

7 Q Ms. Bunker where are you employed?

8 A Walmart.

9 Q Okay. Which Walmart?

10 A On Seventh and Mae Anne.

11 Q Okay. How long have you been employed there?

12 A Little over nine years.

13 Q Nine years. What do you do there?

14 A I'm a cashier.

15 Q Okay. Have you ever held any other position there?

16 A No.

17 Q So you've been a cashier for almost nine years?

18 A Yes.

19 Q Okay. Do you have like an employee number?

20 A Yes, I do.

21 Q What is that?

22 A 1423.

23 Q Okay. And as as cashier, does your employee number
24 printout on receipts?

1 A Yes, it does.

2 Q Okay. In all the receipts?

3 A Yes.

4 Q That you do a transaction for?

5 A Um-hum.

6 Q As a cashier what are your duties?

7 A Well, my duties are just to keep the area clean and to
8 watch the in and outdoor.

9 Q Okay. And also to help people by stuff?

10 A Yes.

11 MR. SCHACHTER: Objection, leading.

12 THE COURT: Sustained.

13 BY MR. BOGALE:

14 Q Why do you watch the in and outdoors?

15 A For people getting out with stuff they haven't paid
16 for.

17 Q Okay. Approximately how many people do you help per
18 day?

19 A Anywhere from 20 to 75.

20 Q Have you been all around the store or are you at one
21 single cashier place?

22 A One designated area.

23 Q One designated area. Which area is that?

24 A In the garden center.

1 Q Okay. I'm going to show you what's been marked and
2 much admit as Exhibit 7. Could you just kind of, if you don't
3 mind standing up and pointing out where you're cash register is
4 in the garden center at that Walmart?

5 A I'm in this area, indicating.

6 Q Okay. Thank you. You can sit down. Just for the
7 record here, you pointed out the outdoor living area?

8 A Correct.

9 Q Kind of the left, the bottom left quadrant of it is
10 that a "yes"?

11 A Question yes.

12 Q So let me direct your attention back to June 9th of
13 this year. Were you employed at that store?

14 A Yes.

15 Q Okay. Were you working as an associate as a cashier?

16 A Yes.

17 Q Okay. Do you recall helping an individual at your cash
18 register who ended up being con friend by asset protection
19 personal?

20 A Yes.

21 Q Do you remember what he purchased?

22 A Yes.

23 Q Okay. What did he purchase?

24 A A solar light and hair dye.

1 MR. SCHACHTER: Objection to this before we get it
2 before the jury gets do see it.

3 THE COURT: Okay.

4 MR. SCHACHTER: As to the chain of custody and how it
5 arrived here.

6 THE COURT: Counsel.

7 MR. BOGALE: Yes.

8 THE COURT: Before you open it you need to have her, if
9 she can identify it if someone else is going to have to do it.

10 MR. BOGALE: We had agreed to go individual item by
11 item Your Honor.

12 THE COURT: I don't know that agreement.

13 Okay. The ladies and gentlemen of the jury I'm going
14 to have you step out for just a few minutes. This is a technical
15 issue we have to resolve. During this break do not discuss the
16 and don't leave until you've heard the admonition. Wait a
17 second. During this break do not discuss the case amongst
18 yourselves or with any other person, do not allow the anyone to
19 speak of the case to you or in any manner attempt to influence
20 you with regard to it. Should any person make such as attempt
21 report it to me immediately. Do not make any independent
22 investigation or inquiry into any of the facts or circumstances
23 surrounding this case and to do notice look at listen to for view
24 any news media or any other accounts regarding this case.

1 Go ahead and go into the jury room.

2 THE COURT: Counsel, I didn't know what you were trying
3 to say so. We need to get it resolved.

4 MR. BOGALE: That's okay.

5 THE COURT: Do you want me to look at the exhibit?

6 MR. BOGALE: Yes, it's been marked.

7 THE COURT: Go ahead and retrieve it.

8 MR. BOGALE: We only marked the bag. We didn't mark
9 the items inside the bag.

10 THE COURT: Correct.

11 MR. BOGALE: The bag that I was talking about.

12 THE COURT: But who brought the bag to the courthouse?

13 MR. BOGALE: We did, the State.

14 THE COURT: You personally did.

15 MR. BOGALE: My agent, the investigator.

16 THE COURT: Can I see the bag?

17 MR. BOGALE: Yes.

18 THE COURT: Mr. Base.

19 MR. BOGALE: Ms. Base.

20 MR. BOGALE: Michelle M base.

21 THE COURT: Okay. He's objecting to you opening the
22 evidence, with you personally opening it with some scissors.

23 MR. BOGALE: Okay.

24 THE COURT: So normally you'd have the witness testify

1 as to where this came from with a chain. And then once the
2 witness can establish this, testifies, then the individual items
3 inside the bag are marked in a series, but the bag has the chain
4 of custody where it came from, et cetera.

5 So I don't think this witness can do that based on what
6 I'm looking at, I'm not sure this witness can do it. And I'm a
7 little concerned with the top. So.

8 MR. BOGALE: Your Honor.

9 THE COURT: You want to retrieve it.

10 MR. BOGALE: Sure. Under the case law that I'm
11 familiar with, Your Honor, to establish a chain of the custody
12 the State doesn't need to provide every single order in the chain
13 of custody, the case is source versus state. There's -- if she.

14 THE COURT: But that envelope doesn't have this
15 witness's name on it anywhere. I understand you don't have to
16 have every person who touched the bag.

17 MR. BOGALE: Right.

18 THE COURT: You haven't established how this got here.
19 And this witness can't establish that.

20 MR. BOGALE: She can establish where it came from and
21 that she printed it.

22 THE COURT: How can she do that?

23 MR. BOGALE: The actual receipt is in the bag. The
24 receipt she gave the defendant is in the bag.

1 THE COURT: So what you want her to testify to is a
2 receipt inside this evidence bag. Okay.

3 MR. BOGALE: And the items that she sold to him. He
4 bought two items.

5 THE COURT: Ma'am, would you step out for a few
6 minutes.

7 THE WITNESS: Sure.

8 THE COURT: Thank you.

9 MR. BOGALE: She gave him the receipt.

10 THE COURT: I'm going to ask her to step out before we
11 start talking.

12 Witness left of the courtroom).

13 THE COURT: Is there an identifying mark from this
14 witness on the document, on the items that you're alleging that
15 she can identify?

16 MR. BOGALE: Yeah. Her employee number is on the
17 receipt?

18 THE COURT: On the item. So what we've got is we've
19 got hair dye. Just a generic hair dye. Is that what's in there?
20 How do we know this is the hair dye that supposedly goes with
21 this receipt?

22 Can this witness testify to that or can the police
23 officer say she handed it to me.

24 MR. BOGALE: She personally conducted the transaction,

1 Your Honor.

2 THE COURT: But the box, does it have her name on it,
3 did mark that box somehow? The only way you know this box goes
4 with that receipt is that she, I'm assuming, handed it to a
5 police officer, who took it in and put it in a bag with his
6 initials on it.

7 MR. BOGALE: I would submit there's another way, Your
8 Honor. Her recollection of personally doing in the transaction
9 and recognizing the item she sold to him and matching it on the
10 receipt. She testified to that. She remembers what she sold
11 him. She personally remembers that.

12 THE COURT: Okay. So.

13 MR. BOGALE: She can identify it. She can look and say
14 that's the items I sold to him. These are the two items I sold
15 to him, this is the receipt I gave him, after he paid for them.
16 That's my employee number on the receipt. That's the date. She
17 can testify to all of that, but I have to show it to her first.

18 THE COURT: Okay. Mr. Schachter.

19 MR. SCHACHTER: She can't identify that particular box.
20 There's 10,000 hair dye box -- what makes that -- exactly like
21 that, what makes that hair dye box and that garden light
22 different that's identifiable to anyone than the 10,000 other
23 ones that's created by Clairol?

24 MR. BOGALE: Is he can asking me that question?

1 THE COURT: He's asking me. He's saying that's why you
2 need the chain of custody.

3 MR. BOGALE: Well, I think that's appropriate grits for
4 cross-examination, Your Honor, but it doesn't go to
5 admissibility.

6 THE COURT: Okay. I'm not sure. Mr. Bogale, it does
7 go to admissibility, if that item -- if the character of that
8 item was at issue in this case. In other words, if this were
9 something that is generic, but whether or not this particular
10 item is the item that was paid for, was necessary for a
11 particular element or a particular part of this case, you're
12 argument would be inappropriate and not acceptable to get the
13 item in.

14 Now there are some evidentiary issues that are not
15 subject to the same requirements of knowing that it's specific.
16 So when Mr. Schachter says, how do you know this is the right
17 box, does it matter if it's the right box, if what you're trying
18 to prove is that this is the receipt that was found, does that
19 matter? Is it essential that it be the right box of Clairol dye?
20 What if it's the wrong box of Clairol dye. If you tested it for
21 fingerprints, DNA is there any any reason for it to matter if
22 there is a reason for it to matter the chain of dud is essential.

23 THE ATTORNEY:

24 Q She as she just previously testified said she remembers

1 what she told to him?

2 A

3 THE COURT: I didn't ask you that I heard what she
4 testified to I'm asking does it player.

5 MR. BOGALE: It matters that the items match the
6 receipt, yeah.

7 THE COURT: Well then ^ adopt ^ don't it matter if this
8 is the item that she gave the police officer.

9 THE ATTORNEY:

10 Q Well it does matter but we already have an answer to
11 that Your Honor?

12 THE COURT: How do you have that answer.

13 MR. BOGALE: She remembers what she told him.

14 THE COURT: Inside side this bag, the box if you think
15 it matters which box she can't identify that box as specifically
16 the one that she handed to the Mr. With the receipt. She shall
17 say it looks like it, yeah that's the kind of dye, but she can't
18 say this is the box. That's why the person she handed it to, if
19 it matters, would come in and say, she handed it me this Walmart
20 the receipt. That's why it's marked and sealed. That's why you
21 don't, that's why you weren't supposed to cut it up before you
22 marked it ex-boyfriend the jury was here Roy why didn't you just
23 take some scissors and cut it part and mark the box we're going
24 to take a so short recession.

1 THE COURT: Okay. The objection was chain of custody.
2 And that goes to mint of an particular. So have you reached any
3 resolution of what to do with this nope.

4 MR. HYLIN: No, Your Honor.

5 THE COURT: You still just want to use your scissors
6 and and cut it pardon.

7 MR. BOGALE: Your Honor, I'll do whatever you allow me
8 to do.

9 THE COURT: I am not. I tried to explain what I
10 thought your argument was in option to his objection, but you
11 haven't used it. So you do what you want and if you can't use
12 the exhibit in after you've done it and you destroyed the chain
13 of you the then you just won't get the exhibit?

14 MR. BOGALE: Well, first I apologize for using the
15 scissors to open the exhibit in court. May I ask to have the
16 individuals items in this marked for identification purposes, and
17 what I'm really getting at is the receipt in there. I don't
18 really have an argument again the hair dye being a generic item.
19 The receipt however, is different. It has unique identifiers on
20 it. It has a date. It has employee number. So it has unique
21 identifiers. And so if we can have it marked, I would like to
22 ask the witness if she knows what it is.

23 THE COURT: Any objection?

24 MR. SCHACHTER: Only as to how everything that's inside

1 the bag got from my property to right here. This is probably
2 taken from the jail from me.

3 THE COURT: Oh. Mr. Schachter, he's requesting that
4 the items be individually marked that are inside the bag. Do you
5 have any objection to that?

6 MR. SCHACHTER: Yes.

7 THE COURT: Objection is overruled. I'll direct the
8 clerk to open the bag at the request of the State and mark each
9 item inside. The items can not be shown to the jury without them
10 being admitted. So you might need something -- I don't know if
11 you have anything opaque, because it's in a clear plastic bag
12 right now.

13 MR. BOGALE: I have like a file folder, I guess.

14 MR. HYLIN: I've got an empty one.

15 THE COURT: He's got an empty one for you.

16 MR. BOGALE: Thank you.

17 THE CLERK: The box of hair dye will be 6 A, 6 B will
18 be the garden light. This is off, Judge. And it appears to be
19 part of the garden light. Can I mark it as C?

20 THE COURT: Mr. Schachter what would do you want to do?

21 MR. SCHACHTER: They were together, so I would just
22 think it would be better if they were both marked as six B.

23 THE CLERK: Okay. Great. I will put them back
24 together. And that will be B. Six C is a Walmart receipt.

1 MR. SCHACHTER: Can I see the receipt?

2 MR. BOGALE: Sure.

3 THE CLERK: And 6 D is a receipt that is titled receipt
4 Washoe County, Nevada office of district attorney.

5 (Discussion held off the record.)

6 THE CLERK: Okay. Everything separately.

7 Mr. Schachter you wanted to see the Walmart receipt.

8 MR. SCHACHTER: Yes.

9 THE CLERK: Anything else?

10 MR. SCHACHTER: No.

11 THE CLERK: Okay.

12 THE COURT: So now you've gotten them marked
13 individually and which you want the witness back on the stand.

14 MR. BOGALE: Your Honor if it is okay with you the
15 State would like to make an offer of proof to get a legal ruling
16 on the admissibility. Items outside the presence of the jury,
17 just so, because it's been objected to.

18 THE COURT: Okay.

19 MR. BOGALE: And now that they're marked we can have
20 Corelee come back in to help present the offer of proof on the
21 receipt itself.

22 THE COURT: Correct.

23 MR. BOGALE: Is that okay.

24 THE COURT: That's fine.

1 MR. BOGALE: Thank you.

2 THE COURT: Okay. Ma'am, you're still under oath. Go
3 ahead and retake the stand.

4 BY MR. SCHACHTER:

5 Q Ms. Bunker, I'm going to show you what has been marked
6 as --

7 THE COURT: Why don't you just take the whole envelope.
8 And you can just kind of get used to dealing with it in his
9 closed format in front of the jury.

10 BY MR. BOGALE:

11 Q This is Exhibit 6 everything is in here, but everything
12 is individually marked. So there's A, B, C, and D. So I'm going
13 to start with what's been marked as Exhibit 6 A.

14 THE COURT: Normally, she would have to look at it in
15 its closed format, if the jury were present, that way you won't
16 be showing it to the jury before it's admitted.

17 So hand her the envelope.

18 MR. BOGALE: So look at Exhibit 6.

19 THE COURT: He wants you to look at something that's
20 marked six A.

21 MR. BOGALE: If you can find six. A do you have that?

22 THE COURT: The mark is on the back. If you turn that
23 piece of paper over to the back.

24 THE WITNESS: Oh, I see.

1 THE COURT: That's the exhibit number.

2 MR. BOGALE: So that's the exhibit.

3 THE WITNESS: Okay.

4 BY MR. BOGALE:

5 Q Have you had a chance to look at that exhibit, six A?
6 Is that "yes"?

7 A Yes, I'm sorry.

8 Q You just have to answer yes for the court reporter.

9 A Yes.

10 Q Now I'm just talking about six A. Are you familiar
11 with that?

12 A Yes.

13 Q Do you recognize it?

14 A Yes.

15 Q What is it?

16 A The solar light.

17 Q Six A?

18 A The receipt. I'm sorry the receipt.

19 Q Six A, yes. It's a receipt?

20 A Um-hum.

21 Q From where?

22 A Walmart.

23 Q Okay.

24 THE COURT: I'm sorry. Six A.

1 MR. BOGALE: What is that marked as?

2 I'm sorry. Sorry, Your Honor. It's my mistake six C.

3 THE COURT: Right six C.

4 BY MR. BOGALE:

5 Q Have you had a chance to look at 6 C, my apology.

6 A Yes.

7 Q Do you recognize it?

8 A Yes.

9 Q What is it?

10 A It's a receipt.

11 Q Okay. From where?

12 A Walmart.

13 Q Did you print that receipt?

14 A Yes, I did.

15 Q How do you know that?

16 A Got my number on it.

17 Q And your number does that mean your employee number?

18 A Yes.

19 Q Is there a date on there?

20 A Yes.

21 Q Do you tell us what the date is?

22 A 6-9-14.

23 Q And are there items listed on there?

24 A Yes.

1 Q What are the attempts on there?

2 A Solar light and hair color.

3 Q And what's the amount?

4 A The total amount was 581.

5 MR. BOGALE: Okay. Your Honor, State moves to admit
6 Exhibit 6 C.

7 MR. SCHACHTER: No objection, Your Honor.

8 THE COURT: Okay. And I think you will, if you go
9 through that drill in front of the jury, you wanted a preliminary
10 ruling on admissibility, I would admit it.

11 MR. BOGALE: Thank you, Your Honor.

12 THE COURT: But you don't want me to admit it now, do
13 you or do you want me to admit now and then just start talking
14 about it in front of the jury.

15 MR. BOGALE: You can admit it now, if there's no
16 objection.

17 THE COURT: Exhibit 6 C is admitted.

18 Now are you we ready to bring the jury back?

19 MR. BOGALE: I believe we are.

20 THE COURT: Okay. Mr. Schachter.

21 MR. SCHACHTER: No objection.

22 THE COURT: Okay. Please bring the jury.

23 Counsel, you stipulate to the presence of the jury.

24 MR. BOGALE: Yes, Your Honor.

1 THE COURT: Mr. Schachter?

2 MR. SCHACHTER: Yes, Your Honor.

3 THE COURT: Thank you. Please be seated. Exhibit 6 C
4 is admitted.

5 MR. BOGALE: Thank you, Your Honor.

6 BY MR. BOGALE:

7 Q Okay, Ms. Bunker let's start back up again. Last time
8 we were talking before the break you had mentioned that you
9 recalled what the defendant purchased, is that correct?

10 A Yes.

11 Q Okay. I'm going to show you now what's been marked as
12 Exhibit 6 C.

13 Your Honor, may I approach?

14 THE COURT: You may.

15 MR. BOGALE: Okay.

16 BY MR. BOGALE:

17 Q Do you know what that is?

18 A Yes.

19 Q What is that?

20 A It's a receipt.

21 Q Okay. And a receipt from where?

22 A Walmart.

23 Q Okay. Is there a date on that receipt?

24 A Yes, there is.

1 Q What's the date?

2 A 6, 9, 14.

3 Q Okay. Did you print that receipt?

4 A I did.

5 Q How do you know that?

6 A Got my number on it.

7 Q You're number?

8 A Is that your employee number.

9 A Employee number.

10 Q Is that 1423?

11 A Correct.

12 Q And are there is there a list of attempts purchased on
13 that receipt?

14 A Yes.

15 Q Can you tell us what they are?

16 A Solar light and hair color.

17 Q Let me retrieve that have back from you, please. Thank
18 you.

19 MR. BOGALE: Your Honor may, I publish this exhibit?

20 THE COURT: You may.

21 MR. BOGALE: Thank you.

22 BY MR. BOGALE:

23 Q So this is Exhibit 6 C that we've been talking about.

24 And I just want to kind of go through the stuff that we just

1 talked about. Let me zoom in a little bit. Okay. Now if you
2 could with me, just go through there receipt. What does it say
3 at the have I very top?

4 A Walmart.

5 Q Okay. And is the address on there?

6 A Yes.

7 Q Where is it?

8 A It's on Seventh Street.

9 Q Okay. And point out to the jury if you don't mind
10 where your employee number is located on it?

11 A Right here.

12 Q So it's the 1423 preceded by four zeros; is that right?

13 A Yes.

14 Q Okay. And the two items listed are what again?

15 A Solar light and hair color.

16 Q And what's the total of those items was 581?

17 Q Is that including tax?

18 A Yes.

19 Q You can sit down. So you remember printing this
20 receipt for the defendant?

21 A Yes.

22 Q I'm going to now show I what's been marked and admitted
23 as Exhibit 16. It's a video file. And just before I play think,
24 do you see the individual that you sold those items to on that

1 receipt here in the courtroom?

2 A Yes.

3 Q Could you point at him and describe an article clothing
4 that he's wearing, please?

5 A The man in the blue shirt.

6 Q Could you be a little bit more specific?

7 A With the gray tie.

8 Q Your Honor, may the record reflect identification of
9 the defendant in this case?

10 THE COURT: Is the defendant wearing anything else?

11 THE WITNESS: Pardon?

12 THE COURT: What else is the defendant wearing?

13 THE WITNESS: He's wearing a tie and black pants.

14 THE COURT: I'll allow the identification.

15 MR. BOGALE: Thank you, Your Honor.

16 BY MR. BOGALE:

17 Q I'm just going to play a video and it's going to play
18 on that screen up there so if you can just look with me and the
19 jury. And just before we move any further, is there a date on
20 this? Is there a date indicated on the video?

21 A Yes.

22 Q What is the date?

23 A 6-9-2014.

24 Q Okay. And is there a time on the video?

1 A Yes.

2 Q What's the time?

3 A 1148.

4 Q And is there seconds?

5 A 26.

6 Q Okay. And just to be clear. We're referring to video
7 file GC for the table POS 51; is that correct?

8 A Correct.

9 Q You can take a seat now if you like. Now watch the
10 video here. Do you see yourself in this video?

11 A Yes, I do.

12 Q Where were you, if you don't mind?

13 A Right here.

14 Q Okay. The and what are you doing?

15 A Waiting on the customer.

16 Q Okay. And by the customer, you mean the defendant?

17 A Correct.

18 Q And is this when he purchased the solar light and hair
19 dye.

20 A Yes.

21 Q Let's continue to watch the video here for a moment.
22 Do you recall if he paid with cash or a card?

23 A Cash.

24 Q Is that the receipt that you just handed to him?

1 A Okay.

2 Q Okay. At 1149 and 22 second about?

3 A Correct.

4 Q Now this video is probably going to end here. What
5 happens immediately after this?

6 A He walked out the door.

7 Q Okay. And then did anything happen to him at that
8 time?

9 A Yes.

10 Q What happened?

11 A AP went after him.

12 Q And by AP you mean?

13 A Alex.

14 Q What does AP mean?

15 A Loss prevention or LP, loss prevention.

16 Q Is that the same as asset protection?

17 A Yes.

18 Q So you saw Mr. Monroy follow him out of the store?

19 A Yes.

20 Q Okay. Was did the defendant -- well tell me what
21 happened next?

22 A Well, they went outside and AP tried to get, tried to
23 talk him into giving them his backpack. He wouldn't do it. So
24 AP kept telling him just give me the backpack.

1 MR. SCHACHTER: Objection, Your Honor.

2 THE WITNESS: Come inside.

3 THE COURT: Okay you have to stop. Your objection.

4 MR. SCHACHTER: To hearsay.

5 THE COURT: To what's being said by someone else.

6 MR. SCHACHTER: Someone else to someone else.

7 THE COURT: Sustained.

8 MR. BOGALE: That's fine, Your Honor. I'll move on.

9 BY MR. BOGALE:

10 Q Without saying what people said what do you observe?
11 What did you see?

12 A He was pushing and shoving and pulling on the backpack.

13 Q So was there a physical confrontation?

14 A Yes.

15 Q Okay. Who initiated the physical confrontation?

16 A The defendant.

17 Q How long did you observe for?

18 A Two or three minutes.

19 Q Okay. Did the defendant every by a backpack from you?

20 A No.

21 Q Did he ever buy the heating pad from you? Did he ever
22 buy like a heating pad from you?

23 A I don't recall.

24 Q On this receipt is there a heating pad on there?

1 A No.

2 Q Is there icy hot?

3 A No.

4 Q No backpack?

5 A No.

6 Q So he only bought a solar light and hair color?

7 A Correct.

8 Q Do you remember or you can just look at the receipt.

9 How many packages of hair color he bought from you?

10 A One.

11 Q Just one?

12 A Yes.

13 MR. BOGALE: No further questions at this time, Your
14 Honor, thank you.

15 THE COURT: Cross-examination.

16 MR. SCHACHTER: Yes, Your Honor.

17 BY MR. SCHACHTER:

18 Q Do you remember as I exited the store, was the alarm at
19 the door went off?

20 A No.

21 Q It didn't go off?

22 A No.

23 Q And you testified that me and the asset protection were
24 during the confrontation we were pushing and shoving?

1 A Yes.

2 Q Did you call supervisor or anybody else to let them
3 know?

4 A No.

5 Q Why?

6 A I have no way to call.

7 Q Did you notify anybody?

8 A Yes.

9 Q Who is that?

10 A One of the over associates.

11 Q Do you remember who it was?

12 A Hugh.

13 Q Hugh. And do you know if anything came of that?

14 A No.

15 Q If you went out -- you didn't see anybody else go out?

16 A Anna.

17 Q Okay. Nothing further, Your Honor?

18 THE COURT: Anything further? .

19 BY MR. BOGALE:

20 Q Are you aware and if not, just tell us what you know,
21 do you know if all items that I-haven't been paid for trigger an
22 alarm at Walmart?

23 A No, they don't.

24 Q So even if someone didn't pay for something and they

1 walk out of the store the areport night not trigger?

2 A Yes.

3 Q Why is that?

4 A Only items of a certain cost or items with an alarm on
5 them.

6 Q Okay.

7 A It's a BSSR. Some prescriptions some cell phones some
8 keys.

9 Q And what is an EAS you referred to?

10 A That's the areport system.

11 Q Do you know what the amount is that triggers?

12 A No.

13 Q No, but you know it's a certain amount?

14 A Yes.

15 Q And it's certain items.

16 A Yes.

17 Q Okay.

18 MR. BOGALE: No further questions Your Honor.

19 THE COURT:

20 BY MR. SCHACHTER:

21 Q Just, do you know if icy hot, heating pads or icy hot
22 or other hair dye?

23 A No.

24 Q -- set off the alarm?

1 A No.

2 Q Do you know if a backpack will set off the alarm?

3 A No.

4 Q You don't know or they won't set off the alarm?

5 A Not that I know of.

6 MR. SCHACHTER: That's all.

7 THE COURT: Okay. Thank you. Anything further?

8 MR. BOGALE: Not from the State.

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

10 Is this witness excused?

11 MR. SCHACHTER: Yes, ma'am.

12 THE COURT: You are excused.

13 Call your next witness.

14 MR. BOGALE: Court's indulgence for just a moment,

15 please.

16 THE COURT: Certainly.

17 MR. BOGALE: The state calls Officer Terry West.

18 THE BAILIFF: Stand right here face the clerk.

19 (Witness Sworn)

20 THE CLERK: Thank you. Please be seated at the witness

21 stand.

22 THE COURT: You may proceed.

23 MR. BOGALE: Thank you, Your Honor.

24

1 BY MR. BOGALE:

2 Q Good morning. Please state your name and spell your
3 last name for the record.

4 A Terry West, WEST.

5 Q And how are you employed?

6 A Reno Police Department.

7 Q Okay. What's your current assignment?

8 A Currently I'm in traffic.

9 Q How long have you been with the Reno Police Department?

10 A Since September of 2005.

11 Q Okay. And so about nine years?

12 A Correct.

13 Q Let me direct your attention to June 9th of this year,
14 2014. Were you still on traffic as you are now or were you on a
15 different assignment?

16 A No, I was in patrol.

17 Q Okay. And what was your beat, like what was your
18 patrol area?

19 A The northwest.

20 Q Northwest of Reno?

21 A Correct.

22 Q Did you respond to a call or did you respond to a call
23 that day?

24 A Correct. Numerous calls.

1 Q Did you respond to one on west Seventh Street?

2 A I did.

3 Q Was that at the Walmart?

4 A Correct.

5 Q What was the report?

6 A It was, initial report I believe was two subjects
7 fighting in the parking lot. And then as I continued, it kept
8 getting updated with more information.

9 Q What other information was that?

10 A And it came out as loss prevention fighting with a
11 subject. And then we had other witnesses call saying it was two
12 people fighting in the parking lot.

13 Q Okay. Now did you, did you ultimately arrive at the
14 Walmart?

15 A Correct.

16 Q Were you with any other officers?

17 A Yeah. I was a double unit that day with Officer
18 Daniels.

19 Q Okay. When you got to the scene, what did you see?

20 A Initially I observed Alex, their loss prevention
21 officer at that Walmart, I'm familiar with him from being there
22 before.

23 And then Mr. Schachter in the parking lot, the
24 defendant was sitting on the curb line and Alex was standing near

1 him waiving us down.

2 Q So you're familiar with Alex, you said?

3 A Correct. I've been to that Walmart numerous times.

4 Q That was you're?

5 A Correct.

6 Q And what were the calls usually when you got from Alex?

7 A They are almost always an in custody for a theft of
8 some type.

9 Q Okay. Now, when you got on scene, did you talk to
10 Alex?

11 A I did, correct.

12 Q Okay. And what did he tell you?

13 A After everything was calmed down, we had separated the
14 defendant and Alex. He told me that the defendant come until the
15 store selected items on the shovel con accepted them in a back
16 back paid for some items and left the store and that's where he
17 contacted him outside. Once he contacted him there was a
18 struggle over the backpack and the defendant had grabbed his
19 thumb and twisted the it over backwards. And eventually I think
20 they both just kind separated away just prior to our arrival.

21 Q What did you do after you got that information?

22 A The defendant was taken to a patrol car by Officer
23 Daniels. I responded to the loss prevention office with Alex.
24 And then we reviewed the, the surveillance footage that they had

1 and evidence that they had there.

2 Q Did you get a chance to actually look at the backpack
3 that you mentioned previously?

4 A Correct.

5 Q Did you get a chance to look at the items inside the
6 backpack?

7 A I did.

8 Q Okay. Let's talk about those for a moment?

9 A Okay.

10 Q What was the condition of the backpack?

11 A It was new. It was still like the feel of it was still
12 very crispy like it hadn't had any use. It was still very
13 compressed, flat. There wasn't any tags or anything on it. It
14 didn't have any mark, stains, tears anything like that.

15 Q Do you know if the bag was checked through all the
16 pockets?

17 A Yeah. The exterior pockets were empty, the interior
18 pocket was opened in the loss prevention office. So there was
19 contents in there that was opened by Alex.

20 Q Was there any like personal identifying information in
21 the backpack?

22 A No.

23 Q So do you know what else happened to the backpack?

24 A It was recovered by loss prevention.

1 Q Why didn't you recover it as an officer?

2 A So when we respond to say like Walmart for examination
3 examination in this case they recover their own products. It's
4 not a unique them per se that somebody brought in that doesn't
5 belong to them. They had already recovered their losses. And we
6 get an itemized receipt showing what those losses were, so we're
7 not a detriment to their products.

8 If we collected everything that was stolen from grocery
9 stores our evidence would be overloaded enormously. Petit
10 larcenies and grand larcenies and other calls of theft are big
11 part of what we respond to. So basically our procedure is to
12 collect an itemized receipt of what was taken and as well as
13 video surveillance if it's available. And other things like
14 that. Now if we recover the product later on, say away from the
15 store then most times we will collect it if we can't return it to
16 the owner.

17 Q Did you collect an evidence receipt in this case is
18 that what you called it?

19 A Correct.

20 Q Court's indulgence.

21 THE COURT: Yes.

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

23 THE COURT: You may.

24 BY MR. BOGALE:

1 Q I'm going to show you here what's been marked and
2 admitted here as Exhibit 8.

3 A Uh-huh.

4 Q Can you take a look at that for me. Have you had a
5 chance to review that?

6 A Yes.

7 Q Do you know what that is?

8 A This is the itemized receipt basically showing what was
9 recovered.

10 Q Okay. And what does that itemized receipt show?

11 A You want me to describe the items on it?

12 Q Let me grab it back and I'll put it up on the video
13 screen.

14 A Okay.

15 MR. SCHACHTER: Your Honor.

16 MR. SCHACHTER: Has it been admitted? It's been
17 published already.

18 THE COURT: Yes, this is Exhibit 8, correct?

19 MR. BOGALE: Yes.

20 THE COURT: And that was previously admitted.

21 Oh, no Exhibit 8 has not been admitted. It was
22 admitted under Anna Young.

23 THE COURT: Okay. I just missed her. Exhibit 8, then,
24 the clerk says had been previously admitted.

1 MR. BOGALE: May I publish this, Your Honor?

2 THE COURT: You may.

3 BY MR. BOGALE:

4 Q Try to get a good view here of it for you.

5 A I can see it.

6 Q Okay. So so this is the itemized receipt?

7 A Correct.

8 Q What does it show on there?

9 A Shows the four items that were recovered out of the
10 backpack. Or I'm sorry three items out the backpack and the
11 backpack itself.

12 Q And at the very top there are some numbers?

13 A Correct.

14 Q Can you tell me what those numbers are?

15 A That's our Reno Police Department specific case number.

16 Q That's the indicates number you sign to the case?

17 A Yes we contact dispatch dispatch assigns the case
18 number.

19 Q Okay. So this is a copy, right?

20 A Correct.

21 Q And what is the total value, I guess, of those four
22 items on the bag?

23 A \$99.61.

24 Q That's the subtotal, correct?

1 A Correct. That's what we use as our value. We don't
2 use it as taxed. The property is recovered.

3 Q What would it have been if it was taxed?

4 A \$107.30.

5 MR. BOGALE: No further questions at this time Your
6 Honor. Thank you.

7 THE COURT: Okay. Cross-examination.

8 MR. SCHACHTER: Yes, Your Honor.

9 BY MR. SCHACHTER:

10 Q You testified that when you originally pulled up I was
11 sitting on the curb. I didn't quite --

12 A You were near the curb, I believe hunched over kind of
13 like in a semi-squatting position.

14 Q When you originally arrived there was no physical
15 altercation going on?

16 A Correct.

17 Q And you said you personally checked the backpack? You
18 said you checked the pockets?

19 A In loss prevention's office, yes.

20 Q But you never took custody, you just looked at it while
21 it was in the loss prevention office?

22 A What do you mean by took custody of it.

23 Q You never actually had it it was just on the bench?

24 A I had it in my hand. I opened all the pockets holding

1 it in my hand.

2 Q And there was absolutely nothing?

3 A What do you mean? Describe nothing?

4 Q Nothing is nothing, as opposed to anything, individual
5 item, anything. Was there anything in the pocket other than air?

6 A Are you talking about like personal items or any
7 objects?

8 Q Any objects.

9 A In the outside pocket, no.

10 Q Any object anywhere?

11 A In the main pocket, yes.

12 Q What was in there?

13 A The items that are listed on the receipt there.

14 Q And that's it?

15 A Correct and the package.

16 A Of those items.

17 Q So there was no little squares to keep the moisture
18 out? You said it was in like-new condition. That's why I ask.

19 A Like the packets.

20 Q Like the packets?

21 A I don't recall those being in there. I didn't look for
22 them either.

23 Q Do you remember how many pockets you searched?

24 A I don't remember exactly. I believe it's three. I

1 believe there's small ones and a medium sized once and the main
2 pocket.

3 Q Go ahead and describe the backpack as you remember it.

4 A I couldn't do that for you. I could not describe what
5 it looks like short of seeing a picture of it. It's been a
6 little bit of time.

7 Q You said there were three pockets with separate zippers
8 and all that?

9 A Correct.

10 Q On this original call, was it originally a robbery
11 call, petit larceny call?

12 A Originally it was a fight.

13 Q Just a fight. Not -- okay.

14 MR. SCHACHTER: Your Honor, can I have -- this hasn't
15 been marked.

16 THE COURT: You want something marked?

17 Mr. Hylin, will you assist with that please?

18 MR. HYLIN: Sure.

19 MR. SCHACHTER: This is arrest for probable cause.

20 THE CLERK: Exhibit 20 marked. And it's two pages,
21 correct? It's not two different items?

22 MR. HYLIN: That's correct.

23 THE CLERK: Thank you.

24 (Exhibit 20 was marked for identification.)

1 MR. SCHACHTER: Can we show --

2 THE COURT: You have to show it to counsel. Mr. Hylin,
3 can you show them.

4 MR. HYLIN: Yeah, I think he did already, but that's
5 fine, Your Honor.

6 If I may approach.

7 THE COURT: You may.

8 BY MR. SCHACHTER:

9 Q You recognize that document,?

10 A The probable cause sheet?

11 Q Yes.

12 A Correct.

13 Q And the other sheet is?

14 A And the other sheet would be the declaration page.

15 Q Okay. And you -- how do you recognize that?

16 A As a copy of an original.

17 Q But is it, is it something that you filled out?

18 A Officer Daniels filled this probable cause sheet out.

19 Q And at the bottom where it says declarant?

20 A Yep.

21 Q Whose name is on it?

22 A That is mine.

23 Q But you didn't fill it out?

24 A The probable cause sheet, no.

1 Q Who is on the probable cause -- you're talking about
2 the declaration, right?

3 A No. I'm talking about the probable cause. I did the
4 declaration.

5 Q Okay.

6 A The probable cause sheet is your booking sheet and
7 Officer Daniels filled that out in the car while you were with
8 him.

9 Q Okay. So but you filled out the declaration part?

10 A Correct, later on.

11 Q On the declaration part, let's go to that then. Would
12 you read it for the jury?

13 A Verbatim.

14 Q Yes, please.

15 MR. BOGALE: Your Honor, I would object. It hasn't
16 been admitted.

17 MR. SCHACHTER: Oh, I'm sorry. Can we admit it?

18 THE COURT: Are you offering it?

19 MR. SCHACHTER: I am, Your Honor.

20 THE COURT: Any objection?

21 MR. BOGALE: No objection, Your Honor.

22 THE COURT: Okay. Then Exhibit 20 is admitted.

23 (Exhibit 20 was admitted into evidence.)

24 THE COURT: Now do you have a question?

1 BY MR. SCHACHTER:

2 Q If you wouldn't mind reading the declaration.

3 A Okay. On 06-09-2014, I responded to 5260 West Seventh
4 Street on the report of a petit larceny, where the suspect was
5 fighting security. Upon arrival I observed two Walmart loss
6 prevention employees attempting to detain arresting Marc
7 Schachter on the north side of the parking lot. Upon detaining
8 Marc and speaking with loss prevention, employees Alejandro
9 Monroy and Anna Young, it was learned that Marc had entered
10 Walmart, removed a backpack from the shelf and began placing
11 other products in the backpack.

12 Marc approached a register on the north side of the
13 store and paid for two items that were not in the backpack. As
14 Marc exited the store Alejandro and Anna contacted Marc who began
15 denying stealing anything.

16 As Alejandro attempted to take the backpack from Marc,
17 Marc began pushing and shoving Alejandro from him attempting in
18 to flee in an effort to retain the stolen property.

19 The struggle continued for approximately one minute
20 with Marc continuing to push and elbow Alejandro in an effort to
21 steal the property. Alejandro was finally able to get the
22 backpack from Marc shortly before the police arrived.

23 The stolen property told \$99.61 and had already been
24 recovered by Alejandro upon our arrival. Based on Marc fighting

1 with Alejandro to retain the stolen property, he was transported
2 booked at Washoe County Sheriff's office without incident for the
3 listed charge of attempted robbery.

4 Q Thank you. So is that a report of a petit larceny?

5 A Correct.

6 Q Not a fight?

7 A Are you familiar with how our declaration supplements
8 are written?

9 Q No.

10 A It's a summarized version of what happens. The report
11 details everything and how we went there. The declaration
12 supplement is initially the probable cause for our arrest.

13 Q You're talking about your original arrest report, is
14 that it, when you say --

15 A As far as detail?

16 Q Yeah, the detail?

17 A Yeah, correct.

18 Q That's on here.

19 A The declaration establishes why I was there.

20 Q Okay. And so when when you say as Marc exited the
21 store Alejandro and Anna contacted Marc who began denying
22 stealing anything, where did that information come from?

23 A From Alejandro and Anna.

24 Q So they told you, right? Was that while everything was

1 still in the parking lot or in the office?

2 A In the office. If you remember, we weren't out in the
3 parking lot for very long with everybody.

4 Q No. Can I get one moment, Your Honor?

5 THE COURT: You may.

6 BY MR. SCHACHTER:

7 Q You said it's procedure not to recover the property if
8 it's either like new or it's Walmart property. Is that something
9 specific to Walmart or to all retail?

10 A It doesn't necessarily condition on the condition of
11 the item, it's whether it's recovered by them prior to our
12 arrival. It was already recovered prior to us getting there.
13 They had recovered their own property.

14 Q Did you think it was evidence?

15 A That's why it was -- yes, it's evidence.

16 Q But not evidence that should be recovered or retained
17 by you, by the police department, when I say you?

18 A So it's recovered by them, prior to our arrival. And
19 it's not a unique item. It's an item that you could go to
20 Walmart and get off of their shelf right now. If you needed a
21 physical did I play for that item.

22 Q What about as to examination, fingerprints, or maybe
23 there was another price tag from a different store, anything like
24 that?

1 A Well, if that was located in there, then we would have
2 collected that. If it was something not unique to Walmart. And
3 Alex identified that as being their store property, that they had
4 recovered that.

5 Q So the individual items that you say were in the
6 backpack, like the hair dye, that's unique to Walmart, is that
7 what you're saying?

8 A No, it's not unique, it's not something else that was
9 brought into the store that's not theirs.

10 Q But it could have been bought at -- across the street
11 at Walgreens?

12 A Sure. It could have been bought at any Walmart across
13 the United States.

14 Q Exactly. So that's Reno Police Department policy?

15 A There's no policy outlining it as far as the evidence
16 collection based on the crime. If it's recovered by them, which
17 is the same reason we don't keep stolen cars in evidence for
18 months, because people need their stuff back.

19 Okay. So if it was something say that had been brought
20 in from the outside that and wasn't Walmart's, then we would have
21 collected that, because that didn't belong to Walmart and Alex is
22 a representative for Walmart.

23 Q And did you -- did you look at the video after any of
24 the incident after I was in the patrol car and you were in the

1 office with the Walmart employees?

2 A Video of the this incident?

3 Q Video of the whole incident.

4 A Yes.

5 Q Do you remember what videos or what was depicted on the
6 videos?

7 A What do you mean, what videos.

8 Q You just said you looked at video of the incident when
9 you were in the store after my arrest and while you were in the
10 loss prevention office, right?

11 A Uh-huh.

12 Q Okay. What did you see on those videos? Do you
13 remember?

14 A Okay. So I'll tell you what I saw, and then you can I
15 guess ask me from there. Alex and Anna showed me video of you in
16 the store in the different departments, selecting some items,
17 pulling some stuff out of the package and looking it and then
18 placing it in the backpack.

19 And then you were in the store a little while longer.
20 You went to the north side, which I guess is considered the
21 garden area and paid for two items in the backpack and then
22 walked out of the store, the exit.

23 Without seeing the video again I can't tell you exact
24 specifics, because there's been a little bit of a time since.

1 Q Right. But you say there's video of me putting items
2 in the backpack?

3 A There's video of you in the area. And then I have Alex
4 depicting what he watched in the video or in person. I don't
5 know where he was in the store at the time.

6 Q What about Ms. Young, did she tell you that she saw?

7 A I don't recall.

8 Q Putting items in the backpack?

9 A I don't recall.

10 Q Do you -- did you personally see any video or can you
11 remember any video of me not with the backpack?

12 A No. Other than after Alex had got it from you. That
13 was the only time during the video.

14 Q Was that on video? Did you see that video or --

15 A From the parking lot view?

16 Q Yeah.

17 A Yeah. The parking lot view video, yes correct.

18 Q Did you take any photos of the merchandise that was
19 alleged to be stolen?

20 A I did not, no.

21 Q So evidence because --

22 A I believe, I don't know if there's a VeriPic tab in our
23 Tiburon system.

24 Q Is there --

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

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

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

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

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

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

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

23 Q Okay.

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

1 Q Are you familiar with NRS 205295?

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

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

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

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

13 MR. SCHACHTER: Okay.

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

17 MR. SCHACHTER: No.

18 BY MR. SCHACHTER:

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

21 A Stealing them or concealing them?

22 Q Either one.

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

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

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

5 A During the video or after?

6 Q From the video.

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

12 Q But more than one item?

13 A In the backpack?

14 Q Opening, opening the items.

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

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

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

23 MR. SCHACHTER: Nothing further.

24 THE COURT: Anything further?

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

2 BY MR. BOGALE:

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

4 A I do.

5 Q Okay.

6 THE CLERK: Exhibit 21 marked.

7 BY MR. BOGALE:

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

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

13 A It would.

14 Q Okay.

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

16 THE COURT: You may.

17 BY MR. BOGALE:

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

20 A Okay.

21 Q Tell me when you're done.

22 A Okay.

23 Q Have you had a chance to review that?

24 A Yep.

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

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

4 Q So you never took any photos?

5 A No.

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

8 A With the receipt, correct.

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

10 THE COURT: Anything further, Mr. Schachter?

11 BY MR. SCHACHTER:

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

13 A It would have been either Alex or Anna.

14 Q You don't remember?

15 A No.

16 MR. SCHACHTER: Nothing further.

17 THE COURT: May this witness be excused?

18 MR. BOGALE: He may, Your Honor.

19 MR. SCHACHTER: Subject to recall.

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

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

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

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

11 Jury excused.)

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

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

16 THE COURT: Okay. And who is that?

17 MR. BOGALE: Keisha Ellis.

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

21 MR. HYLIN: He's already here.

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

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

1 Your Honor.

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

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

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

9 MR. SCHACHTER: Right. I understand.

10 THE COURT: Okay. You understand that?

11 MR. SCHACHTER: Um-hum.

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

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

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

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

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

5 THE COURT: Okay. All right.

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

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

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

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

20 MR. HYLIN: Thank you, Your Honor.

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

22 (Lunch recess taken)

23 --o0o--

AFTERNOON SESSION

--o0o--

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

No. We can bring the jury back in?

MR. BOGALE: Yes.

THE COURT: Okay. Is the jury all here?

THE BAILIFF: Yes, they are, Your Honor.

THE COURT: Okay. You can bring them back in.

Counsel, Mr. Schachter will you stipulate to the presence of the jury?

MR. BOGALE: Yes, Your Honor.

MR. SCHACHTER: Yes, Your Honor.

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

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

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

THE COURT: She's on my witness list.

MR. SCHACHTER: Oh.

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

MR. SCHACHTER: My apologies.

(Witness Sworn)

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

3 BY MR. BOGALE:

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

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

7 Q Good afternoon, Ms. Ellis?

8 A Good afternoon.

9 Q Where are you employed?

10 A At the Washoe County detention facility.

11 Q And what do you do there?

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

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

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

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

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

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

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

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

15 A Yes.

16 THE CLERK: Exhibit 22 marked.

17 (Exhibit 22 was marked for identification.)

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

20 THE COURT: You may.

21 MR. BOGALE: Thank you.

22 BY MR. BOGALE:

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

1 A Thank you.

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

3 A Okay.

4 Q Okay. What is that?

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

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

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

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

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

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

14 A Yes, they are.

15 Q Okay. Is your handwriting on there?

16 A Yes.

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

19 A Yes.

20 Q Okay. Is your badge number on there?

21 A Yes, it is.

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

23 THE COURT: 28? 22.

24 MR. BOGALE: 22.

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

2 MR. SCHACHTER: No, Your Honor.

3 THE COURT: Exhibit 22 is admitted.

4 (Exhibit 22 was admitted into evidence.)

5 BY MR. BOGALE:

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

7 A You're welcome.

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

10 A Yes, I was.

11 Q Were you working at intake that day?

12 A Yes.

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

17 A Yes.

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

20 A Yes.

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

23 A He is sitting here wearing the blue shirt.

24 Q Is he wearing a jacket?

1 A No.

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

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

5 BY MR. BOGALE:

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

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

17 Q Okay.

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

19 THE COURT: You may.

20 BY MR. BOGALE:

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

23 A Okay.

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

1 Is there a date on here?

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

3 Q What's the date?

4 A June 9th, 2014.

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

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

12 Q And is this your handwriting?

13 A Yes, it is.

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

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

18 Q And what's 3277?

19 A That is my badge number.

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

24 A Yes, it does.

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

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

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

6 THE COURT: Cross-examination.

7 BY MR. SCHACHTER:

8 Q Again where it said miss C and P?

9 A Correct.

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

12 A Yes, that's correct.

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

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

17 THE COURT: Stained.

18 BY MR. SCHACHTER:

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

21 A Correct.

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

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

1 not speculation. You can answer the question.

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

5 MR. SCHACHTER: Nothing further.

6 THE COURT: Anything further?

7 MR. BOGALE: Nothing further?

8 THE COURT: May this witness be excused?

9 MR. BOGALE: She may.

10 MR. SCHACHTER: She may.

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

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

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

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

23 THE COURT: Okay. Mr. Schachter.

24 MR. SCHACHTER: We call Scott Yoder.

1 THE COURT: Okay.

2 (Witness Sworn)

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

5 THE COURT: You may proceed.

6 BY MR. SCHACHTER:

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

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

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

13 A Is Walmart.

14 Q And which Walmart is that?

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

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

18 A Store manager.

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

21 A Yes.

22 Q Okay. Including asset prevention?

23 A Yes, to an extent.

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

1 here?

2 A No.

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

4 A Not at all.

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

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

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

10 A Right.

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

12 A Not a report, no.

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

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

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

19 A Not at all.

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

23 A I don't understand the question.

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

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

3 A I'm not familiar with that policy.

4 Q Um-hum?

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

7 Q Are you familiar with Ms. Anna young?

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

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

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

15 Q Can I get one moment, Your Honor?

16 THE COURT: You may.

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

20 THE WITNESS: Thank you.

21 BY MR. SCHACHTER:

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

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

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

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

6 A From a policy standpoint.

7 Q Okay.

8 A Not specific, no.

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

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

15 Q Okay. Nothing further, Your Honor.

16 THE COURT: Any cross-examination?

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

19 BY MR. BOGALE:

20 Q Good afternoon, Mr. Yoder.

21 A Afternoon.

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

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

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

3 A Yes.

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

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

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

10 A Correct.

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

13 A Yes.

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

15 A No.

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

18 A Yes, that would be accurate.

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

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

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

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

2 A No.

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

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

6 Q Explain shrinkage for the jury?

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

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

15 A Yes.

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

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

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

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

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

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

7 A No, it's broad.

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

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

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

14 THE COURT: Anything further?

15 MR. SCHACHTER: Yes, Your Honor.

16 THE COURT: Okay.

17 BY MR. SCHACHTER:

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

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

23 A Could you repeat that again please.

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

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

4 A No, I didn't.

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

6 THE COURT: Anything further?

7 MR. BOGALE: Nothing further, Your Honor.

8 THE COURT: May this witness be excused.

9 MR. SCHACHTER: He may, Your Honor.

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

11 THE WITNESS: Thank you.

12 THE COURT: Mr. Schachter.

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

15 THE COURT: Okay. Officer West, please.

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

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

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

24 (Discussion held off the record.)

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

3 If we can take a brief recess.

4 THE COURT: We'll take a break.

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

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

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

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

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

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

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

13 MR. HYLIN: Oh, the grand larceny?

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

15 MR. SCHACHTER: Perfect.

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

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

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

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

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

8 So we'll be in recess.

9 (Recess taken)

10 THE COURT: Thank you. Please be seated.

11 Mr. Schachter, the clerk tell tells me that maybe you don't want
12 to wait for Officer West.

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

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

19 MR. SCHACHTER: I understand.

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

23 MR. SCHACHTER: Absolutely.

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

1 MR. SCHACHTER: Yes, Your Honor.

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

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

6 THE COURT: You will request --

7 MR. SCHACHTER: Yes, please.

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

12 MR. SCHACHTER: Okay.

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

15 MR. BOGALE: No, Your Honor.

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

18 (Proceedings in the presence of the jury.)

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

21 MR. BOGALE: Yes, Your Honor.

22 THE COURT: Mr. Schachter.

23 MR. SCHACHTER: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (Jury excused for the day).

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

14 MR. SCHACHTER: I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 THE COURT: Right. Yes.

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

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

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

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

12 MR. BOGALE: Yes, Your Honor.

13 THE COURT: Mr. Schachter.

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

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

20 27 it is your duty as jurors.

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

24 Then we have verdict forms, which based upon this

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

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

6 THE COURT: Correct.

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

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

10 MR. HYLIN: Oh, I would never.

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

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

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

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

19 THE COURT: Okay.

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

23 THE COURT: I heard your argument.

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

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

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

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

12 THE COURT: Okay. Mr. Hylin.

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

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

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

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

19 THE COURT: Yes.

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

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

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

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

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

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

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

10 MR. SCHACHTER: No objection to the spelling.

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

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

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

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

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

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

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

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

8 THE COURT: So everybody agrees with that?

9 MR. BOGALE: Yes.

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

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

14 MR. SCHACHTER: I thought that was strange.

15 THE COURT: Okay. So anything else?

16 Mr. Bogale, for the State?

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

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

19 MR. SCHACHTER: No, Your Honor.

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

21 MR. SCHACHTER: No, Your Honor.

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

23 MR. BOGALE: None, Your Honor.

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

1 MR. SCHACHTER: No, Your Honor.

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

6 MR. BOGALE: Yes.

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

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

17 Thank you.

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

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

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

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

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

5 MR. BOGALE: I stipulate.

6 THE COURT: Mr. Schachter?

7 MR. SCHACHTER: So stipulated.

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

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

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

12 --o0o--
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1 STATE OF NEVADA)
) ss.
2 COUNTY OF WASHOE)

3
4 I, EVELYN J. STUBBS, official reporter of the
5 Second Judicial District Court of the State of Nevada, in and for
6 the County of Washoe, do hereby state:

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

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

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

21
22
23 /s/ Evelyn Stubbs
 EVELYN J. STUBBS, CCR #356
24

Return Of NEF**Recipients**

ZELALEM BOGALE, ESQ. - Notification received on 2015-02-11 11:47:15.076.

JENNIFER LUNT, ESQ. - Notification received on 2015-02-11 11:47:15.232.

JARROD HICKMAN, ESQ. - Notification received on 2015-02-11 11:47:15.264.

KELLY KOSSOW, ESQ. - Notification received on 2015-02-11 11:47:15.139.

DIV. OF PAROLE & PROBATION - Notification received on 2015-02-11 11:47:15.17.

NICKOLAS GRAHAM, ESQ. - Notification received on 2015-02-11 11:47:15.201.

******* 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:

02-11-2015:11:46:08

Clerk Accepted:

02-11-2015:11:46:42

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Transcript
Transcript

Filed By:

Lynn Stubbs

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SCHACHTER

JENNIFER L. LUNT, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

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1 CODE 2490
JENNIFER LUNT, BAR# 3057
2 WASHOE COUNTY ALTERNATE PUBLIC DEFENDER
JARROD T. HICKMAN, BAR# 12772
3 MARC PICKER, BAR #3655
P.O. BOX 11130
4 RENO, NV 89520-2083
775-328-3955
ATTORNEY FOR DEFENDANT

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

7
8 THE STATE OF NEVADA,
Plaintiff,

Case No. CR14-1044

9 vs.

Dept. No. 4

10 MARC PAUL SCHACHTER
Defendant.
11 _____/

12 **SENTENCING MEMORANDUM**

13 COMES NOW, MARC PAUL SCHACHTER, by and through his attorneys, Jarrod T.
14 Hickman, Deputy Alternate Public Defender, and Marc Picker, Deputy Alternate Public
15 Defender, hereby submits to the court this Sentencing Memorandum to be considered in
16 addition to argument, papers and pleading on file or as may be presented at the Sentencing
17 Hearing scheduled for February 26, 2015 at 1:30 p.m.

18 DATED this 20th day of February, 2015.

19 By /s/ Jarrod T. Hickman
Jarrod T. Hickman
20 Deputy Alternate Public Defender

21 By /s/ Marc Picker
22 Marc Picker
23 Deputy Alternate Public Defender
24

POINTS AND AUTHORITIES

In *Dressler v. State*, 107 Nev. 686, 819 P.2d 1288 (1991), the Nevada Supreme Court outlined the standard for the use of prior felony convictions for enhancement purposes.

Consistent with established Nevada law, in order to use a prior felony conviction for enhancement purposes, the state's initial burden of production shall be satisfied if the state presents *prima facie* evidence of the existence of the prior conviction. Such evidence of a prior conviction shall be admitted for enhancement purposes so long as the record of that conviction does not, on its face, raise a presumption of constitutional infirmity. If the record raises a presumption of constitutional infirmity, the state must present evidence to prove by a preponderance that the prior conviction was constitutionally obtained.

If the record does not raise a presumption of constitutional infirmity, the defendant is nonetheless free to present evidence tending to rebut the presumption of regularity afforded to a criminal conviction.

Dressler, 107 Nev. at 697-98, 819 P.2d at 1295-96.

A certified copy of a felony conviction is *prima facie* evidence of a prior felony conviction. NRS 207.016(5).

The appropriate standard of review in evaluating the validity of a prior felony conviction pursuant to a guilty plea focuses on the state of the record as a whole and is set forth in *Bryant v. State*, 102 Nev. 268, 721 P.2d 364 (1986) *superseded by statute on other grounds as stated in Hart v. State*, 116 Nev. 558, 562, 1 P.3d 969, 971 (2000). *Id.* at 107 Nev. at 696-98, 819 P.2d at 1294-96 n.6, 7.

Previously Marked Exhibit 4 – Case Number E9171929, Santa Clara, California

State's previously marked Exhibit 4 is constitutionally infirm as it does not demonstrate a valid waiver of Mr. Schachter's constitutional rights pursuant to a plea of guilty. The exhibit tendered by the State consists of a minute order with check boxes, indicating that Mr. Schachter "waive[d] rights." However, the minute order lacks any specificity as to an

1 advisement and/or waiver of any specific right. The exhibit does not include any record of a
 2 written plea agreement detailing the advisement and/or waiver of specific rights. The exhibit
 3 further lacks any transcript of a plea canvass detailing the advisement and/or waiver of specific
 4 rights.

5 In *Boykin v. Alabama*, the United States Supreme Court found
 6 Several federal constitutional rights are involved in a waiver that takes place
 7 when a plea of guilty is entered in a state criminal trial. First, is the privilege
 8 against compulsory self-incrimination guaranteed by the Fifth Amendment and
 applicable to the States by reason of the Fourteenth. Second, is the right to trial
 by jury. Third, is the right to confront one's accusers. *We cannot presume a*
waiver of these three important federal rights from a silent record.

9 395 U.S. 238, 243 (1969) (emphasis added); *but cf. State v. Freese*, 116 Nev. 1097, 13 P.3d 442
 10 (2000) (reversing district court order granting post-conviction petition for a writ of habeas
 11 corpus because totality of the record, including written plea agreement, demonstrated that
 12 defendant was specifically advised and waived constitutional rights).¹

13 Likewise, this exhibit is silent as to any advisement and/or waiver of Mr. Schachter's
 14 right against self-incrimination, trial by jury, confrontation, and compulsory process. As such,
 15 the record is constitutionally insufficient to enhance a sentence under the habitual criminal
 16 statute.

17 State's previously marked Exhibit 4 is also deficient because it lacks any evidence that
 18 the due process right to be provided notice of the charges against Mr. Schachter were satisfied.

19 "A defendant must enter a guilty plea with real notice of the true nature of the offense

20
 21 ¹ In *Freese*, the issue was whether the defendant knowingly and intelligently entered a guilty plea,
 22 not whether a judgment of conviction was constitutionally sufficient for enhancement purposes.
 23 Nevertheless, the standard of review in both situations is a totality of the record. See *Freese*, 116
 24 Nev. at 1104, 13 P.3d at 447; *Dressler*, at 107 Nev. at 696-98, 819 P.2d at 1294-96 n.6, 7. Likewise,
 the inquiry in cases, such as *Freese*, challenging whether a guilty plea was knowingly and
 voluntarily entered often involve questions as to whether the defendant understood and waived
 constitutional rights. While cases such as *Freese* may not be directly on point, their analysis is
 instructive as to whether a record of conviction facially demonstrates waiver of constitutional
 rights.

1 charged.” *Hurd v. State*, 114 Nev. 182, 187, 953 P.2d 270, 273 (1998). Both the Nevada and
2 United States Supreme Courts have found that the concept of notice is a matter of due process.
3 See *Bryant v. State*, 102 Nev. 268, 270, 721 P.2d 364, 366 (1986), *superseded by statute on*
4 *other grounds as stated in Hart v. State*, 116 Nev. 558, 562, 1 P.3d 969, 971 (2000), *citing*
5 *Smith v. O’Grady*, 312 U.S. 329, 334 (1941). The state’s exhibit lacks any indicia that Mr.
6 Schachter was arraigned or otherwise informed of charge and its elements by written plea
7 canvass or oral canvass. See *Hurd*, 114 Nev. at 187-88, 953 P.2d at 273-74 (finding that guilty
8 plea valid because plea memorandum adequately explained factual basis and elements of the
9 charges); *but cf. People v. Sturdy*, 235 Cal.App.2d 306, 312 (1965) (judgment void where
10 defendant not arraigned or called upon to enter plea). As such, the face of the record
11 demonstrates that Mr. Schachter’s due process right to notice was also lacking.

12 Previously Marked Exhibit 5 - Case Number 86-863893, Suffolk County, New York

13 Similarly, this exhibit raises a presumption of constitutional infirmity as it does not
14 demonstrate a valid waiver of Mr. Schachter’s trial rights. The records produced by the state
15 include a certified sentence extract, statement on plea, and indictment. The record is silent as
16 to any meaningful waiver of the Sixth Amendment rights to trial, confrontation, compulsory
17 process, as well as the Fifth Amendment right against self-incrimination. See *Boykin, supra*.
18 The record fails to demonstrate that those rights were even discussed in the related proceedings.

19 Additionally, Exhibit 5 must be considered, if at all, as one conviction for habitual
20 criminal enhancement purposes. “[W]here two or more convictions result from the same act,
21 transaction or occurrence, and are prosecuted in the same indictment or information, those
22 several convictions may be utilized only as a single prior conviction for purposes of the
23 habitual criminal statute.” *Halbower v. State*, 96 Nev. 210, 210, 606 P.2d 536, 537 (1980).

1 Here, Exhibit 5 shows that each count arose from the same indictment. However, the state's
2 Amended Information lists each count as a separate and distinct conviction. Should the Court
3 find the record sufficient for use a prior conviction, it may only be used as a single conviction
4 for enhancement purposes.

5 Exhibit Number Unknown – Case Number BA-031490-01, Los Angeles, California

6 This exhibit is likewise constitutionally insufficient to enhance Mr. Schachter's
7 sentence. The exhibit contains a handwritten chronology of proceedings, two almost illegible
8 documents that may pertain to sentencing, a felony complaint, and a transcript of a preliminary
9 hearing. While the documents note the appointment of an attorney and the presence of counsel
10 during a preliminary hearing, the record is silent as to whether Mr. Schachter entered a plea of
11 guilty with counsel. It is likewise silent as to advisement and waiver of the aforementioned
12 constitutional trial rights. *See Boykin, supra*. Finally, the record contains no guilty plea
13 agreement or memorandum. It is impossible, from the face of the proffered exhibit, to know
14 whether Mr. Schachter was aware of his constitutional rights, whether he waived them, whether
15 he understood the crime to which he pled guilty, and if an attorney was present at the time of
16 his plea. This exhibit is constitutionally infirm on its face and cannot be used as the basis of a
17 habitual criminal enhancement.

18 ///

19 ///

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24

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 20th day of February, 2015.

By /s/ Jarrod T. Hickman
Jarrod T. Hickman
Deputy Alternate Public Defender

By /s/ Marc Picker
Marc Picker
Deputy Alternate Public Defender

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Washoe County Alternate Public Defender's Office, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, I will deposit for mailing in the U.S. Mails, with postage fully prepaid, or by interoffice mail, or by court-run delivery, or facsimile, and e-filing where indicated, a true and correct copy of the foregoing document to the following:

Zelalem Bogale
Via E-filing

DATED this 20th day of February, 2015.

/s/RANDI JENSEN

Randi Jensen

Return Of NEF**Recipients**

ZELALEM BOGALE, ESQ. - Notification received on 2015-02-20 16:42:13.48.
JENNIFER LUNT, ESQ. - Notification received on 2015-02-20 16:42:13.62.
JARROD HICKMAN, ESQ. - Notification received on 2015-02-20 16:42:13.651.
KELLY KOSSOW, ESQ. - Notification received on 2015-02-20 16:42:13.526.
DIV. OF PAROLE & PROBATION - Notification received on 2015-02-20 16:42:13.558.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-02-20 16:42:13.589.

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

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

02-20-2015:16:29:43

Clerk Accepted:

02-20-2015:16:41:41

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Memorandum

Filed By:

Jarrold T Hickman

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JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

JENNIFER L. LUNT, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

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JENNIFER LUNT, ESQ. - Notification received on 2015-02-23 16:02:09.068.
JARROD HICKMAN, ESQ. - Notification received on 2015-02-23 16:02:09.099.
KELLY KOSSOW, ESQ. - Notification received on 2015-02-23 16:02:08.959.
DIV. OF PAROLE & PROBATION - Notification received on 2015-02-23 16:02:09.005.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-02-23 16:02:09.037.

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

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

02-23-2015:14:43:48

Clerk Accepted:

02-23-2015:16:01:38

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

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JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

JENNIFER L. LUNT, 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 1850**
2
3
4
56 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
89 **STATE OF NEVADA,**10 **Plaintiff,****Case No. CR14-1044**11 **vs.****Dept. No. 4**12 **MARC PAUL SCHACHTER,**13 **Defendant.**
14 _____/**JUDGMENT**
15

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

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

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

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

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

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

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

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

Return Of NEF**Recipients**

ZELALEM BOGALE, ESQ. - Notification received on 2015-03-05 16:10:06.878.

JENNIFER LUNT, ESQ. - Notification received on 2015-03-05 16:10:07.034.

JARROD HICKMAN, ESQ. - Notification received on 2015-03-05 16:10:07.065.

KELLY KOSSOW, ESQ. - Notification received on 2015-03-05 16:10:06.94.

DIV. OF PAROLE & PROBATION - Notification received on 2015-03-05 16:10:06.972.

NICKOLAS GRAHAM, ESQ. - Notification received on 2015-03-05 16:10:07.003.

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

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

03-05-2015:16:09:02

Clerk Accepted:

03-05-2015:16:09:38

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Judgment of Conviction

Filed By:

Court Clerk MTrabert

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JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

JENNIFER L. LUNT, 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.):

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

2/26/15

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

HONORABLE

Deputy District Attorney Zelalem Bogale represented the State. Defendant

CONNIE

present with counsel, Deputy Public Defender Marc Picker. Probation

STEINHEIMER

Officer Deborah Brown present on behalf of the Division of Parole and

DEPT. NO.4

Probation.

M. Stone

Court noted receipt of the amended supplemental report from the Division of Parole and Probation.

(Clerk)

R. Malnerich

Defense counsel presented additional corrections to be made to the report as to the defendant's date of birth and criminal history.

(Reporter)

EXHIBIT 24 marked and offered by defense counsel; no objection by State's counsel; ordered admitted into evidence to show that local rules regarding objections to PSI's were followed.

COURT ENTERED ORDER striking the additional date of birth.

COURT FURTHER ENTERED ORDER denying the request as to the defendant's criminal history.

Defense counsel Picker advised the Court that the defendant does not waive any of his prior objections to the PSI.

State's counsel set forth additional corrections to be made to the PSI.

EXHIBIT 4 offered by State's counsel; objection and argument by defense counsel; ordered admitted into evidence after being found constitutionally valid to verify the existence of a prior conviction. The Court found that the defendant was represented by counsel and that his rights were protected.

Motion to Strike Exhibit 5 by defense counsel; presented argument; objection and argument by State's counsel; reply by defense counsel.

COURT ENTERED ORDER denying the Motion as the defendant had a trial set and was not promised any favors in the statement of plea when he entered his plea of guilty.

Motion to Strike Exhibit 23 by defense counsel; presented argument; objection and argument by State's counsel; reply by defense counsel.

COURT ENTERED ORDER granting Motion and Exhibit 23 will not be considered by the Court.

Respective counsel presented argument regarding the defendant being found to be a Habitual Criminal.

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**

2/26/15

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCER. Malnerich
(Reporter)

Probation Officer Brown update the report as to credit for time served and stood by the recommendation in the report.

Defendant made a statement on his own behalf.

The Court finds that the Defendant has suffered constitutionally valid previous convictions to support the adjudication of habitual criminal. In addition, after considering all factors in mitigation, the prior lectures he has received, the prior chances from the State through negotiations as well as his prior chances on parole, this Court finds that it is just and proper that the Defendant deserves to be declared a habitual criminal. Based upon those findings, this Court finds the Defendant to be a habitual criminal. The Defendant shall be sentenced as a Habitual Criminal, as defined in NRS 207.010(a).

EXHIBITS 2 and 3 ordered admitted in to evidence after having been found constitutionally valid prior convictions.

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

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

Defendant remanded to the custody of the Sheriff for transportation to the Warden.

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	No Objection	2/26/15
3.	State	Prior Conviction – Ninth Judicial District Court case no. 06-CR-00052-DC	9/11/14	No Objection	2/26/15
4.	State	Prior Conviction – Santa Clara Municipal Court case no. E9171929	9/11/14	Objection Sustained	
5.	State	Prior Conviction – Suffolk County Court case no. CC#86-863893	9/11/14	Objection Sustain	

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
23.	State	Los Angeles Superior Court case no. 8A031490-01	2/26/15	Objection Sustained	

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
24	Defendant	E-Mail communication regarding Objections to the PSI	2/26/15	No Objection	2/26/15

Return Of NEF**Recipients**

ZELALEM BOGALE, ESQ. - Notification received on 2015-03-23 13:17:19.784.
JENNIFER LUNT, ESQ. - Notification received on 2015-03-23 13:17:20.158.
JARROD HICKMAN, ESQ. - Notification received on 2015-03-23 13:17:20.189.
KELLY KOSSOW, ESQ. - Notification received on 2015-03-23 13:17:20.065.
DIV. OF PAROLE & PROBATION - Notification received on 2015-03-23 13:17:20.096.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-03-23 13:17:20.127.

******* 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:

03-23-2015:13:14:10

Clerk Accepted:

03-23-2015:13:16:34

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.

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NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

JENNIFER L. LUNT, 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 3868
JENNIFER LUNT, BAR #3057
2 ALTERNATE PUBLIC DEFENDER'S OFFICE
JARROD T. HICKMAN, BAR #12772
3 P.O. BOX 11130
RENO, NV 89520
4 (775) 328-3955
Attorney for Defendant
5

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

9 THE STATE OF NEVADA,
10

11 Plaintiff,

Case No. CR14-1044

12 MARC PAUL SCHACHTER,
13

Dept. No. 4

14 Defendant.
15

16 **REQUEST FOR ROUGH DRAFT TRANSCRIPT**

17 TO: CAPTIONS UNLIMITED

18 MARC PAUL SCHACHTER, the Defendant above, requests the following Rough Draft
19 Transcripts be prepared in regard to these certain portions of the proceedings before the District
20 Court, as follows:

21 **July 17, 2014: Rough Draft Transcript of Proceedings: Arraignment**

22 **February 26, 2015: Rough Draft Transcript of Proceedings: Sentencing**

23 This Notice requests a transcript of only those portions of the District Court proceedings
24 that counsel reasonably, and in good faith, believes are necessary to determine whether appellate
25 issues are present.

26 ///

///

///

1 Counsel recognizes that counsel must personally serve a copy of this Notice on both the
2 above-named reporter(s) and opposing counsel, and counsel further recognizes that the above-
3 named court reporter(s) has twenty (20) days from receipt of this Notice to both prepare and
4 submit the transcripts requested to counsel and the District Court.

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

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

8 DATED this 26 day of March, 2015.

9 JENNIFER J. LUNT
10 Washoe County Alternate Public Defender

11 By: 

JARROD T. HICKMAN
12 Deputy
13 Nevada Bar No. 12772
14 Washoe County Alternate Public Defender
15 Post Office Box 11130
16 Reno, Nevada 89520
17 (775) 328-3955
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office and that on this date I served a copy of the **REQUEST FOR ROUGH DRAFT TRANSCRIPTS** to the following:

CAPTIONS UNLIMITED
201 W. LIBERTY ST., STE 202
RENO, NV 89501

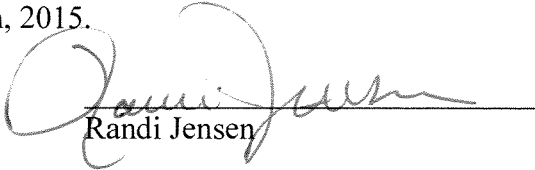
TRACIE LINDEMAN, CLERK
OFFICE OF THE CLERK
SUPREME COURT OF NEVADA
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702
Via U.S. Mail

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

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

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

DATED this 26 day of March, 2015.


Randi Jensen

1 CODE 1310
2 JENNIFER LUNT, BAR #3057
3 ALTERNATE PUBLIC DEFENDER
4 JARROD T. HICKMAN, BAR #12772
5 P.O. BOX 11130
6 RENO, NV 89520-0027
7 (775)328-3955

8 Attorney for Defendant

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

13 THE STATE OF NEVADA,

14 Plaintiff,

15 v.

Case No. CR14-1044

16 MARC PAUL SCHACHTER,

Dept. No. 4

17 Defendant.
18 _____/

19 **CASE APPEAL STATEMENT**

20 1. Appellant, MARC PAUL SCHACHTER, hereby files this Case Appeal
21 Statement;

22 2. This appeal is from a judgment of conviction entered on March 5, 2015, by the
23 Honorable Connie Steinheimer, District Court Judge;

24 3. The parties below were: (a) MARC PAUL SCHACHTER, Defendant; and (b)
25 THE STATE OF NEVADA, Plaintiff;

26 4. The parties herein are: (a) MARC PAUL SCHACHTER, Appellant; and (b)
THE STATE OF NEVADA, Respondent;

///

///

5. Counsel on appeal are:

JENNIFER J. LUNT
Washoe County Alternate
Public Defender

CHRIS HICKS
Washoe County District Attorney

JARROD T. HICKMAN
Deputy Alternate
Public Defender
P.O. Box 11130
Reno, Nevada 89509

TERRENCE MCCARTHY
Deputy District Attorney
P.O. Box 30083
Reno, Nevada 89509

6. Appellant, MARC PAUL SCHACHTER, was represented by appointed counsel in District Court;

7. Appellant, MARC PAUL SCHACHTER, is represented by appointed counsel in this appeal;

8. Not applicable; and,

9. An Information was filed on July 10, 2014, charging MARC PAUL SCHACHTER with one count of ATTEMPTED ROBBERY, a felony, one count of BURGLARY, a felony, and one count of BEING A HABITUAL CRIMINAL. On March 5, 2014, MARC PAUL SCHACHTER was sentenced by the District Court.

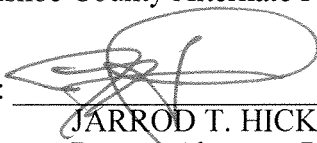
This is a fast track appeal.

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this _____ day of March, 2015.

JENNIFER J. LUNT
Washoe County Alternate Public Defender

By: 
JARROD T. HICKMAN
Deputy Alternate Public Defender

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office and that on this date I served a copy of the **CASE APPEAL STATEMENT** to the following:

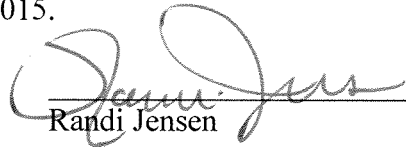
TRACIE LINDEMAN, CLERK
OFFICE OF THE CLERK
SUPREME COURT OF NEVADA
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702
Via U.S. Mail

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

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

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

DATED this 26 day of March, 2015.


Randi Jensen

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

5 Attorney for Defendant

6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9

10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

Case No. CR14-1044

13 MARC PAUL SCHACHTER,

Dept. No. 4

14 Defendant.
_____ /

15 **NOTICE OF APPEAL**

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

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

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

22 DATED this 24 ^{March} day of ~~April~~, 2015.

23 JENNIFER J. LUNT
Washoe County Alternate Public Defender

24
25 By: 
JARROD T. HICKMAN
26 Deputy Alternate Public Defender

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office and that on this date I served a copy of the **NOTICE OF APPEAL** to the following:

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

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

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

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

DATED this 26 day of March, 2015.


Randi Jensen

Return Of NEF**Recipients**

ZELALEM BOGALE, ESQ. - Notification received on 2015-03-26 16:17:48.309.

JENNIFER LUNT, ESQ. - Notification received on 2015-03-26 16:17:48.465.

JARROD HICKMAN, ESQ. - Notification received on 2015-03-26 16:17:48.496.

KELLY KOSSOW, ESQ. - Notification received on 2015-03-26 16:17:48.371.

DIV. OF PAROLE & PROBATION - Notification received on 2015-03-26 16:17:48.402.

NICKOLAS GRAHAM, ESQ. - Notification received on 2015-03-26 16:17:48.433.

******* 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:

03-26-2015:13:33:53

Clerk Accepted:

03-26-2015:16:17:17

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Request

Filed By:

Jarrold T Hickman

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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The following people were served electronically:

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

JENNIFER L. LUNT, 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.):

Return Of NEF**Recipients**

ZELALEM BOGALE, ESQ. - Notification received on 2015-03-27 09:13:14.239.
JENNIFER LUNT, ESQ. - Notification received on 2015-03-27 09:13:14.442.
JARROD HICKMAN, ESQ. - Notification received on 2015-03-27 09:13:14.489.
KELLY KOSSOW, ESQ. - Notification received on 2015-03-27 09:13:14.302.
DIV. OF PAROLE & PROBATION - Notification received on 2015-03-27 09:13:14.349.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-03-27 09:13:14.395.

******* 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:

03-26-2015:13:39:40

Clerk Accepted:

03-27-2015:09:12:37

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Notice/Appeal Supreme Court

Filed By:

Jarrold T Hickman

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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The following people were served electronically:

NICKOLAS J. GRAHAM, ESQ. for STATE OF
NEVADA

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

JENNIFER L. LUNT, 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.):

Return Of NEF**Recipients**

ZELALEM BOGALE, ESQ. - Notification received on 2015-03-27 09:13:23.225.
JENNIFER LUNT, ESQ. - Notification received on 2015-03-27 09:13:23.428.
JARROD HICKMAN, ESQ. - Notification received on 2015-03-27 09:13:23.459.
KELLY KOSSOW, ESQ. - Notification received on 2015-03-27 09:13:23.288.
DIV. OF PAROLE & PROBATION - Notification received on 2015-03-27 09:13:23.335.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-03-27 09:13:23.381.

******* 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:

03-26-2015:13:36:37

Clerk Accepted:

03-27-2015:09:12:55

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Case Appeal Statement

Filed By:

Jarrold T Hickman

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

JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

JENNIFER L. LUNT, 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.):

Code 1350

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

STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR14-1044

Dept. No. 4

MARC PAUL SCHACHTER,

Defendant.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 27th day of March, 2015, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 27th day of March, 2015

JACQUELINE BRYANT
CLERK OF THE COURT

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-03-27 11:19:38.674.
ZELALEM BOGALE, ESQ. - Notification received on 2015-03-27 11:19:38.097.
JENNIFER LUNT, ESQ. - Notification received on 2015-03-27 11:19:38.611.
JARROD HICKMAN, ESQ. - Notification received on 2015-03-27 11:19:38.643.
KELLY KOSSOW, ESQ. - Notification received on 2015-03-27 11:19:38.143.
DIV. OF PAROLE & PROBATION - Notification received on 2015-03-27 11:19:38.175.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-03-27 11:19:38.393.

******* 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:

03-27-2015:11:18:33

Clerk Accepted:

03-27-2015:11:19:04

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk YViloria

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

TERRENCE P. MCCARTHY, ESQ. for STATE OF NEVADA

JARROD T. HICKMAN, ESQ. for MARC PAUL SCHACHTER

JENNIFER L. LUNT, 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.):

CASE NO. CR14-1044

**TITLE: THE STATE OF NEVADA VS. MARC
PAUL SCHACHTER****DATE, JUDGE
OFFICERS OF****COURT PRESENT****APPEARANCES-HEARING****CONT'D TO**

3/5/15

IN-CHAMBERS CONFERENCE REGARDING JUDGMENT OF

HONORABLE

CONVICTION

CONNIE

Deputy District Attorney Zelalem Bogale represented the State. Defendant present with counsel, Deputies Alternate Public Defender Jarrod Hickman and Marc Picker.

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

Counsel noted receipt of the proposed Judgment of Conviction in the above entitled case.

Upon request of the State and no objection by the defense, **COURT ENTERED ORDER** adding the language "it is just and proper" to page two, line one of the proposed Judgment of Conviction.**COURT** directed Clerk to prepare Judgment of Conviction in accordance with the above for signature.

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-03-30 16:18:28.67.
ZELALEM BOGALE, ESQ. - Notification received on 2015-03-30 16:18:28.404.
JENNIFER LUNT, ESQ. - Notification received on 2015-03-30 16:18:28.607.
JARROD HICKMAN, ESQ. - Notification received on 2015-03-30 16:18:28.638.
KELLY KOSSOW, ESQ. - Notification received on 2015-03-30 16:18:28.482.
DIV. OF PAROLE & PROBATION - Notification received on 2015-03-30 16:18:28.514.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-03-30 16:18:28.56.

******* 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:

03-30-2015:16:17:25

Clerk Accepted:

03-30-2015:16:17:59

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

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

JENNIFER L. LUNT, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

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