

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

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Elizabeth A. Brown
Clerk of Supreme Court

MARC PAUL SCHACHTER,

Plaintiff,

vs.

STATE OF NEVADA,

Defendant.

Sup. Ct. Case No. 87040

Case No. CR14-1044

Dept. 4

RECORD ON APPEAL

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APPELLANT

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RESPONDENT

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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 manager 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)

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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

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

Judge:

HONORABLE CONNIE J. STEINHEIMER

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02-11-2015:11:46:08

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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

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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

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 ///

20 ///

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22 ///

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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

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Judge:

HONORABLE CONNIE J. STEINHEIMER

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02-20-2015:16:29:43

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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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SCHACHTER

JENNIFER L. LUNT, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

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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.

******* 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:

02-23-2015:14:43:48

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

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

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.

***** 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:

03-05-2015:16:09:02

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

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

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 present with counsel, Deputy Public Defender Marc Picker. Probation

CONNIE

Officer Deborah Brown present on behalf of the Division of Parole and

STEINHEIMER

Probation.

DEPT. NO.4

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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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.):

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

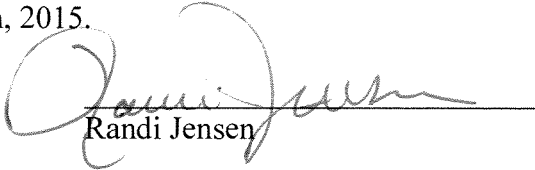
TRACIE LINDEMAN, CLERK
OFFICE OF THE CLERK
SUPREME COURT OF NEVADA
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702
Via U.S. Mail

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;

///

///

1 5. Counsel on appeal are:

2 JENNIFER J. LUNT
3 Washoe County Alternate
 Public Defender

 CHRIS HICKS
 Washoe County District Attorney

4 JARROD T. HICKMAN
5 Deputy Alternate
6 Public Defender
 P.O. Box 11130
 Reno, Nevada 89509

 TERRENCE MCCARTHY
 Deputy District Attorney
 P.O. Box 30083
 Reno, Nevada 89509

7 6. Appellant, MARC PAUL SCHACHTER, was represented by appointed counsel
8 in District Court;

9 7. Appellant, MARC PAUL SCHACHTER, is represented by appointed counsel in
10 this appeal;

11 8. Not applicable; and,

12 9. An Information was filed on July 10, 2014, charging MARC PAUL
13 SCHACHTER with one count of ATTEMPTED ROBBERY, a felony, one count of
14 BURGLARY, a felony, and one count of BEING A HABITUAL CRIMINAL. On March 5,
15 2014, MARC PAUL SCHACHTER was sentenced by the District Court.


16 This is a fast track appeal.

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

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

20 DATED this _____ day of March, 2015.

21 JENNIFER J. LUNT
22 Washoe County Alternate Public Defender

23 By: 
24 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:

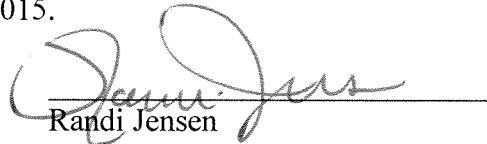
TRACIE LINDEMAN, CLERK
OFFICE OF THE CLERK
SUPREME COURT OF NEVADA
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702
Via U.S. Mail

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

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SCHACHTER

JENNIFER L. LUNT, ESQ. for MARC PAUL
SCHACHTER

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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.

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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

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SCHACHTER

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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.

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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

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SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

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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.

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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

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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.

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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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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.):

5	THE STATE OF NEVADA,)	
6	Plaintiff,)	
7	vs.)	Case No. CR14-1044
8	MARC PAUL SCHACHTER,)	Dept. No. 4
9	Defendant.)	

L1	TRANSCRIPT OF PROCEEDINGS
L2	SENTENCING
L3	FEBRUARY 26, 2015

L5 | APPEARANCES:

L6 For the Plaintiff: ZELELEM BOGALE, ESQ.
L7 Deputy District Attorney
One South Sierra St., 4th Floor
Reno, Nevada

19 For the Defendant: MARC PICKER, ESQ.
20 Alternate Public Defender
350 South Center St., 6th Floor
Reno, Nevada

23 Reported by: ROMONA MALNERICH, CCR #269
24 MOLEZZO REPORTERS
(775) 322-3334

1 RENO, NEVADA, THURSDAY, FEBRUARY 26, 2015, 1:45 P.M.

2 --oOo--

3
4 THE COURT: Please be seated. Good afternoon.
5 Mr. Picker, you're here for Mr. Hickman?

6 MR. PICKER: I am, your Honor.

7 THE COURT: And Mr. Schachter, you're okay with
8 that?

9 THE DEFENDANT: I am fine with that.

10 THE COURT: This is the time set for sentencing.
11 We are ready to proceed; is that correct?

12 MR. PICKER: We are, your Honor.

13 MR. BOGALE: Yes, we are.

14 THE COURT: I'm in receipt of the Amended
15 Supplemental to Presentence Investigation Report, filed
16 February 23rd, 2015.

17 Mr. Picker, have you had an opportunity to
18 review this document with your client?

19 MR. PICKER: Yes, your Honor.

20 THE COURT: Are there any more factual
21 corrections to make to the report?

22 MR. PICKER: Yes, your Honor. We've provided
23 what's been marked as Exhibit 24 to your clerk. What the
24 document is is a set of emails, the emails that Mr.

1 Hickman sent to Parole & Probation with the additional
2 corrections that were sought and their response thereto.
3 They adopted some and did not adopt others. The ones they
4 adopted, obviously, are in the Amended Supplemental. The
5 ones they did not are in their e-mail, and I'm going to
6 ask that that be introduced as -- that they be admitted as
7 an exhibit for the purposes of just evidencing that we
8 followed the local rules as to seeking changes to the PSI.

9 THE COURT: And, then, are you going to verbally
10 talk about the ones that they did not change?

11 MR. PICKER: I can do that, your Honor, and
12 those are brief.

13 THE COURT: Okay. That would help me, rather
14 than try to look at your exhibit and go back and forth
15 about which ones were changed.

16 MR. PICKER: That's fine, your Honor. Do you
17 want me to do that now?

18 THE COURT: Yes.

19 And Mr. Bogale, did you get a chance to see that
20 exhibit?

21 MR. BOGALE: Yes, I have a copy right here.

22 THE COURT: So I'm going to admit it for the
23 purpose of showing that the local rules were satisfied and
24 then we'll talk about each of the ones that Mr. Schachter

1 still believes have not been corrected.

2 MR. PICKER: Thank you, your Honor.

3 The first one that we address was on page two of
4 the Amended Supplemental to Presentence Investigation
5 Report. Under dates of birth, it lists two additional
6 dates of birth. One of those is December 11th, 1961. We
7 note for you, your Honor, in the previous supplemental
8 PSI, in the aliases just above that was listed the name
9 Jennifer Diane Schaffer, and what we attempted to show is
10 that that date of birth was associated with that name.
11 That was a person who actually was booked in the jail on
12 the same day as Mr. Schachter was. You can see Ms.
13 Schaffer and Mr. Schachter's names are fairly similar. He
14 has never used that birth date. That is a birth date
15 associated with Ms. Schaffer and that's what she was
16 booked into the Washoe County Jail under. So we ask that
17 that birth date be stricken.

18 THE COURT: Division?

19 MS. BROWN: Your Honor, due to the fact that
20 it's on the rap sheet, the defendant's FBI and Nevada
21 criminal history rap sheet, we have no way to know if he,
22 in fact, used that date of birth or if it was an error on
23 another police agency's part. Therefore, anything we see
24 on the rap sheet will go onto the PSI and we have no way

1 to confirm whether he used that date of birth or if it was
2 an error somewhere earlier down the tracks.

3 THE COURT: So, basically, what you're telling
4 me is that that date is found somewhere in a record, but
5 you have no idea if it was used or not.

6 MS. BROWN: Correct. But it ended up on his rap
7 sheet as an additional date of birth. Therefore, we
8 assume, without any other information, that he must've
9 used it somewhere along the way.

10 THE COURT: Did you previously have a Jennifer
11 Diane Schaffer as an alias?

12 MS. BROWN: It is not marked in the presentence
13 investigation report. I see on --

14 MR. PICKER: It's actually on the NCIC, your
15 Honor.

16 MS. BROWN: It is on his NCI record as an alias.

17 THE COURT: But you did take that off.

18 MS. BROWN: No. I don't think it ever went on
19 the PSI. For some reason, it got missed going on. It
20 should've been added as an AKA, the Jennifer Diane
21 Schaffer.

22 THE COURT: Okay. I'm going to strike that.
23 I'm going to order that you strike it. If we can't
24 substantiate it belongs to the defendant, it shouldn't be

1 on his PSI. So we'll strike it.

2 MR. PICKER: Second, your Honor, is on page five
3 of the Amended Supplemental. Under the case dated May
4 1996, in the -- well, actually, let me start before that.
5 On page three, it lists -- at the bottom of page three, it
6 lists five paroles, five revoked. If your Honor looks at
7 the criminal history, the only place where Mr. Schachter
8 was ever paroled, which is on page five of the
9 supplemental PSI, is in 1996, on one case. Apparently,
10 the Division determines it as five different paroles, but
11 as you can see, if you look under the disposition on page
12 five, it's one case. He was reinstated on parole, and
13 it's a difference in terminology. In Nevada -- first of
14 all, in Nevada, he wouldn't be reinstated five times. I
15 think we could probably all stipulate to that, but in
16 California, he gets reinstated. It doesn't become a new
17 parole term; it's a return to parole, because what they
18 do is they don't actually do a full revocation. They'll
19 put Mr. Schachter and did put him in prison for a month,
20 put him back out, and it's similar to what our Specialty
21 Court does of putting somebody in for a couple days to see
22 if it changes their behavior.

23 So it's a question for us of whether he actually
24 has five parole revocations or he has one parole that he

1 repeatedly violated. We're not arguing that the
2 violations aren't correct, according to the PSI. It's
3 just calling them five different revocations makes it look
4 much worse than it actually is, because it's one case.

5 THE COURT: Well, first, I don't use the count
6 that they give in the first place, just so you knew. I
7 look at the criminal history and decide how important it
8 is, for myself. But even if I were to use that, I would
9 look at this criminal history and say he got five chances
10 on parole and blew it every time. That's what I see as a
11 revoked parole.

12 MR. PICKER: And I think Mr. Schachter would
13 agree with you that that's a fair statement. It's the
14 question of -- because, in Nevada, a revocation of parole
15 is a much more formal process than it is in California.
16 NDOC would read it as five revocations, and that's our
17 concern on Mr. Schachter's behalf.

18 THE COURT: I can't take judicial notice of what
19 they do in California or not.

20 Division, why do you call it "revoked"?

21 MS. BROWN: When we call California Department
22 of Corrections, they basically tell us that's when he was
23 returned to prison. So he was arrested on a parole
24 violation -- or he was paroled and then he was revoked.

1 THE COURT: Do they use the language "revoked"?

2 MS. BROWN: I believe they do.

3 THE COURT: So that's what you're repeating. So
4 you just put in what they tell you.

5 MS. BROWN: Yes, ma'am. And when the case is
6 finally done in the parole system, they either tell us he
7 expired prison, he expired parole, or they get that new
8 post-conviction. So we report what California is telling
9 us.

10 THE COURT: So I can't really change it, but
11 just so you know, whether that has some implication
12 somewhere down the road, without more evidence, I can't
13 change it. I'm going to go with what the Parole &
14 Probation say they've been told. But the way I look at
15 it, it doesn't matter. Whether it was five different
16 cases that you got parole on and you blew it every time or
17 the same case, you still blew it.

18 MR. PICKER: I understand that, your Honor. And
19 with that, I think that Mr. Schachter's a little more
20 comfortable with knowing how you're viewing it.

21 THE DEFENDANT: The only thing that I would add
22 to that is, it's one term of parole.

23 MR. PICKER: It is one term of parole, and
24 that's the only thing we were -- and I understand what

1 your Honor's saying, and I think Mr. Schachter does too,
2 but it shows as all one case. So --

3 THE COURT: And that's the way I read it.

4 MR. PICKER: So the third one was the one that
5 was done by Parole & Probation. So we have no further
6 issue with that. I believe the fourth one was completed
7 as well, and that would be all the changes that we did
8 with our objections, your Honor.

9 For the record, Mr. Schachter, prior to our
10 appointment, did file his own objection to presentence
11 report on November 20th of 2014. I think your Honor has
12 already reviewed with him previously those that were
13 changed and those that were not granted, but we just
14 wanted to make sure the record was clear that he had not
15 waived those objections raised in November of last year,
16 that our objections were in addition to his.

17 THE COURT: There was a presentence report that
18 the Court was working off of at that time, which had
19 been --

20 MR. PICKER: And there was a supplemental that
21 was filed December 31st that reflected, at least in part,
22 those changes -- or some of those changes. And I don't
23 know how your Honor actually dealt with the remainder of
24 those objections, if you did so on the record.

1 THE COURT: I don't think I did, Mr. Picker. I
2 think I assumed that his objections were either in
3 Mr. Hickman's pleading or they'd been abandoned.

4 MR. PICKER: So in that objection, Mr. Schachter
5 was objecting to the -- or what was written as his
6 statement, especially the paragraph that's at the top of
7 page eight. Your Honor knows that Mr. Schachter went to
8 trial and he contested and continues to contest his guilt.
9 So your Honor would realize that that paragraph doesn't
10 reflect either the position he took at trial or the one
11 that he's continued to espouse since day one of this case.

12 THE COURT: The paragraph at the top of page
13 eight?

14 MR. PICKER: Yes.

15 THE COURT: Okay. He says he objects to
16 defendant's statement, to the whole thing, because it's
17 either a misrepresentation of what has been stated or the
18 facts as presented in the interview at Washoe County Jail
19 on October 26th, 2014.

20 MR. PICKER: Right. And the actual objection,
21 really, to that paragraph at the top of page eight is that
22 it is an inaccurate representation of what he said.

23 THE COURT: So where the line says, "During the
24 interview, the defendant's version of the instant offense

1 was written down by the undersigned. It was read back to
2 him verbatim and he agreed with the statement," he's
3 denying that?

4 MR. PICKER: Correct.

5 THE COURT: I'll note the PSI, and that'll be up
6 to a discussion between him and the report writer.

7 MR. PICKER: Thank you, your Honor.

8 THE COURT: And then I guess he was objecting to
9 the fact that it said "Plea negotiations were not
10 applicable."

11 MR. PICKER: Correct, your Honor. Because as
12 your Honor knows in this case, and I believe you were
13 informed, there had been plea negotiations. And in fact,
14 it had to be pursuant to the U.S. Supreme Court decision
15 that those were placed on the record at some point. I
16 don't have it in front of me, but there were plea
17 negotiations. They were unsuccessful, but there were plea
18 negotiations, and I think that's his objection, is it
19 appears that there was no attempt to negotiate, and I
20 believe everybody agrees there was.

21 THE COURT: And I don't think that's what that
22 section says. It's just saying that they're not going to
23 tell me the plea negotiations, because he went to trial.

24 And then the \$500 he was objecting to in

1 attorney's fees --

2 MR. PICKER: I think he was doing that because
3 Mr. Leslie was serving as standby counsel, as opposed to
4 counsel.

5 THE COURT: But now it's gone up to a thousand.

6 MR. PICKER: Yeah. And I'm not sure how they --
7 because I don't think the statute allows -- I'm not sure
8 that the statute allows for stacking of the \$500
9 attorney's fees just because it switches from the PD's
10 office to the APD's office.

11 MS. BROWN: Your Honor, when the first
12 presentence investigation came down, it was \$500 because
13 of the use of stand-in counsel, and we felt that if the
14 Public Defender's Office or the Alternate Public
15 Defender's Office was involved in this case, then they
16 should be compensated for their time.

17 When Mr. Schachter put in his disagreement with
18 the presentence investigation, we realized that he had
19 actually taken it to trial, and because he still had the
20 use of the county's defenders, jury trials are a thousand
21 dollars, and, therefore, it was an error on the Division's
22 part in the very first PSI and it should've been a
23 thousand at that time.

24 THE COURT: And statutorily, the Court can order

1 any amount of attorney's fees, but that's by practice in
2 Washoe County, that if it's a gross misdemeanor, we
3 usually go 250; a felony is 500, and jury trial's a
4 thousand.

5 MS. BROWN: Correct. Those were the numbers
6 that we had been using, and as we're aware -- it escapes
7 me which judge used to do this, but one judge always gave
8 a \$250 fee, whether it was a felony, gross, jury trial, or
9 whatever. And our attorney fees is under the section
10 "Recommendation" and we just advise the Court that that's
11 what we think.

12 THE COURT: Okay. So have we gone through both
13 lists and resolved all the possible issues?

14 MR. PICKER: Yes, we have, your Honor. Those
15 are all of the issues that were raised.

16 THE COURT: All right. So now that we have the
17 Amended Supplemental to Presentence Investigation, we will
18 proceed with that document that was filed with the one
19 change I've now made, and it was filed in February 23rd,
20 2015, and that'll be the controlling document. Right?

21 MR. BOGALE: May the State offer just one --

22 THE COURT: Yes, absolutely.

23 MR. BOGALE: -- small correction to the PSI? My
24 name's actually spelled wrong. So on the first page,

1 under prosecutor, the first A in the first name should be
2 an E.

3 MR. PICKER: And your Honor, probably it should
4 no longer say "pro per," because Mr. Schachter's no longer
5 pro per.

6 THE COURT: Okay. So Mr. Hickman, the alternate
7 public defender, with Mr. Picker standing in today.

8 MR. PICKER: However you want to do it, your
9 Honor.

10 THE COURT: I don't think I'll make those
11 changes, but I will note that he's not pro per. So that
12 correction is made.

13 Anything else?

14 Okay. Then let's proceed with this document.

15 MR. BOGALE: Not from the State.

16 THE COURT: Argument, Mr. Picker.

17 MR. PICKER: Thank you, your Honor.

18 I'm not sure how you want to proceed, because we
19 have challenged in our trial statement each of the five
20 prior convictions which the State is attempting to offer
21 as enhancement. So, at this point, I will request
22 direction from the Court on how you want to proceed.

23 THE COURT: We can talk about those prior -- I
24 think it is probably a good idea to make a determination

1 as to the validity of the prior convictions before we make
2 a determination of whether or not there are prior
3 convictions that will support a finding of habitual
4 criminal, and then argue whether there are those
5 convictions or not and whether or not habitual criminal
6 should apply.

7 So we have some exhibits marked?

8 THE CLERK: Correct. Exhibit 284 and 5 were
9 previously marked, which are prior convictions. Mr.
10 Bogale marked Exhibit 23 today, which is also another
11 prior conviction.

12 MR. PICKER: We have copies of each of those,
13 your Honor.

14 THE COURT: Then let's talk about the
15 admissibility for purposes of habitual criminal.

16 MR. PICKER: Thank you, your Honor.

17 We can start with Exhibit 4, that being the
18 Santa Clara County Municipal Court documents. As we've
19 outlined in the sentencing -- and I don't want to revisit
20 the sentencing memo, because I assume that you've had a
21 chance to read it. So I don't want to do that. Our main
22 concern with Exhibit 4 has to do with the fact that the
23 documentation, especially the felony minutes, commitment
24 and certification is a form with a series of checkboxes.

1 Unfortunately, what it doesn't do is, other than say Mr.
2 Schachter waived his rights -- and for the record as well,
3 his last name is misspelled on that document -- but in
4 addition to that, it just says "waived rights" and gives
5 no further information. Although it does -- and as we
6 pointed out in our memorandum, it does then refer the case
7 to the higher court, because the Municipal Court in
8 California is unable to actually complete a felony
9 conviction. It has to go to the Superior Court, and that
10 was the next document that would apply.

11 Again, there's no advisement of what specific
12 rights they were. As we quoted from Boykin versus
13 Alabama, there's some specific needs as to which rights
14 are being waived and there has to be some record of that.
15 And the State of Nevada has, of course, acknowledged
16 Boykin versus Alabama and the importance of a totality of
17 the record, which we quoted in the sentencing memorandum,
18 and our concern is, there is no real record of what
19 Mr. Schachter was asked to waive, other than somebody
20 checked -- the judge checked the box "waived rights." We
21 don't know which rights were explained to him, how they
22 were explained or any of that. And we have no record, no
23 transcript of how that was done either.

24 In addition, it does not show a notice of the

1 charges, in that there is no statement or record that
2 Mr. Schachter was arraigned or otherwise provided formal
3 notice of the charges and the elements against him, either
4 in a written canvass or oral canvass. There's no
5 indication of that in the documentation.

6 So based on that, looking at the case law that
7 we have cited, we believe that, on its face, this
8 attempted conviction is insufficient to meet the standards
9 under which it can be used for habitual criminal
10 enhancement purposes.

11 THE COURT: Okay. Mr. Bogale, why don't you
12 address this argument and then we'll go to the next one.

13 MR. BOGALE: Thank you, your Honor.

14 As to Exhibit 4, which is the 1992 Santa Clara
15 County prior for driving or taking a vehicle, the State
16 would argue that it is constitutional, and pursuant to
17 Fornier versus State, which is found at 95 Nevada 591 --
18 it's a 1979 case -- there are two essential ways to have a
19 valid prior conviction. One is to have the presence of
20 counsel. Two is, if you don't have counsel, that you
21 validly waived counsel. Now, that's not the only right
22 that you have to waive. You have to waive your right
23 against self-incrimination, your right to a trial, your
24 right to cross-examine the witnesses, but the presence of

1 counsel, if found, is sufficient to make a prior valid.

2 And then I cite another Nevada Supreme Court
3 case, Daymon versus State, D-A-Y-M-O-N, which is found at
4 94 Nevada 370; it's a 1978 case. In that exhibit, in the
5 felony minutes of arraignment of April 1st, 1992, it lists
6 Frank Mayo as the defendant's attorney. It says the
7 defendant and his attorney, Frank Mayo. It also, on the
8 same page, lists the waived rights. It checks the box
9 "waives rights." It also checks the box that says, "The
10 plea was knowing and intelligent and voluntary." And in
11 the sentencing minutes later on in the prior conviction of
12 July 13th, 1992, it also again lists Frank Mayo as the
13 defendant's attorney. Having an attorney creates a
14 presumption that rights were intelligently waived and that
15 a plea was voluntarily and intelligently entered. That's
16 the whole point of counsel.

17 In fact, the reason why this court, I believe,
18 took so much care to insure that Mr. Schachter had counsel
19 here in this sentencing is because, for example, you can't
20 raise objections to the validity of a prior conviction for
21 the first time on appeal. So if he decides to appeal and
22 he didn't know that and he was pro per, he wouldn't have
23 had those objections. What we have today is the presence
24 of counsel, who's presented objections to the prior

1 conviction. That's an example of the benefit of counsel.
2 That's the concept that makes a prior valid, if the
3 defendant was represented by counsel. He was, the State
4 argues, in the 1992 case, and for that reason, the State
5 thinks, by a preponderance of the evidence, it has shown
6 that it is a valid prior conviction.

7 THE COURT: Anything further, Mr. Picker?

8 MR. PICKER: The only other thing, your Honor,
9 is that -- as we said, the language of the Supreme Court's
10 decision in Boykin and the cases they've utilized in
11 Nevada talk about specificity. They do talk about the
12 totality of the circumstances, but they also, especially
13 when it comes to waiver of rights, are worried about
14 specificity. Because if the record is bare, then this
15 court has to reach some conjecture about whether those
16 rights were -- whether Mr. Schachter was appropriately
17 advised of those rights and he appropriately waived them.
18 That is our concern, your Honor, is that the record is
19 bare. I also note -- well, just based on that, your
20 Honor, we believe that this conviction is insufficient and
21 unconstitutional.

22 THE COURT: well, the Nevada Supreme Court has
23 spoken on the issue of prior convictions and has
24 previously found that, for enhancement purposes, a prior

1 conviction where the defendant was represented by counsel
2 would be presumptive and valid. In this instance, we do
3 have a judge saying that the rights were given and that it
4 happened in open court, voir-dired in open court -- in
5 other words, questioned in open court -- and the Court
6 made a specific finding that the plea was knowingly,
7 intelligently, and voluntarily entered. So the judge says
8 that he was advised, in open court through the voir dire,
9 of those rights and that he waived them. The presence of
10 the attorney is presumptive, but the rights that were
11 provided were, in fact, his rights. His rights were
12 protected when he entered his plea and he knowingly and
13 voluntarily entered it. The same attorney appeared later
14 with the defendant when he was sentenced, and it appears
15 he made actually both of the other appearances with Mr.
16 Schachter. So he was represented throughout by an
17 attorney, and for that reason, the Court is going to find
18 that the certified copy is sufficient to support
19 enhancement.

20 Motion to strike is denied.

21 MR. BOGALE: So the State formally moves for the
22 admission of Exhibit 4, your Honor.

23 THE COURT: We'll do that after --

24 MR. BOGALE: We'll do it afterwards, okay.

1 THE COURT: Go ahead, Mr. Picker.

2 MR. PICKER: Thank you, your Honor.

3 AS to Exhibit 5, for the very reasons that you
4 just denied our objection on 4, that is the reasons why 5
5 should be stricken and not allowed in. In Exhibit 5,
6 there is absolutely no evidence of any waiver of rights at
7 any point in Exhibit 5, which is the Suffolk County, New
8 York case. There is no waiver. There's no advisement,
9 there's no check mark, there's nothing for the purposes of
10 knowing what rights were reviewed, if any, with Mr.
11 Schachter in this case. The only advisement of rights is
12 as to the right to appeal in 30 days. That's the only
13 language used anywhere within this document.

14 So understanding your Honor's ruling as to
15 Exhibit 4, Exhibit 5 doesn't meet any of the criteria that
16 you just used to refuse to strike Exhibit 4. Based on
17 that, your Honor, as a side argument, should your Honor
18 decide that it is appropriate to use Exhibit 5, which we
19 would object to, there is an allegation that there are two
20 convictions here. As your Honor knows, if two charges are
21 within the same conviction, they can only be used as one
22 conviction for the purposes of habitual criminal
23 enhancement.

24 THE COURT: I absolutely agree with you,

1 Mr. Picker, with regard to the ability to use more than
2 one charge as more than one conviction for purposes of
3 habitual criminal enhancement. It can't be done.

4 MR. PICKER: Thank you, your Honor.

5 THE COURT: Do you want to address the issue of
6 inadmissibility?

7 MR. BOGALE: Yes, your Honor, just briefly.

8 So Exhibit 5 is a 1970 conviction out of Suffolk
9 County, New York. The charges are attempted burglary and
10 forgery. The State would make the argument that it is
11 constitutionally valid. On the statement of plea page,
12 page four, it asks, "Have you discussed the case with your
13 lawyer?"

14 "Yes," writes Mr. Schachter.

15 "Did your lawyer offer, basically, a plea to
16 this case?"

17 "Yes."

18 "Did your lawyer or the district attorney
19 promise anything to induce your plea?"

20 "No."

21 "Are you pleading freely and voluntarily?"

22 "Yes."

23 And on the bottom of the page, the defendant
24 signs his name, the defendant's attorney signs his name on

1 a line that says "Defendant's Attorney," as a witness to
2 his signature, I guess. And then on the first page of the
3 certified copy of the prior conviction, page one, it lists
4 Lawrence Mullin, Esq., as the defendant's attorney on the
5 right there, and Kevin Koenig is the assistant prosecutor.

6 So there are two instances in this prior that
7 show the defendant was represented by counsel or had
8 counsel present during the proceedings. One is the first
9 page, showing Lawrence Mullin's name. The next is on page
10 four, which the State will presume is Lawrence Mullin's
11 signature. I can't read it, but it is the signature of an
12 attorney for the defendant. It doesn't matter who it is.
13 So the State would make the argument that because the
14 defendant was represented by counsel, as the State made in
15 the last prior, that it is constitutionally valid and we
16 can presume that the defendant was advised of his rights
17 and knowingly waived those rights. That's the whole
18 purpose of having counsel.

19 THE COURT: But we have a little problem. The
20 statement of plea talks about some of the rights, but not
21 all the rights.

22 MR. BOGALE: It doesn't talk about all the
23 rights, that's right.

24 THE COURT: And where else does it say that he

1 was advised of his rights?

2 MR. BOGALE: I don't believe there's anywhere
3 else in that prior conviction, your Honor, that states
4 that he was advised of all of his constitutional rights.
5 Again, the State points your Honor to Fornier versus
6 State, which I'll read from it: "This court has held that
7 when the State seeks by introduction of prior convictions
8 to invoke the habitual offender enhancement statute, there
9 must be an affirmative showing that the defendant was
10 represented by counsel or that he validly waived his right
11 to counsel in the prior felony proceeding."

12 The State has made the argument that he was
13 represented by counsel and the State believes that's
14 enough. The standard here in terms of the burden of proof
15 is only preponderance of the evidence, because the initial
16 burden is on the State to show a certified copy of the
17 prior conviction. That's prima facial evidence of a valid
18 prior. Once that has happened, the defendant may raise
19 some points of constitutional infirmity, but those are
20 pointed out and the State must prove by a preponderance of
21 the evidence, or some evidence, that the prior conviction
22 is valid.

23 I believe the fact that Lawrence Mullin is
24 listed as his attorney and there's a signature under the

1 the "Defendant's attorney" on the statement of plea, that
2 that suffices, your Honor. Thank you.

3 MR. PICKER: Your Honor, there is a rebuttal
4 presumption and that is what we've raised today. Just to
5 read the most important part of Boykin versus Alabama, in
6 talking about the federal constitutional rights which are
7 involved in a waiver, the U.S. Supreme Court stated, "we
8 cannot presume a waiver of these three important criminal
9 rights from a silent record." You have before you a
10 silent record. While there is a presumption that if there
11 was an attorney present, then it was a constitutionally
12 valid conviction, that does not overcome once a question
13 has been raised about whether any rights were waived
14 within the document.

15 Here, the State provides absolutely no evidence
16 that any constitutional rights were given to Mr. Schachter
17 and that he knowingly and consciously waived those. So
18 given that, your Honor, given the language that the State
19 relies upon in this Statement on Plea -- again, there's
20 also nothing as to the elements of the crime. So if this
21 is the document that is the plea agreement, there's no
22 elements, there's no waiver of rights, there's no notice
23 of elements. So if this is the document the State is
24 relying upon, it is constitutionally insufficient.

1 THE COURT: Boykin versus Alabama was decided in
2 1969. The Nevada Supreme Court decided -- Fortner?

3 MR. BOGALE: Fornier. I have a copy of the
4 case, if you'd like.

5 THE COURT: -- after that and specifically
6 addressed the issues that were being raised in prior
7 convictions being utilized. Of course, the difficulty
8 is how things change over the course of time and how
9 documentation has changed. So when I look at this and I
10 say, okay, he knew he had a right to a jury trial, because
11 he had one scheduled. He was changing his plea. The
12 document shows that he wanted to change his plea from not
13 guilty to one of guilty, and he had a trial set.

14 The second concern is whether or not he had a
15 right against self-incrimination, and he's represented by
16 counsel. That's such a fundamental right. He clearly was
17 not promised anything in the statement of plea. And then
18 the last one from Boykin is the right to confront one's
19 accusers, and I think, based on the Nevada case law, with
20 an attorney present, the Nevada Supreme Court has said
21 that a statement of plea in this format can be used. It's
22 not my favorite. I don't think this is a strong certified
23 copy. I'm not exactly sure what was going on with the
24 defendant, except that he was represented by counsel.

1 So the motion to strike it, I think needs to be
2 denied, because they have met their burden, the State has
3 met their burden, but it's not particularly compelling to
4 me, this particular conviction. So as you argue the case,
5 you may need to know that, both of you.

6 And then we have 23?

7 MR. PICKER: That's correct, your Honor.

8 In Exhibit 23, there is no guilty plea memo,
9 there's no plea canvass, there's no Information, there's
10 no preliminary hearing transcript, there's no judgment of
11 conviction. It is woefully deficient on many levels. It
12 is silent as to advisement of the waiver of privilege and
13 rights. They note the appointment of attorney and
14 presence of counsel during a preliminary hearing, but the
15 record is silent as to whether Mr. Schachter entered a
16 plea of guilty with counsel. That's not within the
17 document itself.

18 So it's interesting that we keep getting further
19 and further from what Boykin anticipated, and we would ask
20 you not to allow this one, because all of those
21 deficiencies are present and there's some significant
22 issues with all of those things. It doesn't even -- we
23 don't believe -- it doesn't even meet what I think you
24 just termed to be a weak conviction, a weak set of prior

1 documents that was in the Suffolk County one. So we'd ask
2 that you strike it.

3 THE COURT: Mr. Bogale, your response to the
4 defendant's motion?

5 MR. BOGALE: The prior conviction, your Honor,
6 marked as Exhibit 23, from Los Angeles County in 1991 does
7 show that the defendant was appointed an attorney. It
8 shows that there was the presence of counsel in a
9 preliminary hearing. Those have nothing to do with the
10 actual plea. So the State would argue that because
11 there's no showing that the defendant removed counsel or
12 got rid of counsel -- he was already appointed an
13 attorney -- I think that allows the Court to presume that
14 he continued using an attorney throughout the proceedings
15 in that case.

16 For that reason, your Honor, the State would
17 urge the Court not to strike it.

18 THE COURT: I don't even know what it is. All
19 I have is that he pled guilty to Count 1.

20 MR. BOGALE: The State's not disagreeing with
21 your Honor's assessment that it's a weak prior conviction.

22 THE COURT: It's so weak, we're not going to
23 accept it. Motion granted. It's absolutely not going to
24 be considered.

1 So we can proceed with sentencing?

2 MR. PICKER: I believe so, your Honor.

3 THE COURT: And the State has a conviction for
4 the attempted robbery, but is asking for a finding of
5 adjudication as a habitual criminal. So we can address
6 those together.

7 MR. PICKER: Your Honor -- actually, I'll do the
8 second one first. Mr. Schachter's criminal history is
9 problematic. There's no denying the fact he has not had a
10 great history. The majority of his criminal behavior is
11 well back in the '90s, but there is a continuation and we
12 cannot argue that there is not. As your Honor heard from
13 Mr. Schachter at trial, he presented his situation very
14 well and he continues to contest that guilt and protests
15 it even today. And while he's been in jail, he has not
16 sat on his hands. He has done those things necessary to
17 make use of the facilities there. He does have an
18 acceptance from the Salvation Army. So he has made
19 efforts to address a very lengthy substance abuse issue,
20 among other things.

21 Your Honor -- now going to where we are with the
22 habitual criminal -- even as recent as last year, in the
23 2014 decision of LaChance, L-A-C-H-A-N-C-E, versus State,
24 which is at 130 Nevada, Advanced Opinion 29, the Nevada

1 Supreme Court looked at the nature of a habitual criminal
2 enhancement and stated that the adjudication of a
3 defendant as a habitual criminal is subject to the
4 broadest kind of judicial discretion. This is probably a
5 situation where your Honor is presented with the most
6 difficult set of questions. It is not only what is a just
7 and proper sentence, given the finding of guilt, but also
8 whether to punish Mr. Schachter based on his past and his
9 record. Those are difficult questions and we appreciate
10 that, and we bring those to your attention because -- and
11 I brought up his trial in this case because your Honor
12 got to see Mr. Schachter's personality better than you
13 probably see any defendant ever, because he took part in
14 the trial. And the idea of punishing somebody as a
15 habitual criminal really has to do with a number of
16 factors. It has to do with the idea that it is designed
17 to punish recidivists, in part, where the Court sees
18 little or no future chance of either rehabilitation or
19 change in behavior to comply with society's norms. And
20 while it is not the rule of law in the State of Nevada,
21 the federal statutes have a phrase when they refer to
22 sentencing, and it is that a sentence should be sufficient
23 but not greater than what is appropriate, given the
24 circumstances of the crime, the circumstances of the

1 defendant, and the circumstances of the situation we all
2 find ourselves in in a case.

3 It's a very interesting formula to look at,
4 because, here, we have a crime that is not the most
5 heinous of crimes that he could be facing. It is theft
6 from wal-Mart. Now, that's not to diminish theft from
7 wal-Mart, but it is also not the most violent of crimes.
8 Now, there is the allegation of his -- or there was
9 allegations regarding his behavior with the person who
10 stopped him, the security officer. By analogy, we look at
11 cases in other states where people pick up a third strike
12 and get life in prison for shoplifting. This is not that
13 case, but that is part of the public outcry regarding
14 imprisoning, incarcerating people for very long lengths of
15 time for their past, but now this one is, by comparison,
16 a relatively lesser crime. It's hard to say that some
17 crimes are greater than others, and I understand that as
18 well. Mr. Schachter understands that as well.

19 So what we're asking you to do in this case is
20 not impose an enhancement for habitual criminal status and
21 that you sentence Mr. Schachter for the conviction at
22 trial. We will not recommend a sentence, because he is
23 continuing to maintain his innocence in this case. And so
24 with that in mind, we'd ask that you consider all of those

1 things and the totality of the circumstances to determine
2 a sentence that is sufficient but not greater than what is
3 required.

4 Thank you.

5 THE COURT: Mr. Bogale.

6 MR. BOGALE: Thank you, your Honor.

7 Defense counsel is correct, that the purpose of
8 the habitual criminal statute is to punish recidivist
9 offenders and discourage repeat offenders. A quick look
10 at the defendant's criminal history shows that he is a
11 repeat offender, he is a recidivist. He's been offending
12 all over the country, from New York to California, with
13 three, now, felony convictions, or two felony convictions
14 and a felony jury trial verdict here.

15 The State is not arguing that all of the
16 defendant's prior convictions and prior criminal activity
17 were extremely violent. They were not extremely violent.
18 The State has no indication they were extremely violent.
19 The State does have some indication, however, as in this
20 case -- as your Honor heard during the trial -- there was
21 violence in this case. This was basically a robbery. The
22 State pursued it as an attempted robbery because he didn't
23 get away with the goods, as he was caught, but he used
24 force against Alejandro Monroy. He almost broke his

1 stomach; he twisted his stomach. He put his hand up to
2 his neck. These are the facts you heard at the trial.

3 So this was a violent crime, but the habitual
4 criminal statute doesn't require a defendant adjudicated
5 as a habitual criminal to be a violent person. The
6 statute only requires that the State shows that the
7 defendant has two or three prior convictions, or more,
8 that would've been felonies in the State of Nevada or
9 felonies at the situs of the offense and the Court -- it
10 says "shall," but we all know from the case law that it's
11 not automatic -- the Court can adjudicate a defendant a
12 habitual criminal.

13 The State thinks the defendant should be
14 adjudicated a habitual criminal in this case. He's had
15 numerous chances to rehabilitate, to change his life, but
16 from 1986 to 2014, as indicated in the amended PSI, the
17 defendant sustained nine felony convictions and thirteen
18 misdemeanors. Now, he has a lot of theft-related crimes,
19 but after a while, your Honor, it doesn't matter what the
20 crimes are. He has nine felony convictions, four of
21 which, the State will submit, are valid prior convictions
22 for enhancement purposes, and that's the end of the hunt
23 for him. He has had a career, basically, of crime since
24 he was 18. He might have a drug addiction, he might have

1 other conditions in his life that have led to these
2 results, but what we're left with here, your Honor, is a
3 career criminal, a habitual criminal.

4 The State has not heard any objections to
5 Exhibit 2 and Exhibit 3, which are prior convictions
6 submitted by the State. Exhibit 2 is a prior conviction
7 in this jurisdiction in 2009 for grand larceny. Exhibit 3
8 is a 2006 conviction out of the Ninth Judicial District
9 Court, State of Nevada, for grand larceny as well. With
10 those two prior convictions, which the State presumes the
11 defendant isn't objecting to, because he didn't include
12 them in the sentencing memorandum, and presumes those are
13 valid priors, as well as Exhibit 4 and Exhibit 5, what we
14 have here are four prior convictions. Four prior
15 convictions, pursuant to NRS 207.010, Subsection 1E,
16 allows for adjudication as a habitual criminal, Category A
17 offense, which the Court has a panoply of options, the
18 most significant of which is life without the possibility
19 of parole, a life sentence with parole after 10 years, or
20 a definite term of 25 years, with parole eligibility after
21 10 years. The State in this case, after going through the
22 jury trial, understanding this case from beginning to end,
23 is going to ask for a definite term of 25 years with
24 parole eligibility after 10 for the habitual criminal,

1 Category A. This wasn't the most violent of offenses, but
2 it was violent. This wasn't the most serious of offenses,
3 but it was attempted robbery. That's the State's position
4 on the habitual criminal. As to the underlying offense of
5 attempted robbery, the State is asking for 4 to
6 10 years -- that's the maximum sentence on that --
7 consecutive to his habitual criminal adjudication.

8 And the State will just make a couple more
9 remarks about the habitual criminal status. The Court has
10 broad discretion to adjudicate a defendant a habitual
11 criminal, and pursuant to case law -- I think the most
12 articulate case from the Nevada Supreme Court is Hughs
13 versus State, 916 Nevada 327. It's a 2000 case. It
14 essentially says the district court should state on the
15 record that it is exercising its broad and individualized
16 discretion if it adjudicates a defendant a habitual
17 criminal, that the Court should weigh appropriate factors
18 in the case for and against a finding of habitual criminal
19 that is just and proper to do so in this particular case,
20 and that the prior convictions upon which the Court is
21 relying are not too remote, trivial, or stale, and that
22 the finding of a habitual criminal adjudication will serve
23 the purpose of the statute and the interest of justice in
24 this case.

1 The State, I believe, has addressed all of those
2 issues. The interest of justice and the purpose of the
3 statute would be served if the Court found a habitual
4 criminal adjudication in this case, because the defendant
5 is a recidivist criminal. There's no way around it. The
6 State asked for all nine prior felony convictions through
7 certified copy. We didn't get all nine, but we did ask
8 for them, and simply because we only have four that we can
9 rely on, the State encourages the Court to incorporate the
10 fact that he has nine into its analysis. Exhibit 2 and
11 Exhibit 3 are both within the last 10 years -- again,
12 Exhibit 2 from 2009 and Exhibit 3 from 2006. The two
13 other convictions are old, but they show that the
14 defendant has a long arc of criminal activity. This isn't
15 just a blip on the radar, this is a career of crime.

16 So the State encourages the Court to adjudicate
17 the defendant a habitual criminal and to sentence him to a
18 definite term of 25 years, with parole eligibility after
19 10. Thank you, your Honor.

20 THE COURT: Mr. Picker?

21 MR. PICKER: Thank you, your Honor.

22 Two things, and I brought this up a little bit
23 earlier. I mentioned the fact that there were plea
24 negotiations in this case previously. I would just note

1 that the State felt it was just and proper to offer Mr.
2 Schachter a much different sentence prior to trial, and
3 now that he has exercised his constitutional right to have
4 the State prove the elements of the crime against him
5 beyond a reasonable doubt, they're seeking 10 to 25 years
6 incarceration.

7 In LaChance -- well, let me address one other
8 thing first. At trial, Mr. Monroy admitted that he did
9 not identify himself prior to attempting to halt Mr.
10 Schachter. He also claimed but the PSI doesn't claim the
11 injuries on Mr. Monroy's behalf. So that argument must be
12 taken with some consideration. The State read you
13 language out of a case, but they don't address the 2014
14 decision that we just told you about in LaChance. Not
15 only is the adjudication of a defendant as a habitual
16 criminal subject to the broadest of judicial discretion,
17 but the Court should consider whether the prior offenses
18 are stale or trivial, or in other circumstances where an
19 adjudication of habitual criminality would not serve the
20 purposes of either the statute or the interest of justice.
21 The State has already admitted that the 1991 Santa Clara
22 Municipal Court conviction is old. It is 24 years old.
23 The 1986 conviction is not quite 30 years old, but as your
24 Honor noted in saying that you would consider it, you also

1 noted it was weak for the purposes of habitual criminal
2 status. So what we have is two fairly recent convictions,
3 if you want to call 10 years recent -- I'll give the State
4 that -- you have the current conviction, and then you have
5 the only other two convictions the State can prove up.
6 Because they can ask you to consider the nine other
7 convictions, but for the purpose of a habitual criminal
8 status, you can only use the ones that are proven. So
9 what we really have is the current conviction and these
10 other two from Nevada, and then we have very stale and
11 possibly even unconstitutional convictions for them to get
12 to where they want to be for a habitual criminal status.

13 Given that, your Honor, given the totality of
14 circumstances and the broad discretion that this court
15 has, we believe that it is inappropriate and we'd ask you
16 not to impose an enhancement of habitual criminal status.
17 Thank you.

18 THE COURT: Division?

19 MS. BROWN: Your Honor, we are standing by our
20 recommendation. And the credit for time served is
21 262 days.

22 THE COURT: Mr. Schachter, the law affords you
23 an opportunity to be heard. Do you have something you'd
24 like to say?

1 THE DEFENDANT: Yes, your Honor. I'm a little
2 conflicted, because while I believe the evidence of my
3 criminal history, I can't deny that it's recidivism. I've
4 been a criminal for a long time. So I can't really deny
5 that aspect towards the habitual, but I can say, with all
6 honesty, your Honor, that I'm not guilty of the attempted
7 robbery. And that is why I went to trial. So if I'm
8 gonna be punished for the recidivist part, I can
9 understand that, but not to the attempted robbery. I
10 would've never done this. If there's anything my record
11 shows, your Honor, is that I know how to plead guilty, if
12 I was guilty.

13 The fact that I didn't do this crime is what led
14 me to self-represent. If you remember back on the waiver,
15 when we did the Faretta waiver, I said that -- when you
16 asked me the reason why I wanted to self-represent, I said
17 it's gonna be the easiest way for me to show my innocence,
18 is by me confronting Mr. Monroy directly rather than
19 through a third person, and I can show that he was lying
20 easier with myself than with the help of an attorney. And
21 you cautioned me against representing myself, and I said I
22 didn't think that it was even gonna go to trial, because I
23 thought the video would show up and it would all be
24 dismissed. Unfortunately, the video stuff didn't

1 materialize, for a bunch of different reasons.

2 Everything else, I don't know how to -- the
3 offer that was made at the beginning of the trial, if
4 that's what they thought this case was worth, if I had
5 just pled out to it -- I don't understand how they can now
6 say that I'm some sort of monster based on the priors.
7 They knew about the priors. If I had just pled out, one
8 to four was what they had asked for, and free to argue for
9 probation, your Honor, and I couldn't do it. I seen you
10 stop a dozen pleas here, because the defendant wasn't sure
11 that they committed the crime and you wouldn't let them
12 plead guilty. So there's no way -- even if I could have,
13 I couldn't have pled guilty like that. I know you
14 wouldn't have let me just say I was guilty to something I
15 wasn't guilty of.

16 And so that's what we have. So while I believe
17 that my criminal history deserves the recidivist part -- I
18 can't deny any of that -- the primary offense, I'm not
19 guilty of.

20 THE COURT: I'm sorry, Mr. Schachter. I don't
21 remember at this moment what you thought you were guilty
22 of. Were you guilty of anything? So you're denying the
23 whole shoplifting, everything?

24 THE DEFENDANT: Yes.

1 THE COURT: Okay. I just wanted to make sure.

2 THE DEFENDANT: He actually took the property
3 from me. That's what caused the confrontation. That's
4 what caused me and him to -- any violence that occurred
5 between me and Mr. Monroy, that pushing and shoving and
6 grabbing -- because that was my backpack -- that's what
7 the thing was. And I never denied that that happened.
8 Everything that -- the focus on the investigation for the
9 police was through the confrontation. That part was not
10 denied. I never stole anything. That's what the issue
11 was and that's why I can't plead guilty. That's why I
12 can't accept any guilt in this. The part I can accept the
13 guilt for is because of my past. I can understand that, I
14 can accept that. Anybody can run my rap sheet and there's
15 a rush to judgment as to returning the property and maybe
16 not dotting all the I's and crossing all the T's in the
17 investigation, but I still didn't do it.

18 So I don't know how the Court deals with that.
19 As I was thinking about everything that I've learned as a
20 part of this experience, all the individual -- being able
21 to do stuff outside my comfort zone in the course of the
22 trial and managing my own affairs and all that, the one
23 thing I never thought about this last couple, three days
24 was, at least when I turned down the last plea

1 negotiation, I was secure in the idea that I'm not guilty.
2 So I have that to move forward. Whatever your decision
3 is, I'll be able to appeal it and move forward. Sometimes
4 the jury don't get it right, and there's a lot of reasons
5 I see why the jury didn't get it right. And some of it's
6 my fault; there's blame to go around, but what I never
7 thought about was that while I have had to stand on my
8 innocence, it would be worse, your position right now, to
9 have to make a sentence and then later find out that the
10 person was innocent. That's the part that's not ever
11 discussed in the Faretta waiver or when we see cases come
12 back on appeal or whatever.

13 Out of everything else that happens in this
14 case -- I believe in the system as a whole, that's why I
15 went forward. If I didn't believe that the jury system
16 and everything else was appropriate, was working -- when I
17 was younger, I was way more cynical and way more defiant,
18 but in the process of being a career criminal, for lack of
19 a better word, I know the system does work. I've seen it
20 work. We just saw two trials and the DNA finally came
21 back and other cases out there in Elko. So I know the
22 system does work, and I have faith in that system. So as
23 I made the individual connections by going pro per, I lost
24 some of that disconnect that I had, seeing everybody else

1 in the room as sort of the enemy or the opposite side.
2 Now that I know all the effort and all the work that goes
3 into the everyday running of the court and the trial and
4 the attorneys and all of that, it has at least made me a
5 better person, no matter what happens here. I at least
6 have some sort of empathy and respect for the DA and all
7 of the other court personnel. Not that I never had, but
8 just less so. And so I hope that the disconnect went both
9 ways. Everybody was very nice to me and I appreciate
10 that. And as me and Mr. Bogale sort of stumbled through
11 the trial and all the proceedings together, I don't look
12 at him as an enemy, I don't look at him as some mean
13 person. You would not believe the things that people say
14 at the jail as far as attorneys and the DAs and the
15 judges.

16 So as people come and ask me, at least within
17 the unit, I can at least share it's not always over the
18 top, like you think. Mr. Bigler is not over there cutting
19 a deal with the DA to get you a life sentence. There's a
20 lot of people that believe in it. There's a huge
21 disconnect between the defendants and the Court, and when
22 I'm allowed to go pro per and you make it more individual,
23 then it certainly helps. It helped me. I know it's a big
24 pain in the neck for everybody else in court, but it at

1 least helped me. whatever else happens to me, I know that
2 I've learned to be a better person. No matter what else
3 happens, I've learned to be a better person. And with
4 this experience, it's easier for me to operate outside my
5 comfort zone than it was before. If you were to give me a
6 lower sentence, I would at least right now know that at
7 some point in the future when I was on the street and I
8 needed to make a life decision about whether to commit a
9 crime or not, I would be more willing to come here or to
10 call Mr. Bogale and ask for advice than any other time in
11 my life.

12 I don't know if I can say that if you give me a
13 long sentence, because I can't deny that there'll be some
14 bitterness and some resentment if it's 10 years. I'd like
15 to say that I have as much faith as I do right now today,
16 but I can't say that for sure. Being in custody and being
17 around the people somehow wears you down. It makes you
18 more cynical and more bitter, and as each individual
19 denial or level of appeal gets shot down or whatever, I
20 can't imagine I wouldn't become a little more cynical in
21 that situation.

22 As far as stopping any recidivism, I think that
23 right now is the best opportunity for me to do that. I
24 don't know -- that's an argument coming from me. I don't

1 know that I could make you understand that if you were to
2 at least show that you had some belief that I was not
3 guilty, then that would do more to stop me from committing
4 another crime than any amount of sentence, any amount of
5 years you could give me, 'cause the belief itself, the
6 encouragement rather than the punishment would allow me to
7 come here or call Mr. Bogale before I made that bad
8 decision, to at least take into account that there's
9 somewhere to go, someplace that understands or is willing
10 to help, as opposed to just being -- I don't want to go
11 back to court. When you see people that don't show up to
12 court or are scared to go to court, it's because of that.
13 If more defendants realized that the Court is here to help
14 and not just to punish, you would see more -- I mean, I
15 don't know if you want a bunch of people running in your
16 courtroom here asking for your advice, but it's certainly
17 better than the alternative.

18 Again, I just want to thank all the court
19 personnel, the ones here and not here. They were very
20 nice. So whatever else happens, your Honor, I would ask
21 that you just keep that in mind. I don't want to become
22 bitter and cynical, sitting in the law library for the
23 next 10 years. I've been accepted into Salvation Army.
24 Whatever you want to do with this, I just hope that you

1 believe me. Thank you.

2 THE COURT: Any legal reason why judgment should
3 not be entered at this time?

4 THE DEFENDANT: No.

5 THE COURT: First, you're right. I don't take a
6 plea if a person doesn't tell me they're guilty, unless
7 they tell me that they want to take the plea because they
8 want to avoid a more serious decision and they've
9 discussed it and they want to do it. So you're sort of
10 right on what you observed, but you missed the other
11 piece.

12 Your position with regard to your innocence is
13 absolutely your right and you can carry that forever. It
14 was not for me to determine, it was the jury, and so the
15 jury decided. They made that decision, and so it's not
16 for me to say, "well, you're really not guilty or you
17 really are guilty." It's for me to decide what your
18 punishment should be, based on the jury's decision. I
19 still don't think you should've represented yourself. I
20 don't think that was a good idea. I tried to convince you
21 not to do it on more than one occasion, but everyone has
22 the right to do that and I respect that right. I'm not
23 going to punish you because you asserted that right. I'm
24 not going to punish you because you went to trial. That's

1 not why you're being sentenced today. You're being
2 sentenced because the jury found you guilty. Because you
3 turned down those negotiations for the habitual criminal
4 not to be considered, you are faced with that today and
5 you are faced with that issue, and I do have to make a
6 decision with regard to that, as well as the proper
7 punishment for what the jury found you guilty of doing.

8 with regard to the punishment for what the jury
9 found you guilty of, the case made it clear to me that it
10 wasn't the most violent offense that I've ever seen. I'm
11 not sure exactly what everyone's motivation was, but I do
12 know the jury found enough evidence to convict you beyond
13 a reasonable doubt of attempted robbery, and, therefore,
14 I will sentence you to that, but it is not the worst
15 attempted robbery I've ever seen.

16 So with regard to Count 1, you will be sentenced
17 to 48 months in the Nevada Department of Corrections, with
18 minimum parole eligibility of 12 months. Now, I know
19 there's a request for me to give you probation on that and
20 there's also a request for me not to give you probation
21 and, in fact, adjudicate you a habitual criminal. Whether
22 I had a request to adjudicate you a habitual criminal or
23 not, I would deny your request for probation, and that's
24 because you expired your '96 case in '05. By '06, you had

1 a new burg. You expired that case in '08. By '09, you
2 had a new grand larceny. You expired that case in '12,
3 and by '14, you have this new charge. So, clearly, if we
4 just start with the '05 expiration to this conviction,
5 you've been on a roll and that does not support me giving
6 you probation. So I just want you to understand why I
7 would not do that, nor will I do it.

8 I am going to order also a thousand dollars in
9 attorney's fees, and that's not by way of punishment.
10 It's just that your lawyers have worked really hard for
11 you and they've spent a lot of hours. It doesn't really
12 have to do with the fact you had a jury trial. It's just
13 all the time that was spent. And the \$25 administrative
14 assessment fee and a \$3 GMA fee.

15 Now, with regard to the habitual criminal, it's
16 incumbent upon the Court to consider your criminal
17 history, and as I consider that criminal history, I must
18 look at all possible mitigation, as well as aggravation,
19 and how many chances you've had, how many prior lectures
20 you've had, and determine whether or not adjudicating you
21 as a habitual criminal will have a deterrent effect on you
22 and that you are, in fact, a repeat offender. I don't
23 know what happened in a lot of your convictions, because I
24 don't have enough of a certified copy, I don't have a

1 transcript, I don't know how many lectures you were given.
2 I don't know exactly all of that. But the Court is
3 convinced that -- Exhibit 2, which was when I sentenced
4 you -- that I told you that you didn't have a very good
5 criminal history and that I considered your criminal
6 history and I sentenced you accordingly, and you got
7 prison time. And you knew, I'm sure, from my demeanor and
8 from what I said that this was a short trip for you. You
9 really were at the end of your road. And then after that,
10 you were in front of Judge Gamble -- or before that?

11 THE DEFENDANT: Before that.

12 THE COURT: Before that, you were with Judge
13 Gamble, and Judge Gamble sent you to prison before me, and
14 I'm sure the penalty that you received in that case was
15 for a felony. You knew that you couldn't commit a new
16 felony; then you came here and committed a new felony and
17 I sentenced you to prison. I don't think I gave you the
18 maximum, but I certainly told you that you needed to not
19 do what you were doing. And so, here you are again.

20 When I look at mitigation, the only mitigation
21 I'm really hearing is -- well, one, you can be pleasant,
22 which you are, and two, that you're a drug addict, which
23 is pretty obvious. So that's a significant mitigation,
24 but is it enough to really take care of all of your prior

1 criminal history? I don't think I'm convinced that it is,
2 but I am convinced that 207.010(A) is not appropriate
3 today. So I'm not going to be adjudicating you pursuant
4 to 207.010(A), but I am going to be adjudicating you a
5 habitual criminal pursuant to NRS 207.010(B), which
6 carries the maximum penalty of 20 years, with minimum
7 parole eligibility at five years, based upon two prior
8 criminal convictions, felony convictions. Those are
9 Exhibits 2 and 3 that I'm utilizing to support this
10 enhancement. I am not utilizing the current conviction,
11 the one that you just got. It's the two priors and then
12 getting a third. So I'm just giving you Sub B, and I'm
13 finding that it is appropriate because there isn't
14 sufficient mitigation here to find that I shouldn't find
15 you a habitual criminal. You said it yourself, you have
16 been a habitual criminal.

17 I have considered carefully your case. We've
18 had lots of people try to represent themselves over the
19 years and they're not always pleasant. You have been.
20 You have been respectful when you're here in the court.
21 Those are positives, but I have to consider the other
22 aspects of your history and your criminal history, and an
23 aspect of that includes that you've been given chances
24 before. Your parole history in the '96 case; five

1 different times, in jail, in prison, out. You fouled up.
2 Okay, we'll give you a few days, weeks, months, whatever
3 it was. Another chance and you did it again. And the
4 prior chances you've been given in those circumstances and
5 the fact that you haven't utilized those chances in the
6 past tells me that I am making the right decision to
7 adjudicate you as a habitual criminal. I think it will
8 serve the purpose of discouraging future behavior, as much
9 as the fact that you're going to get more time, but it's
10 going to give you an opportunity to stay clean and sober
11 longer, and when you're clean and sober, I think you're a
12 smart person and maybe you can get some insight into your
13 drug addiction while you're in custody.

14 Mr. Picker said the decision by the Court to
15 exercise my discretion to find you a habitual criminal is
16 a serious decision, and he's right. It is one of the most
17 difficult decisions that the district court judge has to
18 make. Because, for the same reasons you didn't want me to
19 do it, you wanted me to give you that assurance that
20 everything you had done wasn't awful and that there was a
21 future for you. By finding you a habitual criminal, I
22 have to, in some respect, say that nothing we've done in
23 the past has worked, and I think your criminal history
24 shows that. So when I consider all of those factors and

1 the circumstances of your current offense, as it was
2 presented in the jury verdict, I am finding that the
3 appropriate and the right thing for me to do is to
4 exercise my discretion and find you a habitual criminal.

5 Are there any other findings that you would
6 request, Mr. Bogale, with regard to the finding of
7 habitual criminality?

8 MR. BOGALE: I believe you've covered most of
9 it, your Honor. The case law says you don't have to utter
10 a specific phrase, but "just and proper" seems to appear
11 in all the cases.

12 THE COURT: I don't know if I said that, but I
13 certainly believe that it is the just and proper decision.

14 So as to Count 2, the defendant is adjudicated
15 pursuant to NRS 207.010(B) as a habitual criminal. I will
16 be sentencing the defendant to 20 years in the Nevada
17 Department of Corrections, with minimum parole eligibility
18 at five years. And I think it's discretionary whether it
19 runs concurrent or consecutive to the robbery in Count 1.
20 So I'm going to exercise my discretion to run it
21 concurrent to the robbery in Count 1.

22 Now, Mr. Schachter, what you do with this is
23 going to be your decision, where you go, how you do in
24 prison and how you do when you get out, but this

1 conviction is strong. The lecture I've given you is
2 strong. The two that I've used to support this are
3 strong. If you get out and you commit more offenses, I
4 don't think there's a judge in the adjacent states,
5 anyway, that wouldn't follow through with a request from
6 the DA to find you a habitual criminal and you'll spend
7 the rest of your life in prison. I hope that you are able
8 to get on the other side of your criminal history.

9 Anything further for today?

10 MR. BOGALE: The State would just add, your
11 Honor -- I believe the subsection the Court is referring
12 to is Subsection A. That's the two priors, 5 to 20.

13 THE COURT: I'm sorry, did I flip it?

14 MR. BOGALE: I think so.

15 THE COURT: Yes, I want it to be A. I'm sorry,
16 it's the one based on two prior felony convictions.

17 MR. BOGALE: And do those priors need to be
18 admitted formally, your Honor?

19 THE COURT: They do, and I'm admitting formally
20 Exhibit 2 and 3. The others will be part of the court
21 record, however.

22 MR. BOGALE: Thank you.

23 THE COURT: Mr. Picker, anything further?

24 MR. PICKER: No. Thank you, your Honor.

1 THE COURT: We have some issues with regard to
2 the judgment of conviction sometimes in habitual
3 criminals. So I'm going to ask the clerk to provide the
4 form of judgment to counsel, Mr. Picker and Mr. Bogale,
5 before she provides it to me for signature. And then if
6 you have any objections, please make a record of that
7 before we enter the judgment.

8 THE DEFENDANT: Absolutely, your Honor.

9 THE COURT: Thank you.

10 Court's in recess.

11 (End of proceedings.)

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1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss.

3 I, ROMONA MALNERICH, official reporter of the
4 Second Judicial District Court of the State of Nevada,
5 in and for the County of Washoe, do hereby certify:

6 That as such reporter, I was present in
7 Department No. 6 of the above court on Thursday, February
8 26, 2015, at the hour of 1:45 p.m. of said day, and I then
9 and there took verbatim stenotype notes of the proceedings
10 had and testimony given therein upon the Sentencing in the
11 case of THE STATE OF NEVADA, Plaintiff, versus MARC PAUL
12 SCHACHTER, Defendant, Case No. CR14-1044.

13 That the foregoing transcript, consisting of
14 pages numbered 1 to 54, both inclusive, is a full, true
15 and correct transcript of my said stenotype notes, so
16 taken as aforesaid, and is a full, true and correct
17 statement of the proceedings had and testimony given upon
18 the Sentencing in the above-entitled action to the best of
19 my knowledge, skill and ability.

20 DATED: At Reno, Nevada, this 16th day of April,
21 2015.

22 Romona Malnerich

23 _____
24 ROMONA MALNERICH, CCR #269

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-04-16 22:18:55.745.
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JENNIFER LUNT, ESQ. - Notification received on 2015-04-16 22:18:55.667.
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***** IMPORTANT NOTICE - READ THIS INFORMATION *****
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A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

04-16-2015:22:17:50

Clerk Accepted:

04-16-2015:22:18:24

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Transcript

Filed By:

Romona Malnerich

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TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

JENNIFER L. LUNT, ESQ. for MARC PAUL
SCHACHTER

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

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

MARC PAUL SCHACHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67673
District Court Case No. CR141044

D4

RECEIPT FOR DOCUMENTS

TO: Washoe County Alternate Public Defender \ Jarrod T. Hickman, Jennifer L. Lunt
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

03/31/2015 Appeal Filing Fee waived. Criminal.

03/31/2015 Filed Notice of Appeal/Fast Track. Filed certified copy of notice of appeal. (Fast Track Notice issued to counsel for appellant.)

DATE: March 31, 2015

Tracie Lindeman, Clerk of Court
lh

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TERRENCE MCCARTHY, ESQ. - Notification received on 2015-04-24 08:23:45.322.
ZELALEM BOGALE, ESQ. - Notification received on 2015-04-24 08:23:44.839.
JENNIFER LUNT, ESQ. - Notification received on 2015-04-24 08:23:45.229.
JARROD HICKMAN, ESQ. - Notification received on 2015-04-24 08:23:45.276.
KELLY KOSSOW, ESQ. - Notification received on 2015-04-24 08:23:44.901.
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A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

04-24-2015:08:22:38

Clerk Accepted:

04-24-2015:08:23:12

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Supreme Court Receipt for Doc

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OF NEVADA

JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

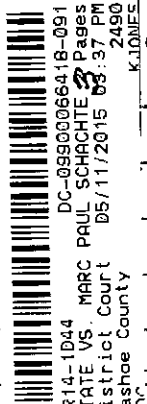
JENNIFER L. LUNT, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

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V7. 1368



CR14-1044
STATE VS. MARC PAUL SCHACHTER
District Court
Washoe County
DC-09900066418-0911
Pages
05/11/2015 09:37 PM
2490
KIDNES

MARC SCHACHTER
#91445
NCC
P.O. BOX 7000
CARSON CITY, NV 89702

IN PROPER

FILED

2015 MAY 11 PM 3:57

JACQUELINE BRYANT
CLERK OF THE COURT

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

THE STATE OF NEVADA,
PLAINTIFF,

v.

MARC PAUL SCHACHTER,
DEFENDANT.

CASE NO: CR-14-1044

DEPT. NO: 4

MOTION TO SUBMIT REQUEST FOR CASE FILE
FOR JUDICIAL DECISION

THE DEFENDANT, MARC SCHACHTER, IN PROPER, COMES NOW
AND MOVES THIS COURT TO MAKE A DECISION
ON DEFENDANT'S REQUEST FOR STAND-BY COUNSEL'S
ENTIRE CASE FILE.

ON 11-18-14, DEFENDANT FILED REQUEST FOR CASE
FILE OF STAND-BY COUNSEL, JAMES LESLIE OF
THE WASHOE COUNTY PUBLIC DEFENDER'S OFFICE.

ON 12-2-14, THE STATE FILED AN OMNIBUS
ANSWER TO SEVERAL POST-CONVICTION FILINGS.
THE STATE RESPONDED, "THE STATE TAKES NO
POSITION ON THESE FILINGS" [PAGE 2 LINES 17-19]

THE ATTACHED EXHIBIT FURTHER INDICATE MR.
LESLIE'S FAILURE TO PROVIDE THE REQUESTED
INFORMATION TO THE DEFENDANT.

V7. 1368

THE DEFENDANT RESPECTFULLY REQUESTS THIS COURT
TO ORDER MR. LESHE TO PROVIDE THE
DEFENDANT WITH A COPY OF THE ENTIRE CASE
FILE OR TO SET A HEARING ON THIS MATTER.

AFFIRMATION PURSUANT TO NRS 239B.030

THE UNDERSIGNED HEREBY AFFIRMS THIS MOTION
DOES NOT CONTAIN ANY SOCIAL SECURITY NUMBER(S)
OR ANY PERSON(S).

DATED: APRIL 7, 2015

X Marc Schachter

MARC SCHACHTER

IN PROPER.

CERTIFICATE OF SERVICE

I, MARC SCHACHTER, PLACED A TRUE AND
CORRECT COPY OF THE ENCLOSED DOCUMENTS
FOR MAILING WITH THE CORRECTIONAL
OFFICER AT SOUTHERN DESERT CORRECTIONAL
CENTER TO THE FOLLOWING:

WASHOE COUNTY DISTRICT ATTORNEY
P.O. BOX 11130
RENO, NV 89520-0027

DATE: APRIL 27, 2015

X Marc Schachter
MARC SCHACHTER

V7
CR14-1044 DC-09900066418-002
STATE VS. MARC PAUL SCHACHTE 4 Pages
District Court 05/11/2015 03:37 PM
Washoe County
CV 1

EXHIBIT 1

EXHIBIT 1

V7. 1371

EXHIBIT 1

EXHIBIT 1

Hickman, Jarrod

From: Leslie, Jim
Sent: Wednesday, December 17, 2014 1:01 PM
To: Hickman, Jarrod
Subject: RE: Marc Schrachter

Jarrod:

Thanks for the written request. As you know, Mr. Schachter represented himself, against the advice of counsel and the Court, and I was appointed as stand-by.

Responding to your email:

As to discovery, my recollection was the state was producing that directly to him, so he should have it all. I recall the State making a record at times of what was produced, and Schachter indicating affirmance of having received various materials, and I also believe the State was using one of its investigators to effect hand-deliver of discovery. If he is missing anything, which I have no reason to believe he is, that would most likely be the result of production issues on the part of the State. I'm not sure I can add anything to issue.

As to correspondence with the client, I would think he would have what I sent him. It's time consuming to go back and copy materials he already has, and which he previously acknowledged to me, and at times the court, having received, so in the absence of a specific reason to do so I prefer not to at this time absent direction from the Court or further explanation of need from the client/you.

As to investigative requests and results, I believe his request is premature in that no appeal or IAC claim has been asserted in the formal sense; I know he claims generally that I did him some kind of a disservice, although he has never specified, to me at least, how. Additionally, I recall putting on record all or most of the results we had obtained. If I may, I suggest he/you obtain copies of the transcripts of proceedings, including sealed hearings, and see if those transcripts answer whatever questions he has.

As for subpoenas, again, his request appears premature vis appeal and/or IAC claim assertion. I prefer to respond to those demands at the appropriate time and in the appropriate manner.

As I recall, I believe I accommodated all reasonable requests of Mr. Schachter, as well as some unreasonable requests. If you choose to seek an order to produce materials, I would request you set a hearing for that and provide me opportunity to address the court, along with notice to the State.

Please let me know if you have any questions or if I misunderstood any of your requests.

Thanks,

Jim

From: Hickman, Jarrod
Sent: Wednesday, December 10, 2014 5:19 PM
To: Leslie, Jim
Subject: Marc Schrachter
Importance: High

Good evening Jim,

V7. 1374

Per our discussions, please consider this my written request for your file pertaining to Marc Schrachter. Specifically, I am requesting discovery, correspondence with Mr. Schrachter, investigation requests and results, and any subpoenas issued.

Sincerely,

Jarrold T. Hickman
Deputy Alternate Public Defender
Washoe County Alternate Public Defender's Office
350 South Center Street
Reno, Nevada 89501
T: (775) 328-3964
F: (775) 328-3998

Confidentiality Note: *This message is intended for use only by the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent of the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender immediately and destroy the communication in its entirety, whether electronic or hard copy. Thank you.*

CR14-1044
DC-09900088418-093
STATE VS. MARC PAUL SCHACHTER 1 Page
District Court 05/11/2015 03:37 PM
Washoe County
nmr

MARC SCHACHTER
#91445 / In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018

FILED

2015 MAY 11 PM 3:57

JACQUELINE BRYANT
CLERK OF THE COURT

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

* * *

STATE OF NEVADA

CASE NO. CR-14-1044

PLAINTIFFS

DEPT. NO. 4

vs.

NOTICE OF CHANGE OF ADDRESSMARC PAUL SCHACHTERDEFENDANT

COMES NOW, DEFENDANT, MARC SCHACHTER, in Proper Person,

hereby gives notice to the above-entitled court, that due to Nevada Department
of Correction's action, ON 4/13/15, has been transferred from NORTHERN
NEVADA CORRECTIONAL CR. TO: SOUTHERN DESERT CORRECTION CR.

Therefore, DEFENDANT, MARC SCHACHTER, prays that this
Honorable Court will henceforth, send all documents/paperwork concerning the
above-cited case number to the new address.

CC: FILE

DATED: this 24 day of APRIL, 2015.

Respectfully submitted,

BY:

MARC SCHACHTER #91445
In Propria Personam

CASE NO. CR14-1044

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

**DATE, JUDGE
OFFICERS OF**

PAGE ONE

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

9/11/14 **ONGOING PRE-TRIAL MOTIONS/MOTION TO CONFIRM TRIAL DATE**

HONORABLE Deputy District Attorney Zelalem Bogale, Esq., represented the State.
CONNIE Defendant present representing himself. Chief Deputy Public Defender
STEINHEIMER James Leslie, Esq., present as stand-by counsel for the Defendant.
DEPT. NO.4

M. Stone Alejandro Monroy called by State's counsel, sworn and testified.

(Clerk)

J. Schonlau ***Witness identified the Defendant for the record.

(Reporter)

EXHIBIT C marked by State's counsel.

Witness Monroy further direct examined.

EXHIBIT C offered by State's counsel; voir dire and no objection by Defendant; ordered admitted into evidence.

Witness Monroy further direct examined; cross-examined; redirect examined; recross-examined; excused.

Nick Reed called by State's counsel, sworn and testified.

EXHIBITS 1 and 1A marked and offered by State's counsel; no objection by Defendant; ordered admitted into evidence.

Witness Reed further direct examined.

EXHIBIT 1B marked by State's counsel.

Witness Reed further direct examined; cross-examined; excused.

Discussion ensued regarding the purpose of the testimony and contents of Exhibits A and B marked at previous hearing.

11:11 a.m. Court recessed.

11:48 a.m. Court reconvened with State's counsel, Defendant and Stand-By counsel present.

Michelle Bays called by State's counsel, sworn and testified.

EXHIBIT 1B offered by State's counsel; no objection by Defendant; ordered

CASE NO. CR14-1044

**TITLE: THE STATE OF NEVADA VS. MARC
PAUL SCHACHTER****DATE, JUDGE
OFFICERS OF
COURT PRESENT****PAGE TWO****APPEARANCES-HEARING****CONT'D TO**

9/11/14 **PRE-TRIAL MOTIONS**
 J. Schonlau admitted into evidence.
 (Reporter) **EXHIBIT B1** marked by State's counsel.

Witness Bays further direct examined.

EXHIBIT B1 offered by State's counsel; no objection by Defendant; ordered admitted into evidence.

Witness Bays further direct examined.

State's counsel set forth differences to all the surveillance videos.

Witness Bays excused subject to recall.

12:06 p.m. Court recessed.

1:09 p.m. Court reconvened with State's counsel, Defendant and Stand-By counsel present.

Witness Bays, heretofore sworn, resumed stand and was further direct examined.

EXHIBIT D marked by State's counsel.

Witness Bays further direct examined.

EXHIBIT D offered by State's counsel; objection by Defendant; objection sustained, admission denied.

Witness Bays further direct examined.

EXHIBIT D re-offered by State's counsel; admission held in abeyance pending further questioning of the witness.

Witness Bays further direct examined.

EXHIBIT E marked by State's counsel.

CASE NO. CR14-1044

**TITLE: THE STATE OF NEVADA VS. MARC
PAUL SCHACHTER****DATE, JUDGE
OFFICERS OF****PAGE THREE****COURT PRESENT****APPEARANCES-HEARING****CONT'D TO**

9/11/14

PRE-TRIAL MOTIONSJ. Schonlau
(Reporter)

Witness Bays further direct examined

EXHIBIT D re-offered by State's counsel; voir dire and objection by Defendant; ordered admitted into evidence over objection.

Witness Bays further direct examined.

EXHIBITS A and B offered by State's counsel; no objection by Defendant; ordered admitted into evidence.

Witness Bays further direct examined; cross-examined; excused.

Discussion ensued regarding the State recalling Witness Monroy.

Witness Monroy, heretofore sworn, recalled by State's counsel and was direct examined; cross-examined; examined by the Court; redirect examined; recross-examined; further examined by the Court, State's counsel and Defendant; excused

1:30 p.m. Court recessed.

4:06 p.m. Court reconvened with State's counsel, Defendant and Stand-by counsel.

Witness Monroy, heretofore sworn, recalled by State's counsel and was direct examined.

EXHIBIT F marked by State's counsel.

Witness Monroy further direct examined.

EXHIBIT F offered by State's counsel; voir dire and no objection by Defendant; ordered admitted into evidence.

Witness Monroy further direct examined; cross-examined; examined by the Court; excused.

State rested.

4:10 p.m. Court recessed.

**DATE, JUDGE
OFFICERS OF****PAGE FOUR****COURT PRESENT****APPEARANCES-HEARING****CONT'D TO**

9/11/14

PRE-TRIAL MOTIONSJ. Schonlau
(Reporter)

4:45 p.m. Court reconvened with State's counsel, Defendant and Stand-by counsel present.

Motion to Dismiss due to Prejudicial Delay by defendant; presented argument.

Motion to Dismiss due to Lost or Destroyed Evidence by defendant; presented argument.

COURT ENTERED ORDER denying the Motion for Preliminary Hearing Transcript based on the defendant's refusal to accept the remedy of remanding case back to Justice Court for preliminary examination; granting Motion to Compel State to provide "Brady" Material; granting the Motion in Limine regarding bad acts of the State's witnesses and a hearing outside the presence of the jury must be conducted prior to any questions being asked.

State's counsel presented objections to the Motions to Dismiss.

Discussion ensued regarding the Faretta canvass conducted by Judge Lynch in the lower Court, the defendant's inability to hire an investigator, the request for an investigator at public expense and subpoena's issued on behalf of the defendant by the Public Defender's Office.

State's counsel provided the defendant and stand-by counsel with the State's packet of proposed Jury Instructions.

EXHIBITS 2, 3, 4 and 5 marked by State's counsel.

State's counsel advised the Court and the defendant that Exhibits 2 and 3 would be utilized for impeachment purposes.

Stand-by counsel Leslie presented argument on behalf of the defendant for the limited purpose of the use of Exhibits 2 and 3 for impeachment purposes. State's counsel presented reply argument.

COURT ENTERED ORDER allowing for the use of the Judgments of Conviction contained in Exhibits 2 and 3 for impeachment purposes should the defendant testify and deny having prior convictions. **COURT** further found Exhibits 2 and 3 constitutionally valid for impeachment purposes.**COURT** took the following Motions under advisement: Motions to Dismiss due to Prejudicial Delay, Motion to Dismiss due to Lost or Destroyed Evidence, Motion to Advise Witnesses for the State of the privilege against self-incrimination, Motion to Compel the State to provide exculpatory evidence, Motion to Obtain Material and Exculpatory Video Recording, Motion for the Production of the Replacement or Substitute lost or stolen Material, and Motion in Limine with Regard to the Surveillance video Evidence.

Exhibit marking set.

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-05-12 11:11:31.955.
ZELALEM BOGALE, ESQ. - Notification received on 2015-05-12 11:11:31.721.
JENNIFER LUNT, ESQ. - Notification received on 2015-05-12 11:11:31.893.
JARROD HICKMAN, ESQ. - Notification received on 2015-05-12 11:11:31.924.
KELLY KOSSOW, ESQ. - Notification received on 2015-05-12 11:11:31.783.
DIV. OF PAROLE & PROBATION - Notification received on 2015-05-12 11:11:31.815.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-05-12 11:11:31.846.

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

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

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

05-12-2015:11:10:21

Clerk Accepted:

05-12-2015:11:11:00

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

***Minutes

Filed By:

Court Clerk MTrabert

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

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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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1 CODE: 4185
2 DAWN B. GUSTIN, CCR #253
3 Hoogs Reporting Group
4 435 Marsh Avenue
5 Reno, Nevada 89509
6 (775) 327-4460
7 COURT REPORTER

8 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE
10 THE HONORABLE ELLIOTT A. SATTler, DISTRICT JUDGE

11 --ooOoo--

12 THE STATE OF NEVADA,) Case No. CR14-1044
13 Plaintiff,) Dept. No. 4
14 vs.)
15 MARC PAUL SCHACHTER,)
16 Defendant.)
17 =====

18 TRANSCRIPT OF PROCEEDINGS

19 ARRAIGNMENT

20 THURSDAY, JULY 17, 2014

21
22
23 Reported by: DAWN BRATCHER GUSTIN, CCR 253, RPR, CRR
24 California CSR 7124

1 APPEARANCES:

2 FOR THE PLAINTIFF:

NATHAN D. MacLELLAN, ESQ.
Deputy District Attorney
1 S. Sierra St., 4th Floor
Reno, Nevada 89501

4

5 FOR THE DEFENDANT:

JAMES BRIAND LESLIE, ESQ.
Chief Deputy Public Defender
350 S. Center St., 5th Floor
Reno, Nevada 89501

7

8 FOR THE DIVISION OF
9 PAROLE AND PROBATION:

LYNETTE DIX

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RENO, NEVADA, THURSDAY, JULY 17, 2014, 9:49 A.M.

--oOo--

THE COURT: How about Marc Schachter, CR14-1044. Mr. Schachter appears in court in custody with his attorney, Mr. Leslie. Mr. MacLellan is here on behalf of the State of Nevada. Ms. Dix is here on behalf of the Division of Parole and Probation. This is an arraignment.

Mr. Leslie, do you have a copy of the July 14th, 2014, file-stamped Information in this case? Amended Information, excuse me.

MR. LESLIE: Your Honor, if I might, actually at the Justice Court level I appeared per assignment with Mr. Schachter. Judge Lynch conducted a Faretta canvass at Mr. Schachter's request. I take no position on how he did, although he did well in some of his answers. In any event, Judge Lynch found that he was competent under Faretta to proceed representing himself.

I'm not a hundred percent sure why I'm here today, but my secretary did track me down yesterday and say, "Look, Department 4 wanted you there." I think that at this point he's representing himself.

1 THE COURT: Well, I'm -- I'm somewhat
2 concerned about that. I have no disrespect certainly for
3 Judge Lynch at the Justice Court level, but I am pretty
4 confident that Judge Steinheimer would want to conduct
5 her own Faretta canvass of the defendant. I could do a
6 Faretta canvass as well, but the case is ultimately going
7 to be assigned to Department 4 for further proceedings,
8 and so what I will do in this case is continue this
9 matter.

10 Is Judge Steinheimer back next week?

11 THE CLERK: Yes, your Honor. She will be
12 available on July 24th.

13 THE COURT: All right. So what we're going
14 to do, Mr. Schachter, is just continue your case one week
15 so that Judge Steinheimer, who is the assigned judge,
16 will be able to do the same type of canvass that was done
17 with you at the Justice Court level pursuant to Supreme
18 Court Rule 253, if I remember correctly.

19 THE DEFENDANT: Can I just make one note for
20 the record?

21 THE COURT: Sure.

22 THE DEFENDANT: The continual mother-henning
23 of the courts to make sure my rights are preserved is
24 prejudicing my case where I can't get a timely --

1 exculpatory evidence that could eventually be material to
2 the case.

3 THE COURT: In what way?

4 THE DEFENDANT: In that I have videotape that
5 could potentially be lost, and the continual delay,
6 delay, delay, especially without -- I have received
7 minimal discovery, no witness statements, four or five
8 pages of actual police reports that deal with the instant
9 offense.

10 THE COURT: Well, if Judge Steinheimer
11 determines that you are able to represent yourself going
12 forward in this matter, then you can certainly file
13 whatever motions regarding discovery you feel are
14 appropriate and the State has an obligation, even without
15 the motions being filed, to provide you with all the
16 evidence that they have in their possession regarding
17 your case. That's a little bit too broad, but they have
18 an obligation to provide you with certain discovery, as
19 you know. And I don't see that one week of a continuance
20 is going to impact your case. You certainly haven't
21 articulated any reason that would lead me to believe that
22 we have to do anything with your case today as opposed to
23 one week from today.

24 So it will be the order of the Court that

1 this matter is continued to be heard by Judge Steinheimer
2 on Thursday, July 24th --

3 Does she start at 8:30 or 9:00?

4 THE CLERK: 9:00 a.m., your Honor.

5 THE COURT: -- at 9:00 a.m. So you've got
6 one week to go, Mr. Schachter, and then she'll do the 253
7 canvass with you and make a decision on your case.

8 THE DEFENDANT: Thank you, your Honor.

9 THE COURT: Thank you, sir.

10 (Proceedings concluded.)

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1 STATE OF NEVADA)
2) ss.

3 COUNTY OF WASHOE)

4 I, DAWN BRATCHER GUSTIN, Certified Court
5 Reporter in and for the State of Nevada, do hereby
6 certify:

7 That the foregoing proceedings were taken by
8 me at the time and place herein set forth; that the
9 proceedings were recorded stenographically by me and
10 thereafter transcribed via computer under my supervision;
11 that the foregoing is a full, true and correct
12 transcription of the proceedings to the best of my
13 knowledge, skill and ability.

14 I further certify that I am not a relative
15 nor an employee of any attorney or any of the parties,
16 nor am I financially or otherwise interested in this
17 action.

18 I declare under penalty of perjury under the
19 laws of the State of Nevada that the foregoing statements
20 are true and correct.

21 Dated this 2nd day of June, 2015.

22
23 Dawn Bratcher Gustin

24 Dawn Bratcher Gustin, CCR #253

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-06-02 19:13:11.891.
ZELALEM BOGALE, ESQ. - Notification received on 2015-06-02 19:13:11.673.
JENNIFER LUNT, ESQ. - Notification received on 2015-06-02 19:13:11.829.
JARROD HICKMAN, ESQ. - Notification received on 2015-06-02 19:13:11.86.
KELLY KOSSOW, ESQ. - Notification received on 2015-06-02 19:13:11.72.
DIV. OF PAROLE & PROBATION - Notification received on 2015-06-02 19:13:11.767.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-06-02 19:13:11.798.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
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A filing has been submitted to the court RE: CR14-1044

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

06-02-2015:19:12:14

Clerk Accepted:

06-02-2015:19:12:41

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Transcript

Filed By:

Dawn Bratcher Gustin

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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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1 2490
JENNIFER LUNT, BAR# 3057
2 ALTERNATE PUBLIC DEFENDER
JARROD T. HICKMAN, BAR# 12772
3 MARC PICKER, BAR# 3566
DEPUTY ALTERNATE PUBLIC DEFENDER
4 P.O. BOX 11130
RENO NV 89520-3083
(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,

Case No. CR14-1044

12 vs.

Dept. No. 4

13 MARC PAUL SCHACHTER,

14 Defendant.

15 **JOINT MOTION TO UNSEAL EX PARTE MOTION FILE WITH THE COURT**

16 MARC PAUL SCHACHTER (hereinafter "Mr. Schachter"), by and through Washoe
17 County Alternate Public Defender JENNIFER LUNT and Deputy Alternate Public Defender
18 JARROD T. HICKMAN, and the STATE OF NEVADA, by and through Washoe County
19 District Attorney CHRISTOPHER HICKS and Deputy District Attorney TERRANCE

20 ...

21 ...

22 ...

23 ...

24 ...

1 McCARTHY hereby request this Court issue an Order unsealing the ex parte motion and
 2 accompanying declaration filed by Mr. Schachter on July 24, 2014.

3 DATED this 11th day of June, 2015.

4 JENNIFER LUNT
 Washoe County Alternate Public Defender

5 /s/ Jarrod T. Hickman
 6 JARROD T. HICKMAN
 Deputy Alternate Public Defender

CHRISTOPHER HICKS
 Washoe County District Attorney

7 /s/ [Signature]
 TERRANCE MCCARTHY
 Deputy District Attorney

8 POINTS AND AUTHORITIES

9 Mr. Schachter was charged with attempted robbery, burglary and habitual criminality
 10 by Amended Information filed July 14, 2014. At his arraignment on July 24, 2014, he
 11 requested the ability to represent himself. The Court canvassed him pursuant to SCR 253 and
 12 *Faretta v. California*, 422 U.S. 806 (1975), before it granted his request. Mr. Schachter then
 13 filed an "Ex Parte Motion to Appoint Investigator For a Pro Per Defendant at the Expense of
 14 the State" accompanied by a Declaration pertaining to the request. *See Transcript of*
 15 *Arraignment, July 24, 2014* at 24. The Court accepted those documents and filed them under
 16 seal.

17 Ultimately, Mr. Schachter was convicted of attempted robbery, adjudicated a habitual
 18 criminal, and sentenced accordingly. Currently, the matter is pending appeal.

19 The parties request that this Court unseal the "Ex Parte Motion to Appoint Investigator
 20 For a Pro Per Defendant at the Expense of the State" and accompanying Declaration as they are
 21 necessary to complete the record on appeal. Although counsel is unable to locate a statute or
 22 rule specifically pertaining to the unsealing of ex parte motions in a criminal case, such a
 23 record may be unsealed upon motion in a civil case. *See* SRCR 4 (providing that in the civil
 24

1 context, a sealed court record may be unsealed "upon stipulation of all the parties [. . .] or upon
2 a motion filed by a named party or another person). Additionally, this court retains the
3 jurisdiction to unseal a record although the matter is pending appeal. See SRCR 5.

4 CONCLUSION

5 Based on the foregoing, Mr. Schachter respectfully requests that this Court issue an
6 order unsealing "Ex Parte Motion to Appoint Investigator For a Pro Per Defendant at the
7 Expense of the State" and accompanying Declaration for purposes of appeal.

8 AFFIRMATION PURSUANT TO NRS 239B.030

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

11 DATED this 11th day of June, 2015.

12 JENNIFER LUNT
13 Washoe County Alternate Public Defender

14 /s/ Jarrod T. Hickman
JARROD T. HICKMAN
15 Deputy Alternate Public Defender

CHRISTOPHER HICKS
Washoe County District Attorney

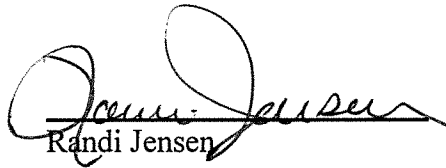
16 /s/ [Signature]
TERRANCE MCCARTHY
17 Deputy District Attorney
18
19
20
21
22
23
24

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 where indicated, a true and correct copy of the foregoing document to the following:

Terrance McCarthy
Via E-Filing

DATED this 11th day of June, 2015.



Randi Jensen

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-06-11 13:39:38.667.
ZELALEM BOGALE, ESQ. - Notification received on 2015-06-11 13:39:36.654.
JENNIFER LUNT, ESQ. - Notification received on 2015-06-11 13:39:38.604.
JARROD HICKMAN, ESQ. - Notification received on 2015-06-11 13:39:38.636.
KELLY KOSSOW, ESQ. - Notification received on 2015-06-11 13:39:37.278.
DIV. OF PAROLE & PROBATION - Notification received on 2015-06-11 13:39:37.419.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-06-11 13:39:38.464.

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

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

06-11-2015:13:22:11

Clerk Accepted:

06-11-2015:13:36:55

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Motion

Filed By:

Jarrold T Hickman

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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

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

1 CODE 3860
2 JENNIFER LUNT, BAR #3057
3 WASHOE COUNTY ALTERNATE PUBLIC DEFENDER
4 JARROD T. HICKMAN, BAR #12772
5 PO BOX 11130
6 RENO NV 89520
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,

CASE NO. CR14-1044

15 vs.

DEPT NO. 4

16 MARC SCHACHTER,
17 Defendant.

18 REQUEST FOR SUBMISSION

19 COMES NOW, Defendant, MARC SCHACHTER, by and through the Washoe County
20 Alternate Public Defender's Office and his counsel, Jennifer Lunt, Alternate Public Defender,
21 Jarrod T. Hickman, Deputy, and hereby requests that the JOINT MOTION TO UNSEAL
22 EXPARTE MOTION FILE WITH THE COURT that was filed on June 11, 2015, be submitted.

23 ///

24 ///

25 ///

26 ///

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this 11TH day of June, 2015.

Washoe County Alternate Public Defender

/s/ Jarrod T. Hickman

JARROD T. HICKMAN
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:

Terrance McCarthy
Via E-filing

DATED this 11th day of June, 2015.

/s/RANDI JENSEN
Randi Jensen

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-06-12 09:17:24.315.
ZELALEM BOGALE, ESQ. - Notification received on 2015-06-12 09:17:23.535.
JENNIFER LUNT, ESQ. - Notification received on 2015-06-12 09:17:24.253.
JARROD HICKMAN, ESQ. - Notification received on 2015-06-12 09:17:24.284.
KELLY KOSSOW, ESQ. - Notification received on 2015-06-12 09:17:23.582.
DIV. OF PAROLE & PROBATION - Notification received on 2015-06-12 09:17:23.629.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-06-12 09:17:23.66.

******* 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:

06-11-2015:15:42:08

Clerk Accepted:

06-12-2015:09:16:55

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Request for Submission

Filed By:

Jarrold T Hickman

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

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

-

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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.):

1 3370
JENNIFER J. LUNT, #3057
2 JARROD HICKMAN, #12772
WASHOE COUNTY ALTERNATE PUBLIC DEFENDER
3 P.O. BOX 11130
RENO, NEVADA 89520
4 (775) 328-3995

5 Attorney for Defendant

6
7
8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE

10 THE STATE OF NEVADA,
Plaintiff,

11 vs.

Case No. CR14-1044

Dept. No 4

12
13 MARC PAUL SCHACHTER,
Defendant.

14 _____ /
15 **ORDER TO UNSEAL EX PARTE MOTION FILE WITH THE COURT**

16 The Court having reviewed the Joint Motion to Unseal Ex Parte Motion File with the
17 Court filed by the Defendant on June 11, 2015, and good cause appearing,

18 IT IS HEREBY ORDERED that the Ex Parte Motion to Appoint Investigator for a Pro
19 Per Defendant at the Expense of the State and the accompanied Declaration be unsealed.

20 DATED this 30 day of June, 2015.

21
22 *Connie J. Steinheimer*
23 DISTRICT JUDGE
24
25
26

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-07-02 14:37:55.26.
ZELALEM BOGALE, ESQ. - Notification received on 2015-07-02 14:37:55.026.
JENNIFER LUNT, ESQ. - Notification received on 2015-07-02 14:37:55.198.
JARROD HICKMAN, ESQ. - Notification received on 2015-07-02 14:37:55.229.
KELLY KOSSOW, ESQ. - Notification received on 2015-07-02 14:37:55.089.
DIV. OF PAROLE & PROBATION - Notification received on 2015-07-02 14:37:55.12.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-07-02 14:37:55.151.

******* 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:

07-02-2015:14:36:49

Clerk Accepted:

07-02-2015:14:37:23

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Order...

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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-

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The following people were served electronically:

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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

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC PAUL SCHACHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67673

FILED

JUL 09 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK*ORDER DIRECTING TRANSMISSION OF EXHIBITS*

Appellant has moved for the transmission of documents that were filed under seal in the district court. Cause appearing, we grant the motion. NRAP 30(d). The clerk of the district court shall have 15 days from the date of this order to transmit to this court under seal appellant's ex parte "Motion to Appoint Investigator for a Pro Per Defendant at the Expense of the State" and the "Declaration of a Pro Per Defendant" filed in the district court in District Court Case No. CR-14-1044 on July 24, 2014.

It is so ORDERED.

[Signature], C.J.

cc: Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-07-15 11:18:09.16.
ZELALEM BOGALE, ESQ. - Notification received on 2015-07-15 11:18:08.941.
JENNIFER LUNT, ESQ. - Notification received on 2015-07-15 11:18:09.097.
JARROD HICKMAN, ESQ. - Notification received on 2015-07-15 11:18:09.129.
KELLY KOSSOW, ESQ. - Notification received on 2015-07-15 11:18:09.004.
DIV. OF PAROLE & PROBATION - Notification received on 2015-07-15 11:18:09.035.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-07-15 11:18:09.066.

***** 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:

07-15-2015:11:16:56

Clerk Accepted:

07-15-2015:11:17:37

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk ASmith

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The following people were served electronically:

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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

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

THE STATE OF NEVADA,

Plaintiff,

vs.

MARC PAUL SCHACHTER,

Defendant.

Case No. CR14-1044

Dept. No. 4

CERTIFICATE OF CLERK AND TRANSMITTAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe. On the 21st day of July, 2015, I deposited in the Washoe County mailing system for postage and mailing in the United States Postal Service in Reno, Nevada, a sealed copy of the Declaration of a Pro Per Defendant and Motion to Appoint Investigator for a Pro Per Defendant at the Expense of the State addressed to the Nevada Supreme Court, 201 S. Carson Street, Suite 201, Carson City, Nevada 89701. The Order is transmitted pursuant to the Supreme Court's Order filed on July 9, 2015.

I further certify that the transmitted record is a copy of the original pleadings on file with the Second Judicial District Court.

Dated this 21st day of July, 2015.

Jacqueline Bryant
Clerk of the Court

By /Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-07-21 08:58:09.676.
ZELALEM BOGALE, ESQ. - Notification received on 2015-07-21 08:58:08.006.
JENNIFER LUNT, ESQ. - Notification received on 2015-07-21 08:58:09.567.
JARROD HICKMAN, ESQ. - Notification received on 2015-07-21 08:58:09.613.
KELLY KOSSOW, ESQ. - Notification received on 2015-07-21 08:58:08.084.
DIV. OF PAROLE & PROBATION - Notification received on 2015-07-21 08:58:08.63.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-07-21 08:58:08.677.

******* 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:

07-21-2015:08:55:09

Clerk Accepted:

07-21-2015:08:57:35

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

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The following people were served electronically:

NICKOLAS J. GRAHAM, ESQ. for STATE OF
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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.):

1 **CODE 1860**

2

3

4

5

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

Case No. CR14-1044

11 **vs.**

Dept. No. 4

12 **MARC PAUL SCHACHTER,**

13 **Defendant.**

14 _____/

15 **CORRECTED JUDGMENT**

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 felony.

5 For Count I, Attempted Robbery by a habitual criminal, the Defendant shall
6 be punished by imprisonment in the Nevada Department of Corrections for the maximum
7 term of twenty (20) years with the minimum parole eligibility of five (5) years, with credit for
8 two hundred sixty-three (263) days time served; and by payment of attorney's fees in the
9 amount of One Thousand Dollars (\$1,000.00) for reimbursement of legal expenses.
10 Defendant is further ordered to pay a Three Dollar (\$3.00) administrative assessment for
11 obtaining a biological specimen and conducting a genetic marker analysis and a Twenty-
12 Five Dollar (\$25.00) administrative assessment fee to the Clerk of the Second Judicial
13 District Court.

14 The fees are subject to removal from the Defendant's books at the Nevada
15 Department of Corrections.

16 Dated this 29 day of July, 2015.
17 NUNC PRO TUNC to February 26, 2015.

18
19 
20 DISTRICT JUDGE
21
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1 CODE 3370
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 STATE OF NEVADA,

10 Plaintiff,

Case No. CR14-1044

11 vs.

Dept. No. 4

12 MARC PAUL SCHACHTER,

13 Defendant.
14 _____/

15 ORDER

16 A Corrected Judgment of Conviction having been entered regarding the
17 sentence in which the Defendant received on February 26, 2015, and the defendant
18 having filed a Notice of Appeal on March 26, 2015,

19 IT IS HEREBY ORDERED that the Clerk of the Second Judicial
20 District Court transmit a copy of the Corrected Judgment of Conviction to the Clerk of the
21 Nevada Supreme Court.

22 Dated this 30 day of July, 2015.
23
24

25 Connie I. Steinheims
26 DISTRICT JUDGE
27
28

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-07-30 16:25:39.534.
ZELALEM BOGALE, ESQ. - Notification received on 2015-07-30 16:25:37.615.
JENNIFER LUNT, ESQ. - Notification received on 2015-07-30 16:25:38.816.
JARROD HICKMAN, ESQ. - Notification received on 2015-07-30 16:25:39.487.
KELLY KOSSOW, ESQ. - Notification received on 2015-07-30 16:25:38.504.
DIV. OF PAROLE & PROBATION - Notification received on 2015-07-30 16:25:38.738.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-07-30 16:25:38.769.

******* 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:

07-30-2015:16:23:53

Clerk Accepted:

07-30-2015:16:24:50

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Judgment Conviction-Corrected

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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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.):

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-07-30 16:26:40.377.
ZELALEM BOGALE, ESQ. - Notification received on 2015-07-30 16:26:40.159.
JENNIFER LUNT, ESQ. - Notification received on 2015-07-30 16:26:40.315.
JARROD HICKMAN, ESQ. - Notification received on 2015-07-30 16:26:40.346.
KELLY KOSSOW, ESQ. - Notification received on 2015-07-30 16:26:40.221.
DIV. OF PAROLE & PROBATION - Notification received on 2015-07-30 16:26:40.252.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-07-30 16:26:40.283.

***** 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:

07-30-2015:16:25:18

Clerk Accepted:

07-30-2015:16:26:00

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Order...

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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NEVADA

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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.):

Code 1350

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

**STATE OF NEVADA,
Plaintiff,**

Case No. CR14-1044

Vs,

Dept. No. 4

**MARC PAUL SCHACHTER,
Defendant.**

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe. On the 3rd day of August, 2015, I electronically filed to the Supreme Court the Corrected Judgment filed July 30, 2015.

I further certify that the transmitted record is a copy of the original pleadings on file with the Second Judicial District Court.

Dated this 3rd day of August, 2015.

Jacqueline Bryant
Clerk of the Court

By /s/Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

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

STATE OF NEVADA,
Plaintiff,

Case No. CR14-1044

Vs,

Dept. No. 4

MARC PAUL SCHACHTER,
Defendant.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe. On the 3rd day of August, 2015, I electronically filed to the Supreme Court the Order filed on July 30, 2015.

I further certify that the transmitted record is a copy of the original pleadings on file with the Second Judicial District Court.

Dated this 3rd day of August, 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 2015-08-03 08:55:04.449.
ZELALEM BOGALE, ESQ. - Notification received on 2015-08-03 08:55:04.168.
JENNIFER LUNT, ESQ. - Notification received on 2015-08-03 08:55:04.355.
JARROD HICKMAN, ESQ. - Notification received on 2015-08-03 08:55:04.402.
KELLY KOSSOW, ESQ. - Notification received on 2015-08-03 08:55:04.23.
DIV. OF PAROLE & PROBATION - Notification received on 2015-08-03 08:55:04.277.
NICKOLAS GRAHAM, ESQ. - Notification received on 2015-08-03 08:55:04.308.

***** 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:

08-03-2015:08:53:57

Clerk Accepted:

08-03-2015:08:54:33

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Certificate of Clerk

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.

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NEVADA

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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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IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC PAUL SCHACHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67673

FILED**APR 20 2016**TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERKCR14-1044
dy**ORDER DIRECTING TRANSMISSION OF EXHIBIT**

This court has concluded that its review of one of the trial exhibits is warranted. Accordingly, the clerk of the district court shall have 10 days from the date of this order to transmit to this court the exhibit admitted at trial and marked as State's Exhibit 17. NRAP 11(a)(1).

It is so ORDERED.

Paragon, C.J.

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2016-04-27 15:33:36.7.
ZELALEM BOGALE, ESQ. - Notification received on 2016-04-27 15:33:36.607.
JENNIFER LUNT, ESQ. - Notification received on 2016-04-27 15:33:36.763.
JARROD HICKMAN, ESQ. - Notification received on 2016-04-27 15:33:36.81.
KELLY KOSSOW, ESQ. - Notification received on 2016-04-27 15:33:36.654.
DIV. OF PAROLE & PROBATION - Notification received on 2016-04-27 15:33:36.841.
NICKOLAS GRAHAM, ESQ. - Notification received on 2016-04-27 15:33:36.732.

******* 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:

04-27-2016:15:32:29

Clerk Accepted:

04-27-2016:15:33:02

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk ASmith

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

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KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

JENNIFER L. LUNT, ESQ. for MARC PAUL
SCHACHTER

JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

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,

Case No. CR14-1044

vs.

Dept. No. 4

MARC P SCHACHTER,

Defendant.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – ORIGINAL EXHIBITS

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 2nd day of May, 2016, I deposited in the Washoe County mailing system for postage and certified mailing, Certified Mail Tracking Number 7015 0920 0001 5182 4742, the original Exhibit 17 Admitted on September 22, 2014 with the U.S. Postal mailing in the United States Postal Service in Reno, Nevada addressed to the Nevada Supreme Court 201 S. Carson Street, Suite 201, Carson City, Nevada 89701.

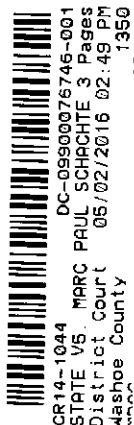
The original Exhibit was transmitted pursuant to the Supreme Court's Order entered on April 20, 2016.

Dated this 2nd day of May, 2016.

Jacqueline Bryant
Clerk of the Court

By /s/Annie Smith
Annie Smith
Deputy Clerk

1 **Code 1350**



2
3
4
5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF WASHOE**

7 **STATE OF NEVADA,**

8 **Plaintiff,**

Case No. CR14-1044

9
10 **vs.**

Dept. No. 4

11 **MARC P SCHACHTER,**

12 **Defendant.**
13 _____/

14 **CERTIFICATE OF CLERK AND TRANSMITTAL – ORIGINAL EXHIBITS**

15 I certify that I am an employee of the Second Judicial District Court of the State of
16 Nevada, County of Washoe; that on the 2nd day of May, 2016, I deposited in the Washoe
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21

22 The original Exhibit was transmitted pursuant to the Supreme Court's Order entered
23 on April 20, 2016.

24 Dated this 2nd day of May, 2016.

25 Jacqueline Bryant
26 Clerk of the Court

27 By /s/Annie Smith
28 Annie Smith
Deputy Clerk

CE14-1044 Assmt

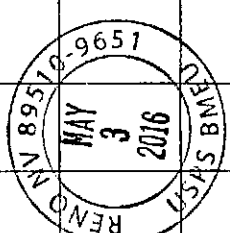
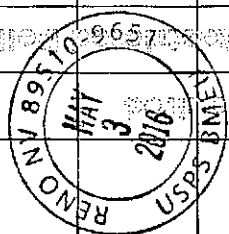
Name and Address of Sender
Clerk of the
Second Judicial District Court
Washoe County, 75 Court Street
Reno, Nevada 89501

Check type of mail or service:
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☒ Certified Mail
☐ COD
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☐ Insured

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1. 7015 0820 0001 5182 4742	NEVADA SUPREME COURT 201 South Carson Street #201 Carson City, Nevada 89701-4703												
2.													
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7.													
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 Total Number of Pieces Received at Post Office: 1

Postmaster, Per (Name of receiving employee)
 Angie Esposito

6214-1044

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<p>1. Article Addressed to:</p> <p style="text-align: center;">NEVADA SUPREME COURT 201 South Carson Street Carson City, Nevada 89701-4702</p>		<p>B. Received by (Printed Name) C. Date of Delivery</p> <p style="text-align: center;">MAY 05 2016</p> <p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes</p> <p>If YES, enter delivery address below: <input type="checkbox"/> No</p> <p style="text-align: center;">WACIE K. LINDEMAN CLERK OF SUPREME COURT DEPUTY CLERK</p>	
<p>2. Article Number (Transfer from service label) 7015 0920 0001 5182 4742</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p>	
<p>PS Form 3811, July 2013</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> <p style="text-align: center;">Domestic Return Receipt</p>	

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PS Form 3800, July 2014 See Reverse for Instructions

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2016-05-02 14:51:38.517.
ZELALEM BOGALE, ESQ. - Notification received on 2016-05-02 14:51:38.33.
JENNIFER LUNT, ESQ. - Notification received on 2016-05-02 14:51:38.658.
JARROD HICKMAN, ESQ. - Notification received on 2016-05-02 14:51:38.736.
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DIV. OF PAROLE & PROBATION - Notification received on 2016-05-02 14:51:38.798.
NICKOLAS GRAHAM, ESQ. - Notification received on 2016-05-02 14:51:38.595.

******* 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:

05-02-2016:14:49:15

Clerk Accepted:

05-02-2016:14:51:08

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 ASmith

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

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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
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TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

ZELALEM BOGALE, ESQ. for STATE OF
NEVADA

JENNIFER L. LUNT, ESQ. for MARC PAUL
SCHACHTER

JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

DIV. OF PAROLE & PROBATION

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC PAUL SCHACHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CR14-1044
No. 67673

FILED

AUG 10 2016

ORDER OF AFFIRMANCE

JACQUELINE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of attempted robbery. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On June 9, 2014, appellant Marc Schachter was arrested after attempting to steal from Walmart a backpack, heat pad, Icy Hot electrical pad, and a box of hair dye. On June 23, 2014, Schachter requested that he be allowed to represent himself and his request was granted on July 24. On that day, Schachter asked for investigative services, which court-appointed standby counsel arranged to provide around July 31. Schachter filed a motion to dismiss the amended information arguing that the delays in granting his requests resulted in the loss of exculpatory surveillance video footage showing him entering the Walmart wearing the stolen backpack because the surveillance video was destroyed, per store policy, before the investigator issued the subpoena for the video.¹ The district court denied the motion and Schachter appeals.

¹Schachter argues that the district court erred by imposing a separate sentence for both his attempted robbery conviction and his adjudication as a habitual criminal. The State concedes that this was an error. The district court entered a corrected judgment of conviction on

continued on next page...

This court reviews a district court's decision to grant or deny a motion to dismiss for an abuse of discretion. *Hill v. State*, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008). On appeal, Schachter argues that the cumulative delays by the justice and district court in granting his requests for self-representation and for reasonable investigative services resulted in a denial of his right to self-representation and due process in that he was denied the means of developing and presenting an adequate defense. Citing California law, Schachter argues that pro se defendants have "the right to reasonably necessary defense services." *People v. James*, 136 Cal. Rptr. 3d 85, 93 (Ct. App. 2011) (internal quotation marks omitted) (recognizing this right under the Sixth Amendment). However, even if we were to recognize this right, Schachter must demonstrate that he was prejudiced by the failure to provide him with the reasonably necessary services to prepare his defense. *See id.* (providing that to be entitled to reversal on this issue, "a defendant must show both error and resulting prejudice"); *People v. Jenkins*, 997 P.2d 1044, 1141 (Cal. 2000) (expressing concern that the trial court refused to allow defendant to interview an out-of-state expert witness before pro se defendant called him to testify, but "[a]ssuming error, however, no prejudice appears, because the witness's testimony was excluded as irrelevant").

Here, Schachter has demonstrated that the delay in allowing him to represent himself, followed by the delay in affording him reasonable investigative services, may have resulted in the loss of the surveillance video, which some evidence suggests Walmart may have had

...continued

July 30, 2015, properly imposing a single sentence. Therefore, this issue is moot.


but destroyed 60 days after the incident. Even crediting this assertion, Schachter still cannot prevail as he has not shown prejudice. The crime of attempted robbery does not include a threshold monetary valuation and the amount stolen does not affect the sentence. NRS 193.330; NRS 200.380; *see Williams v. State*, 93 Nev. 405, 407, 566 P.2d 417, 419 (1977) (“The State is not required to prove the entire amount or value of property taken in a robbery, only that some property was indeed taken.”). Schachter only alleges that the surveillance video would show him entering Walmart with the backpack on—he does not allege that he did not steal the other items found in the backpack after he left the store. An asset protection associate from Walmart testified that he witnessed Schachter put the other items in the backpack. Therefore, even if the surveillance video showed Schachter entering with the backpack, he cannot demonstrate prejudice because he would still be guilty of attempted robbery for the items in the backpack when he exited the store without paying.

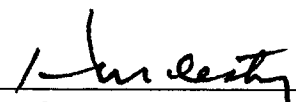
Next, Schachter claims that the district court erred by denying his motion to dismiss after it determined that the State’s failure to collect evidence (the backpack) was the result of mere negligence. Schachter argues that, because the police were statutorily required to secure the alleged stolen property pursuant to NRS 205.295, the failure to collect was the result of gross negligence. *See Daniels v. State*, 114 Nev. 261, 267-68, 956 P.2d 111, 115 (1998) (articulating the two-part test for a failure-to-collect claim as a demonstration that the evidence was material and whether the failure to collect was the result of negligence, gross negligence, or bad faith). The district court found that the backpack was material evidence, but did not explain why.

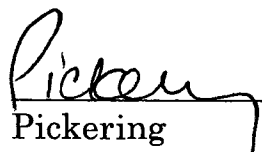
We disagree that the backpack was material. *See State v. Ware*, 881 P.2d 679, 685 (N.M. 1994) ("The determination of evidence materiality is a question of law for the court."). Evidence is material where "there is a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different." *Daniels*, 114 Nev. at 267, 956 P.2d at 115. Schachter wanted the backpack to show that he customized it and thus, could not have stolen it. Yet, for the reasons stated above, this showing would not have changed the outcome of the proceedings because, whether the backpack was his or not, it still contained items he stole. As he failed to demonstrate that the backpack was material, we need not consider whether the police's actions constituted negligence or gross negligence. *See id.* ("If the evidence was material, then the court must determine whether the failure to gather evidence was the result of mere negligence, gross negligence, or a bad faith attempt to prejudice the defendant's case." (emphasis added)). Accordingly, we conclude that the district court did not abuse its discretion by denying Schachter's motion to dismiss. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").

Schachter's other arguments lack colorable merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Saitta, J.


Hardesty, J.


Pickering, J.

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2016-08-18 09:26:17.75.
ZELALEM BOGALE, ESQ. - Notification received on 2016-08-18 09:26:17.579.
JENNIFER LUNT, ESQ. - Notification received on 2016-08-18 09:26:17.875.
JARROD HICKMAN, ESQ. - Notification received on 2016-08-18 09:26:17.938.
KELLY KOSSOW, ESQ. - Notification received on 2016-08-18 09:26:17.688.
DIV. OF PAROLE & PROBATION - Notification received on 2016-08-18 09:26:18.0.
NICKOLAS GRAHAM, ESQ. - Notification received on 2016-08-18 09:26:17.813.

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

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

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

08-18-2016:09:25:08

Clerk Accepted:

08-18-2016:09:25:46

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Supreme Court Order Affirming

Filed By:

Deputy Clerk YViloria

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NEVADA

ZELALEM BOGALE, ESQ. for STATE OF
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JENNIFER L. LUNT, ESQ. for MARC PAUL
SCHACHTER

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

DIV. OF PAROLE & PROBATION

JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC PAUL SCHACHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67673
District Court Case No. CR141044

04

NOTICE OF RETURN OF RECORD

TO: Jacqueline Bryant, Washoe District Court Clerk

This matter having been disposed of, I am returning to your custody the original documents as follows:

Exhibit (original). State's Exhibit 17.

Exhibits: "Motion to Appoint Investigator for a Pro Per Defendant at the Expense of the State" and the "Declaration of a Pro Per Defendant" filed in the district court in District Court Case No. CR-14-1044 on July 24, 2014.

Please acknowledge receipt of said documents below and return this notice to the Clerk of the Supreme Court. The enclosed copy is provided for your records.

DATE: September 08, 2016

Tracie Lindeman, Clerk of Court

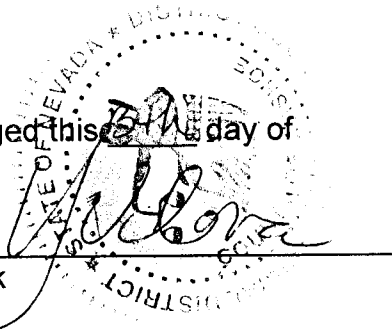
By: Amanda Ingersoll
Chief Deputy Clerk

cc without enclosure:
Washoe County Alternate Public Defender
Washoe County District Attorney
Attorney General/Carson City

RECEIPT FOR DOCUMENTS

Receipt of the documents listed herein is hereby acknowledged this 21st day of September, 2016.

District Court Clerk



Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2016-09-13 14:53:10.591.
ZELALEM BOGALE, ESQ. - Notification received on 2016-09-13 14:53:10.373.
JENNIFER LUNT, ESQ. - Notification received on 2016-09-13 14:53:10.732.
JARROD HICKMAN, ESQ. - Notification received on 2016-09-13 14:53:10.825.
KELLY KOSSOW, ESQ. - Notification received on 2016-09-13 14:53:10.529.
DIV. OF PAROLE & PROBATION - Notification received on 2016-09-13 14:53:10.903.
NICKOLAS GRAHAM, ESQ. - Notification received on 2016-09-13 14:53:10.654.

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

-

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

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

09-13-2016:14:51:58

Clerk Accepted:

09-13-2016:14:52:34

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

Document(s) Submitted:

Supreme Court Notice

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.

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

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NEVADA

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NEVADA

JENNIFER L. LUNT, ESQ. for MARC PAUL
SCHACHTER

KELLY ANN KOSSOW, ESQ. for STATE OF
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

DIV. OF PAROLE & PROBATION

JARROD T. HICKMAN, ESQ. for MARC PAUL
SCHACHTER

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IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC PAUL SCHACHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67673
District Court Case No. CR141044

04

REMITTITUR

TO: Jacqueline Bryant, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: September 07, 2016

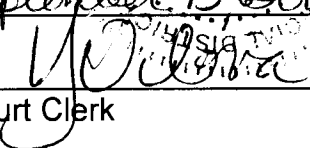
Tracie Lindeman, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Connie J. Steinheimer, District Judge
Washoe County Alternate Public Defender
Washoe County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on September 13, 2016.


District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC PAUL SCHACHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67673
District Court Case No. CR141044

04

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 10th day of August, 2016.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
September 07, 2016.

Tracie Lindeman, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC PAUL SCHACHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CR14-1044
No. 67673 DY

FILED

AUG 10 2016

ORDER OF AFFIRMANCE

KAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of attempted robbery. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

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¹Schachter argues that the district court erred by imposing a separate sentence for both his attempted robbery conviction and his adjudication as a habitual criminal. The State concedes that this was an error. The district court entered a corrected judgment of conviction on
continued on next page...

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Here, Schachter has demonstrated that the delay in allowing him to represent himself, followed by the delay in affording him reasonable investigative services, may have resulted in the loss of the surveillance video, which some evidence suggests Walmart may have had

...continued

July 30, 2015, properly imposing a single sentence. Therefore, this issue is moot.

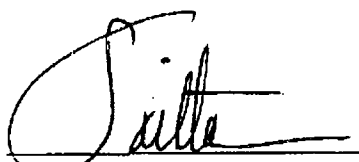
but destroyed 60 days after the incident. Even crediting this assertion, Schachter still cannot prevail as he has not shown prejudice. The crime of attempted robbery does not include a threshold monetary valuation and the amount stolen does not affect the sentence. NRS 193.330; NRS 200.380; *see Williams v. State*, 93 Nev. 405, 407, 566 P.2d 417, 419 (1977) ("The State is not required to prove the entire amount or value of property taken in a robbery, only that some property was indeed taken."). Schachter only alleges that the surveillance video would show him entering Walmart with the backpack on—he does not allege that he did not steal the other items found in the backpack after he left the store. An asset protection associate from Walmart testified that he witnessed Schachter put the other items in the backpack. Therefore, even if the surveillance video showed Schachter entering with the backpack, he cannot demonstrate prejudice because he would still be guilty of attempted robbery for the items in the backpack when he exited the store without paying.

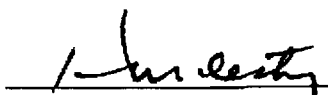
Next, Schachter claims that the district court erred by denying his motion to dismiss after it determined that the State's failure to collect evidence (the backpack) was the result of mere negligence. Schachter argues that, because the police were statutorily required to secure the alleged stolen property pursuant to NRS 205.295, the failure to collect was the result of gross negligence. *See Daniels v. State*, 114 Nev. 261, 267-68, 956 P.2d 111, 115 (1998) (articulating the two-part test for a failure-to-collect claim as a demonstration that the evidence was material and whether the failure to collect was the result of negligence, gross negligence, or bad faith). The district court found that the backpack was material evidence, but did not explain why.

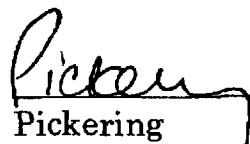
We disagree that the backpack was material. *See State v. Ware*, 881 P.2d 679, 685 (N.M. 1994) ("The determination of evidence materiality is a question of law for the court."). Evidence is material where "there is a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different." *Daniels*, 114 Nev. at 267, 956 P.2d at 115. Schachter wanted the backpack to show that he customized it and thus, could not have stolen it. Yet, for the reasons stated above, this showing would not have changed the outcome of the proceedings because, whether the backpack was his or not, it still contained items he stole. As he failed to demonstrate that the backpack was material, we need not consider whether the police's actions constituted negligence or gross negligence. *See id.* ("If the evidence was material, then the court must determine whether the failure to gather evidence was the result of mere negligence, gross negligence, or a bad faith attempt to prejudice the defendant's case." (emphasis added)). Accordingly, we conclude that the district court did not abuse its discretion by denying Schachter's motion to dismiss. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").

Schachter's other arguments lack colorable merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Saitta, J.


Hardesty, J.


Pickering, J.

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

CERTIFIED COPY

This document is a true and correct copy of the original on file and of record in my office.

DATE: Sept 17 2016

Supreme Court Clerk, State of Nevada

By Angela Deputy