

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAZEN ALOTAIBI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 67380

District Court Case No.: C-13-287173-1
DEPT. XXIII

Electronically Filed
Apr 19 2016 08:23 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**APPELLANT MAZEN ALOTIABI'S REQUEST FOR JUDICIAL
NOTICE OR, IN THE ALTERNATIVE, MOTION TO SUPPLEMENT
THE RECORD**

COMES NOW, Appellant Mazen Alotiabi ("Mazen"), by and through his attorneys, Dominic P. Gentile, Esq., and Vincent Savarese III, Esq., of the law firm of Gentile Cristalli Miller Armeni Savarese, and pursuant to NRAP 27 files this Request for Judicial Notice or, in the alternative, Motion to Supplement the Record, based upon the following facts and circumstances and Points and Authorities.

I.

SUPPORTING REASONS

A central and controlling issue in this case is the question of whether Statutory Sexual Seduction (NRS 200.364-6) is an included offense in Sexual Assault with a Minor Under the Age of 14 (NRS 200.366-1 & 3(c)). This Court

held in *Robinson v. State* 110 Nev. 1137, 1139 (1994) that it is. However, in the opinion filed therein by the Court, the language “*statutory* sexual assault” (emphasis added) was used by the Court although it appears that no Nevada statute has ever expressly utilized or been identified by that terminology. The State, at page 21, footnote 4 of its Brief in Opposition filed herein, asserts that the *Robinson* case did not involve a charge of Sexual Assault, but rather “Statutory” Sexual Assault. It notes that “[t]here is no published authority discussing the elements of statutory sexual assault *vis a’* sexual assault as defined in NRS 200.366, and the former crime no longer exists”.

It is respectfully submitted that the “former crime” never did exist. *Robinson*, which had the docket number of 24349 in this Court and #CR 92-0388 in the Second Judicial District Court, was prosecuted under NRS 200.366 which was the same statute containing the same language as that which formed the basis of Mr. Alotaibi’s prosecution. *Robinson* was decided by this Court on September 28, 1994 and the record was returned to the Clerk of the Second Judicial District on January 9, 1995 where it has been kept ever since.

As there is no reason to believe that the State is deliberately misleading this Court, one can only conclude that the State simply did nothing more than read this Court’s opinion in *Robinson* and made no effort to probe deeper so as to learn the precise statutory section that formed the basis of that prosecution. A certified copy

of the relevant documents contained therein has been obtained by Mr. Alotaibi's counsel and is attached hereto pursuant to NRAP 27(2) as Exhibit 1. It demonstrates the accuracy of the aforementioned assertions contained herein.

II.

POINTS AND AUTHORITIES.

Judicial Notice is Available, Proper and Will Aid the Court

This Court is requested to take judicial notice of the actual charges brought in *Robinson* that were before it when it decided that case. NRS 47.130 & NRS 47.150 empower this Court to do so. In *Mack v. Estate of Mack*, 125 Nev. 80, 91-92 (2009) and *Occhiuto v. Occhiuto*, 97 Nev. 143, 145 (1981) this Court took judicial notice of cases involving a party common to the case before it and somewhat related to it. The request in the case *sub judice* is for this Court to take judicial notice of the identical case that is being cited to it for purposes of clarifying this Court's use of language therein and therefore the *res judicata* value of that case. It is within the ambit of NRS 47.150 for it to do so. Examining the record that was before it in *Robinson* will aid the Court in determining that the prosecution in *Robinson* was for not for "statutory" sexual assault but for a violation of NRS 200.366 committed upon a 14 year old. It will therefore provide a context that is not otherwise available from reading *Robinson*, a decision that is controlling on the issue of whether the jurisprudence of this Court has recognized

that Statutory Sexual Seduction is an included offense in Sexual Assault With a Minor Under the Age of 14.

III.

CONCLUSION

For the aforementioned reasons this Court should take the requested Judicial Notice or, in the alternative, grant this Motion to Supplement the Record.

DATED this 18th day of April 2016.

GENTILE CRISTALLI
MILLER ARMENI SAVARESE



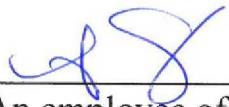
DOMINIC P. GENTILE
Nevada Bar No. 1923
VINCENT SAVARESE III
Nevada Bar No. 2467
410 South Rampart Blvd., Suite 420
Las Vegas, Nevada 89145
(702) 880-0000
Attorneys for Appellant
MAZEN ALOTAIBI

CERTIFICATE OF SERVICE

The undersigned, an employee of Gentile Cristalli Miller Armeni Savarese, hereby certifies that on the 18th day of April, 2016, I caused a copy of the foregoing **APPELLANT MAZEN ALOTIABI'S REQUEST FOR JUDICIAL NOTICE OR, IN THE ALTERNATIVE, MOTION TO SUPPLEMENT THE RECORD**, to be served electronically to all parties of interest through the eFlex system as follows:

Ryan J. MacDonald
Steven S. Owens
Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Adam Paul Laxalt
Nevada Attorney General
100 N. Carson Street
Carson City, Nevada 89701-4717
(775) 684-1108
Counsel for Respondent



An employee of
GENTILE CRISTALLI
MILLER ARMENI SAVARESE

EXHIBIT 1

EXHIBIT 1

DA# F91-2891

FILED

No. CR92- 0388

'92 FEB 25 P1:43

Dept. No. 6

JUD. BAILEY, CLERK
BY Stokes Berche
DEPUTY

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

INFORMATION

TERMAINE ROBINSON,

Defendant.

DOROTHY NASH HOLMES, District Attorney within and for
the County of Washoe, State of Nevada, in the name and by the
authority of the State of Nevada, informs the above entitled
Court that TERMAINE ROBINSON, the defendant above named, has
committed the crime of:

SEXUAL ASSAULT, a violation of NRS 200.366, a felony, in the
manner following:

That the said defendant on or between the 27th day of
September A.D. 1991, and the 28th day of September A.D. 1991,
or thereabout, and before the filing of this Information, at

1 and within the County of Washoe, State of Nevada, did
2 willfully, and unlawfully subject KATHY HILL, a minor of the
3 age of 14 years, to sexual penetration against her will, in
4 that the defendant caused the victim to submit to sexual
5 intercourse at 805 Robinhood Drive, apartment 148, Washoe
6 County, Nevada.

7
8 All of which is contrary to the form of the Statute
9 in such case made and provided, and against the peace and
10 dignity of the State of Nevada.

11 DOROTHY NASH HOLMES
12 District Attorney
13 Washoe County, Nevada

14 By David W. Clifton
15 DAVID W. CLIFTON
16 Deputy District Attorney
17
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(Continued)

2

1 The following are the names and addresses of such
2 witnesses as are known to me at the time of the filing of the
3 within Information:
4

5 RENO POLICE DEPARTMENT

6 DETECTIVE JIM OVERTON
7 OFFICER D. ROBINSON, #2768
8 OFFICER PITTMAN

9 KATHY HILL, ~~REDACTED~~

10 LINDA AND ROBERT DURHAM

11 CARRIE CHANEY, SAINTS

12 TENISHA MARTIN
13
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22 DOROTHY NASH HOLMES
23 District Attorney
24 Washoe County, Nevada

25 By David W. Clifton
26 DAVID W. CLIFTON
 Deputy District Attorney

0219I11313

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 4-15-16
JACQUELINE BRYANT, Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By  Deputy

1 DA# F91-2891

2 No. CR92-0388

3 Dept. No. 6

FILED

8-14-92
JUDY BAILEY, Clerk

By S. Stagnaro
DEPUTY

4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

12 WILLIE JAMES THOMAS and
13 TERMAINE ROBINSON,

14 Defendants.

AMENDED
INFORMATION

15 DOROTHY NASH HOLMES, District Attorney within and for
16 the County of Washoe, State of Nevada, in the name and by the
17 authority of the State of Nevada, informs the above entitled
18 Court that WILLIE JAMES THOMAS and TERMAINE ROBINSON, the
19 defendants above named, have committed the crimes of:

20 COUNT I. SEXUAL ASSAULT, a violation of NRS 200.366, a felony,
21 in the manner following:

22 That the said defendant, WILLIE JAMES THOMAS, on or
23 between the 27th day of September A.D. 1991, and the 28th day
24 of September A.D. 1991, or thereabout, and before the filing
25 of this Information, at and within the County of Washoe, State
26 of Nevada, did willfully, and unlawfully subject KATHY HILL, a
minor of the age of 14 years, to sexual penetration against
her will, in that the defendant caused the victim to submit to
sexual intercourse at 805 Robinhood Drive #148, Reno, Washoe
County, Nevada.

COUNT II. SEXUAL ASSAULT, a violation of NRS 200.366, a felony,
in the manner following:

That the said defendant, WILLIE JAMES THOMAS, on or
between the 27th day of September A.D. 1991, and the 28th day
of September A.D. 1991, or thereabout, and before the filing

1 of this Information, at and within the County of Washoe, State
2 of Nevada, did willfully, and unlawfully subject KATHY HILL, a
3 minor of the age of 14 years, to sexual penetration against
4 her will, in that the defendant caused the victim to submit to
anal intercourse at 805 Robinhood Drive #148, Reno, Washoe
County, Nevada.

5 COUNT III. SEXUAL ASSAULT, a violation of NRS 200.366, a felony,
6 in the manner following:

7 That the said defendant, TERMAINE ROBINSON, on or
8 between the 27th day of September A.D. 1991, and the 28th day
9 of September A.D. 1991, or thereabout, and before the filing
10 of this Information, at and within the County of Washoe, State
11 of Nevada, did willfully, and unlawfully subject KATHY HILL, a
12 minor of the age of 14 years, to sexual penetration against
13 her will, in that the defendant caused the victim to submit to
14 sexual intercourse at 805 Robinhood Drive, apartment 148,
15 Washoe County, Nevada.

16 All of which is contrary to the form of the Statute
17 in such case made and provided, and against the peace and
18 dignity of the State of Nevada.

19 DOROTHY NASH HOLMES
20 District Attorney
21 Washoe County, Nevada

22 By David W. Clifton
23 DAVID W. CLIFTON
24 Deputy District Attorney
25
26

(Continued)

37

1 The following are the names and addresses of such
2 witnesses as are known to me at the time of the filing of the
3 within Information:
4

5 RENO POLICE DEPARTMENT

6 DETECTIVE JIM OVERTON
7 OFFICER D. ROBINSON, #2768
8 OFFICER PITTMAN

9 KATHY HILL,

10 LINDA AND ROBERT DURHAM

11 CARRIE CHANEY, SAINTS

12 TENISHA MARTIN

13 JULIE KARABELAS

14 GEORGIA KARABELAS

15 GABRIEL GALVAN, 710 Robinhood Drive, #139, Reno, Nevada

16 JANELL RAPOZO, 710 Robinhood Drive, #129, Reno, Nevada

17 AMBER BROUGHTON, 1050 Williams Street, Reno, Nevada
18
19
20
21

22 DOROTHY NASH HOLMES
23 District Attorney
24 Washoe County, Nevada

25 By David W. Clifton
26 DAVID W. CLIFTON
 Deputy District Attorney

0219111313

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 4-15-10

JACQUELINE BRYANT, Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By *J. Bryant* Deputy

DA# F91-2891

No. CR92-0388/CR92-0640/CR92-1746

'92 OCT 28 A9:38

Dept. No. 6

JUDICIAL CLERK
BY J. Berchman
DEPUTY

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

WILLIE JAMES THOMAS,
TERMAINE ROBINSON and
GWENDOLYN ANN JOHNSON,

Defendants.

SECOND AMENDED
INFORMATION

DOROTHY NASH HOLMES, District Attorney within and for the County of Washoe, State of Nevada, in the name and by the authority of the State of Nevada, informs the above entitled Court that WILLIE JAMES THOMAS, TERMAINE ROBINSON and GWENDOLYN ANN JOHNSON, the defendants above named, have committed the crimes of:

COUNT I. SEXUAL ASSAULT, a violation of NRS 200.366, a felony, in the manner following:

That the said defendant, WILLIE JAMES THOMAS, on or between the 27th day of September A.D. 1991, and the 28th day of September A.D. 1991, or thereabout, and before the filing of this Information, at and within the County of Washoe, State of Nevada, did willfully, and unlawfully subject KATHY HILL, a ~~minor of the age of 14 years~~, to sexual penetration against her will, in that the defendant caused the victim to submit to sexual intercourse at 805 Robinhood Drive #148, Reno, Washoe County, Nevada.

COUNT II. SEXUAL ASSAULT, a violation of NRS 200.366, a felony, in the manner following:

That the said defendant, WILLIE JAMES THOMAS, on or between the 27th day of September A.D. 1991, and the 28th day of September A.D. 1991, or thereabout, and before the filing

1 of this Information, at and within the County of Washoe, State
2 of Nevada, did willfully, and unlawfully subject KATHY HILL, a
3 ~~minor of the age of 14 years~~, to sexual penetration against
4 her will, in that the defendant caused the victim to submit to
anal penetration at 805 Robinhood Drive #148, Reno, Washoe
County, Nevada. 7/10 B.P.

5 COUNT III. SEXUAL ASSAULT, a violation of NRS 200.366, a felony,
6 in the manner following:

7 That the said defendant, TERMAINE ROBINSON, on or
8 between the 27th day of September A.D. 1991, and the 28th day
9 of September A.D. 1991, or thereabout, and before the filing
10 of this Information, at and within the County of Washoe, State
11 of Nevada, did willfully, and unlawfully subject KATHY HILL, a
12 ~~minor of the age of 14 years~~, to sexual penetration against
13 her will, in that the defendant caused the victim to submit to
14 sexual intercourse at 805 Robinhood Drive, #148, Washoe
County, Nevada. 7/10 B.P.

15 COUNT IV. AIDING AND ABETTING IN THE COMMISSION OF THE CRIME OF
16 SEXUAL ASSAULT, a violation of NRS 195.020 and NRS 200.366, a
17 felony, in the manner following:

18 That the said defendant, GWENDOLYN ANN JOHNSON, on
19 the 27th day of September A.D. 1991, or thereabout, and before
20 the filing of this Information, at and within the County of
21 Washoe, State of Nevada, did willfully and unlawfully aid and
22 abet TERMAINE ROBINSON and/or JAMES WILLIE THOMAS in
23 subjecting KATHY HILL, a ~~minor of the age of 14 years~~, to
24 sexual penetration against her will at 805 Robinhood Drive,
25 #148, Reno, Washoe County, Nevada, in that the said SHINEA
26 CHAUNIE JOHNSON did falsely pose as the mother of KATHY HILL's
friend, JANELL RAPOZO, in order to obtain permission for KATHY
HILL to spend the night at said location, whereupon said
SHINEA CHAUNIE JOHNSON subsequently prevented KATHY HILL from
leaving the residence until she engaged in sexual relations
with said TERMAINE ROBINSON and/or JAMES WILLIE THOMAS. B.P. GWENDOLYN ANN JOHNSON

27 All of which is contrary to the form of the Statute
28 in such case made and provided, and against the peace and
29 dignity of the State of Nevada.

30 DOROTHY NASH HOLMES
31 District Attorney
32 Washoe County, Nevada

33 By David W. Clifton
34 DAVID W. CLIFTON
35 Deputy District Attorney
36

(Continued)

85

1 The following are the names and addresses of such
2 witnesses as are known to me at the time of the filing of the
3 within Information:
4

5 RENO POLICE DEPARTMENT

6 DETECTIVE JIM OVERTON
7 OFFICER D. ROBINSON, #2768
8 OFFICER PITTMAN

9 KATHY HILL,

10 LINDA AND ROBERT DURHAM

11 CARRIE CHANEY, SAINTS

12 TENISHA MARTIN

13 JULIE KARABELAS

14 GEORGIA KARABELAS

15 GABRIEL GALVAN, 710 Robinhood Drive, #139, Reno, Nevada

16 JANELL RAPOZO, 710 Robinhood Drive, #129, Reno, Nevada

17 AMBER BROUGHTON, 1050 Williams Street, Reno, Nevada

18 KATHLEEN MILBECK, SAINTS

19 DR. THOMAS SANDERS

20 CAROL ROTH, 1335 Williams Circle, Reno, Nevada

21
22 DOROTHY NASH HOLMES
23 District Attorney
24 Washoe County, Nevada

25 By David W. Clifton
26 DAVID W. CLIFTON
 Deputy District Attorney

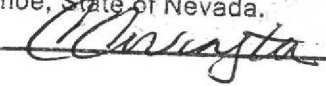
0219111313

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 4-15-16

JACQUELINE BRYANT, Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By  Deputy

1 No. CR92/0388/CR92-0640/CR92-1746

2 Dept. No. 6

FILED

11/17/92 8:45p.m.
JUDI BAILEY, Clerk

By P. Wright DEPUTY

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

8 ***

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

V E R D I C T

12 TERMAINE ROBINSON,

13 Defendant.

14
15 _____/
16 We, the jury in the above-entitled matter, find the
17 defendant, TERMAINE ROBINSON, GUILTY of COUNT III: SEXUAL
18 ASSAULT.

19 DATED this 17th day of NOVEMBER, 1992.

20
21 Sandy L. Meisner
FOREMAN
22
23
24
25
26

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 4-15-10
JACQUELINE BRYANT, Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By *J. Bryant* Deputy