

EXHIBIT 2C

EXHIBIT 2C

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAZEN ALOTAIBI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 67380

Electronically Filed
Apr 22 2016 02:30 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

**MAZEN ALOTAIBI'S REPLY IN SUPPORT OF APPELLANT'S
REQUEST FOR JUDICIAL NOTICE OR, IN THE ALTERNATIVE,
MOTION TO SUPPLEMENT THE RECORD**

COMES NOW Appellant Mazen Alotaibi, 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 hereby submits his Reply to the State's Opposition to Appellant's Request for Judicial Notice or, in the Alternative, Motion to Supplement the Record (filed on April 20, 2016).

This Reply is made and based upon the papers and pleadings already on file herein and the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Rule 27(a)(1) of the Nevada Rules of Appellate Procedure ("NRAP"): "An application for an order or other relief is made by motion." NRAP 27(a)(2) provides in pertinent part that "[a] motion must state with particularity the

grounds for the motion, the relief sought, and the legal argument necessary to support it,” and that “ [i]f a motion is supported by affidavits or other papers, they shall be served and filed with the motion.” Appellant’s Request for Judicial Notice or, in the Alternative, Motion to Supplement the Record fully complies with these provisions.

Appellant is requesting this Court to take judicial notice of the *actual* offense with which the defendant had been charged and was convicted in *Robinson v. State*, 110 Nev. 1137, 881 P.2d 667 (1994); to wit: Sexual Assault committed against a child under the age of 16 years (prohibited by NRS 200.366). *See* Appellant Mazen Alotaibi’s Request for Judicial Notice or, in the Alternative, Motion to Supplement the Record (“Appellant’s Motion”) p. 3. Appellant specifically and particularly relies upon this Court’s decision in *Robinson* for the proposition that the crime of Statutory Sexual Seduction (prohibited by NRS 200.364) is a lesser included offense of the crime of Sexual Assault committed against a child under the age of 14 years (likewise prohibited by NRS 200.366); and therefore, that Appellant was entitled to a lesser offense instruction in this case *sua sponte*. *See* Appellant’s Opening Brief pp. 16-24; Appellant’s Reply Brief pp. 2-5, 8-12. Appellant has served and filed together therewith certified copies of the charging documents in the *Robinson* case.

Appellant is requesting the Court to take judicial notice of the actual criminal charge at issue in *Robinson* pursuant to NRS 47.130.2(b), because it is a fact

“[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,” i.e. certified copies of the actual charging documents in *Robinson*; and therefore, “is not subject to reasonable dispute.” Pursuant to NRS 47.150.2, “[a] . . . court shall take judicial notice [of such a fact] if requested by a party and supplied with the necessary information.” See Appellant’s Motion p. 3.

This is of critical importance in this appeal because, in Respondent’s Answering Brief, at p. 21, the State asserts that *Robinson* is distinguishable here because “in Robinson, the defendant was charged with **statutory** sexual assault of a fourteen-year-old female” – not Sexual Assault committed against a child under the age of 16 years in violation of NRS 200.366 (emphasis added). And therefore, according to the State, “[t]his Court held that Statutory Sexual Seduction was a lesser-included offense of **Statutory** Sexual Assault.” Respondent’s Answering Brief, at p. 22 (emphasis added). According to the State: “There 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.” Respondent’s Answering Brief, at p. 22, note 4 (emphasis added).

In Appellant’s Reply Brief, at p. 4, Appellant points out that “[a]lthough the [*Robinson*] Court used the phrase ‘statutory sexual assault’ in the opinion, Robinson was charged with violating NRS 200.366, the same statute with which Mr. Alotaibi

is charged.” And although it also true that the *Robinson* Court did not cite NRS 200.366 (Sexual Assault), the charging documents in that case do so. They also refer to the crime charged in that case as “SEXUAL ASSAULT” (not “statutory sexual assault”); and further allege that – notwithstanding that the victim was “a minor of the age of 14 years” – she was subjected to sexual penetration “*against her will*” (emphasis added). And as the *Robinson* Court acknowledged, NRS 200.364 (Statutory Sexual Seduction) is the Nevada statute that “prohibits a person 18 years of age or older from having [*consensual*] sexual intercourse with a person under the age of 16 years.” 110 Nev. at 1138, 881 P.2d at 668 (quotation marks and italics omitted). Indeed, even the dissenting opinion characterizes NRS 200.364 (prohibiting Statutory Sexual Seduction) as Nevada’s version of “a ‘statutory rape’ law.” 110 Nev. at 1139, 881 P.2d at 669.

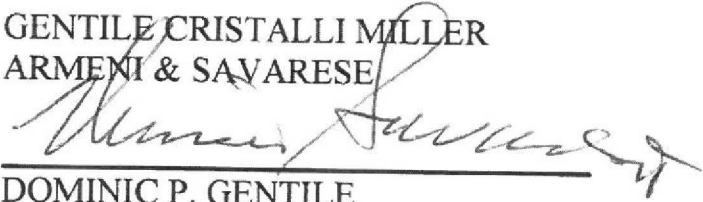
The certified pleadings appended as exhibits to Appellant’s Motion therefore squarely support Appellant’s contention that the State is “attempt[ing] to escape the *stare decisis* value of *Robinson*” in this appeal by leaving this Court with a false impression with respect to binding precedent. Appellant’s Reply Brief p. 3. Thus, as Appellant’s Motion points out, at p. 2, what the State characterizes as the purported “former crime” of “Statutory Sexual Assault” “never did exist” in the State of Nevada; and the defendant in *Robinson* 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." Appellant's Motion p. 2. *See* Appellant's Reply Brief p. 3, note 2.

Thus, Appellant's Motion is not "trying to raise a new issue" as the State suggests in its Opposition at p. 2. Rather, Appellant is seeking to support a critical issue he has in fact already raised in both Appellant's Opening Brief and Appellant's Reply Brief so as to prevent this Court from entertaining a false impression regarding the direct *stare decisis* effect of a controlling precedent in this appeal. The State's reliance upon NRAP 31(d) is completely inapposite in that that rule has no conceivable application here. And assuming that the State was attempting to refer to NRAP 31(e), that provision is likewise unavailing because it pertains strictly to a "Notice of Supplemental Authorities" and imposes no limitation upon an application for an order providing for appropriate relief pursuant to NRAP 27 like that before the Court in this case.

Dated this 22nd day of April, 2015.

GENTILE CRISTALLI MILLER
ARMENI & SAVARESE



DOMINIC P. GENTILE

Nevada Bar No. 1923

VINCENT SAVARESE III

Nevada Bar No. 2467

410 South Rampart Boulevard, Suite 420

Las Vegas, Nevada 89145

(702) 880-0000

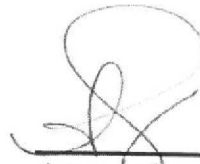
Attorneys for Appellant, Mazen Alotaibi

CERTIFICATE OF SERVICE

The undersigned, an employee of Gentile Cristalli Miller Armeni Savarese, hereby certifies that on the 22nd day of April, 2016, I caused a copy of the foregoing **MAZEN ALOTAIBI'S REPLY IN SUPPORT OF APPELLANT'S REQUEST FOR JUDICIAL NOTICE OR, IN THE ALTERNATVIE, 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 2B

EXHIBIT 2B

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAZEN ALOTAIBI,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
Apr 20 2016 01:20 p.m.
Tracie K. Lindeman
Clerk of Supreme Court
CASE NO: 67380

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

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, RYAN J. MACDONALD, and files this Opposition to Appellant's Request for Judicial Notice, or in the Alternative, Motion to Supplement the Record. This opposition is filed pursuant to NRAP 27 and 31(d) and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 20th day of April, 2016.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ Ryan J. Macdonald
RYAN J. MACDONALD
Deputy District Attorney
Nevada Bar #012615
Office of the Clark County District Attorney

ARGUMENT

In Appellant's pleading, he is requesting for this Court to take judicial notice of the charges brought in Robinson v. State, 110 Nev. 1137, 1139, 881 P.2d 667 (1994), in order to prove that Robinson was charged under the same statute containing the same language which formed the basis for Appellant's charges. However, Nevada Rule of Appellate Procedure 31(d) provides that parties may not raise new points or issues in a supplemental brief or motion, just new authorities. Here, Appellant is trying to raise a new issue, by trying to prove that the charges in Robinson were the same as in the instant case in order to supplement its argument that statutory sexual seduction is a lesser-included offense of sexual assault with a minor under 14 years of age. Not only does the State disagree with this argument, but it is not proper for Appellant to try to expand the record with these exhibits. These cases are *not* identical, and therefore it is not appropriate for Appellant to ask this Court to take judicial notice of Robinson's charges.

However, if this Court were inclined to grant Appellant's request and take judicial notice of the charges, and thus permit him to expand the record, the State respectfully requests that this Court order supplemental briefing regarding the impact of Robinson on Appellant's case pursuant to NRAP 27 and allow the State to respond in kind.

///

CONCLUSION

WHEREFORE, the State respectfully requests that this Court deny Appellant's Request for Judicial Notice, or in the Alternative, order Supplemental Briefing on this issue.

Dated this 20th day of April, 2016.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Ryan J. Macdonald*

RYAN J. MACDONALD
Deputy District Attorney
Nevada Bar #012615
Office of the Clark County District Attorney

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on April 20, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

DOMINIC P. GENTILE, ESQ.
VINCENT SAVARESE, III, ESQ.
Counsels for Appellant

RYAN J. MACDONALD
Deputy District Attorney

BY /s/ j. garcia

Employee,
Clark County District Attorney's Office

RJM/Kelsey Einhorn/jg

EXHIBIT 2A

EXHIBIT 2A

Case No. 67380

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAZEN ALOTAIBI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 67380

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

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

**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.

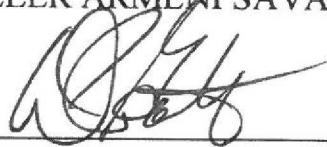
III.

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



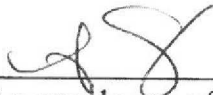
DOMINIC P. GENTILE
Nevada Bar No. 1923
VINCENT SAVARESE III
Nevada Bar No. 2467
410 South Rampart Blvd., Suite 420
Las Vegas, Nevada 89145
(702) 880-0000
Attorneys for Appellant
MAZEN ALOTAIBI

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
18
19
20
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25
26

(Continued)

8

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
14
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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

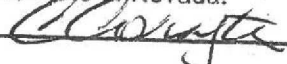
0219I11313

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. Stagnar

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 [Signature] Deputy

DA# F91-2891

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

'92 OCT 28 A9:38

Dept. No. 6

ADD: CLERK
BY: *J. Brackman*
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. 710 E.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. 710 E.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~~ GWENDOLYN
26 ~~CHUNIE~~ 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.

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

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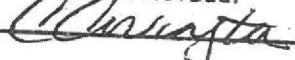
86

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.
JUDIE BAILEY, Clerk

By P. Wright
DEPUTY

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 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 Sandy L. Meisner
21 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: 4-15-16
JACQUELINE BRYANT, Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By [Signature] Deputy

EXHIBIT 1

EXHIBIT 1

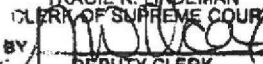
IN THE SUPREME COURT OF THE STATE OF NEVADA

MAZEN ALOTAIBI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67380

FILED

JUN 01 2016

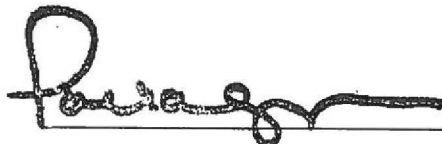
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER

Appellant has filed a motion requesting this court take judicial notice of certain documents in another case or, alternatively, that this court supplement the record with the documents at issue. Respondent opposes the motion and appellant has filed a reply.

Having considered the motion, opposition, and reply, we decline to take judicial notice of the specified documents. *See Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (as a general rule, this court “will not take judicial notice of records in another and different case”). Likewise, appellant’s motion to supplement the record with these documents is denied. *See* NRAP 10; *Carson Ready Mix v. First Nat’l Bank*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (this court’s review is limited to the record made in and considered by the district court).

It is so ORDERED.¹

 C.J.

¹Respondent’s request for supplemental briefing is denied as moot.

cc: Gentile, Cristalli, Miller, Armeni & Savarese, PLLC
Attorney General/Carson City
Clark County District Attorney

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAZEN ALOTAIBI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 67380

Electronically Filed
Jun 13 2016 03:54 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

**APPELLANT'S MOTION TO REVIEW DECISION OF A SINGLE
JUSTICE PURSUANT TO NRAP 27 (C)(2)**

COMES NOW Mazen Alotaibi, Appellant in the above-entitled matter, by and through his attorney, Dominic P. Gentile, Esq. of the law firm of Gentile Cristalli Miller Armeni Savarese, and pursuant to Rule 27(c)(2) of the Nevada Rules of Appellate Procedure, hereby moves the Court to review the decision and Order¹ of a single justice denying his Request for Judicial Notice or, in the Alternative, Motion to Supplement the Record. ²

...

...

...

¹ A copy of which is attached hereto as Exhibit 1.

² A copy of all papers filed with regard thereto are attached as Exhibits 2 A through C.

This Motion is made and based upon all pleadings and papers on file herein, the exhibits appended hereto, and the following Memorandum of Points and Authorities.

Dated this 13th day of June, 2016.

GENTILE CRISTALLI
MILLER ARMENI SAVARESE

DOMINIC P. GENTILE (Nevada Bar 1923)
410 South Rampart Boulevard, Suite 420
Las Vegas, Nevada 89145
(702) 880-0000
Attorneys for Appellant, Mazen Alotaibi

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

On April 19, 2016 Appellant filed a Request for Judicial Notice or, in the Alternative, Motion to Supplement the Record. See Exhibit 2A. On April 20, 2016, the Respondent filed its Opposition. See Exhibit 2B. Appellant filed his Reply to the Opposition on April 21, 2016. See Exhibit 2C. On June 1, 2016, Chief Justice Parraguire signed an Order denying Appellant's Request for Judicial Notice or, in the Alternative, Motion to Supplement the Record, rendering moot the Respondent's request for supplemental briefing. See Exhibit 1.

Appellant's Request for Judicial Notice or, in the Alternative, Motion to Supplement the Record was made necessary because of an incorrect statement made by Respondent as to the holding in *Robinson v. State*, 110 Nev. 1137, 881 P. 2d 667 (1994), a case that forms the cornerstone of Appellant's argument that Statutory Sexual Seduction is a necessarily included offense in Sexual Assault with a Minor Under 14 Years of Age and, therefore, his entitlement to the included offense instruction which was not given by the trial court. The incorrect statement is "This Court held [in *Robinson*] that Statutory Sexual Seduction was a lesser-included offense in Statutory Sexual Assault, but never decided the issue as to the crime of Sexual Assault with a Minor Under Fourteen Years of Age." See Respondent's Answering Brief (Exhibit 2B) at page 22.

In addition, while this appeal was pending, in *Van Horn v. State*, No. 63069, 2015 WL 4402655 (July 15, 2015) (Unpublished Disposition), a three-justice panel of this Court departed from the holding in *Robinson*, albeit *sub silentio*. The *Van Horn* panel – of which Chief Justice Parraguire was a member - does not openly "overrule" the decision of the *en banc* Court in *Robinson* nor does the unpublished *Van Horn* panel opinion even cite *Robinson*³.

...

³ This Court has the discretion to take judicial notice that *Robinson* was cited by both parties in all three briefs filed with the Court in *Van Horn. Mack v. Estate of Mack*, 125 Nev. 80, 91 (2009).

II.

ARGUMENT

A.

THE TRUE HOLDING IN *ROBINSON V. STATE* CAN ONLY BE DISCERNED BY TAKING JUDICIAL NOTICE OF THE ACTUAL CHARGING DOCUMENTS IN *ROBINSON* AND REMOVING THE TERM “STATUTORY” BEFORE “SEXUAL ASSAULT”.

Appellant’s Request for Judicial Notice or, in the Alternative, Motion to Supplement the Record was filed with this Court to call to its attention that the reference to “statutory sexual assault” as the charge against *Robinson* was inaccurate. There is no explanation for this error other than it was a clerical. It is well settled that a court has inherent power independent of statute to remove any ambiguity in a judgment or decree or to correct clerical or formal error at any time. *Lindsay v. Lindsay*, 52 Nev. 26, 280 P. 95, 97, 67 A.L.R. 824 (1929). In *Sparrow & French v. Strong*, 2 Nev. 362 (1867) the Court held that it will at all times correct a mere clerical error when it can be corrected from the record itself. *Silva v. Second Judicial Dist. Court in & for Washoe Cty.*, 57 Nev. 468, 66 P.2d 422, 424 (1937). Appellant’s Request for Judicial Notice or, in the Alternative, Motion to Supplement the Record contained a certified copy of the charging documents that were part of this Court’s record at the time it decided *Robinson* and thereafter returned to the District Court for the Second Judicial District after that decision. A clerical error,

as opposed to a judicial error, is defined to be “a mistake in writing or copying”. As more specifically applied to judgments and decrees a clerical error is a mistake or omission by a clerk, counsel, judge, or printer which is not the result of the exercise of the judicial function. In other words, a clerical error is one which cannot reasonably be attributed to the exercise of judicial consideration or discretion. *Alamo Irr. Co. v. United States*, 81 Nev. 390, 394-95, 404 P.2d 5, 7 (1965) *overruled on other grounds by Ford v. Showboat Operating Co.*, 110 Nev. 752, 877 P.2d 546, 1994 WL 325291 (1994). A simple viewing of the charging document in *Robinson*, when coupled with the fact that no such charge as “statutory sexual assault” existed when he was prosecuted and hadn’t since NRS 200.360-2 – the former “statutory rape” statute - was repealed in 1967, leads to the irrefutable conclusion that a clerical error was made in the insertion of “statutory” before “sexual assault” in the opinion. If *Robinson* is viewed correctly, the Respondent’s contention as to the scope of its holding and its *stare decisis* effect is conclusively established as wrong.

B.

MISAPPREHENSION OF THE HOLDING IN *ROBINSON* HAS RESULTED IN ITS MISAPPLICATION BY DISTRICT COURT’S

Appellant’s Request for Judicial Notice or, in the Alternative, Motion to Supplement the Record was also filed to call to the Court’s attention the apparent inconsistency between a panel of this Court in *Van Horn* and the *en banc* decision in *Robinson*. Without the clear understanding of and access to the proof of the actual

charges in *Robinson* the Respondent's contention as to its holding may mislead the Court and render it less likely to appreciate Appellant's position herein. Moreover, without correcting the misuse of the term "statutory sexual assault" in the *Robinson* opinion, district courts are likely to misapply it, as was done in the case *sub judice*. While under the provisions of the now repealed Nevada Supreme Court Rule ("SCR") 123, as an *unpublished* opinion, *Van Horn* "shall not be regarded as precedent", this Court has not decided in a published opinion that a district court is barred from considering an unpublished decision or order. Thus, there is grave danger that, in the wake of the repeal of former SCR 123, the conflict between *Robinson* and *Van Horn* may be misinterpreted by a district court. See *Cooper Roofing and Solar, LLC v. Chief Administrative Officer of Occupational Safety and Health Administration*, No. 67914, 2016 WL 2957129 (May 19, 2016).

When one considers that a conviction for Sexual Assault with a Minor Under 14 Years of Age mandates a life sentence with at least thirty-five (35) years spent in prison before parole eligibility and Statutory Sexual Seduction carries a maximum of five years in prison, with probation as a possible alternative to incarceration, this is precisely the type of situation where potential confusion and resulting error cannot be said to be insignificant. The case *sub judice* presents an opportunity to clear up that potential confusion, clarify the holding in *Robinson* and avoid the damage that

necessarily flows from a trial court not giving the lesser-included offense instruction which *Robinson* addresses.

III.

CONCLUSION

For the foregoing reasons, this Court should review the decision and Order of a single justice, grant the Appellant's Request for Judicial Notice or, in the Alternative, Motion to Supplement the Record, recognize in this case and clarify for the district courts of Nevada the that the holding in *Robinson* is that Statutory Sexual Seduction is a lesser-included offense in Sexual Assault with a Minor Under the Age of 14.

Dated this 13 day of June, 2016.

GENTILE CRISTALLI
MILLER ARMENI SAVARESE



DOMINIC P. GENTILE (Nevada Bar 1923)
410 South Rampart Boulevard, Suite 420
Las Vegas, Nevada 89145
(702) 880-0000
Attorneys for Appellant, Mazen Alotaibi

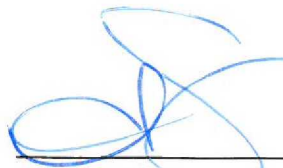
CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On June 13, 2016, I caused to be served a true and correct copy of the foregoing **APPELLANT'S MOTION TO REVIEW DECISION OF A SINGLE JUSTICE NRAP 27(c)(2)**, by the method indicated:

- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☐ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

Clark County District Attorney's Office –
Criminal Division
Ryan J. MacDonald
Email: ryan.macdonald@clarkcountyda.com
Steven S. Owens
Email: steven.owens@clarkcountyda.com
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155
Counsel for the State of Nevada

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