

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**  
2                                   \_\_\_\_\_

3 JOSHUA C. SHUE,                                   )

No. 67428

4                                   Appellant,                                   )

5                                   v.                                   )

6                                   THE STATE OF NEVADA,                                   )

7                                   Respondent.                                   )

Electronically Filed  
Jul 20 2015 04:59 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

8                                   \_\_\_\_\_

9                                   **APPELLANT'S APPENDIX VOLUME II PAGES 241-456**

10

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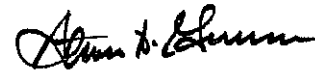
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**JOSHUA C. SHUE**  
**Case No. 67428**

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CLERK OF THE COURT

1 **EXMT**  
2 **STEVEN B. WOLFSON**  
3 **Clark County District Attorney**  
4 **Nevada Bar #001565**  
5 **LEAH BEVERLY**  
6 **Deputy District Attorney**  
7 **Nevada Bar #12556**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO. C-13-288172-1

12 JOSHUA C. SHUE, aka, Joshua Caleb Shue,  
13 #1550230

DEPT NO. XXI

14 Defendant.

15 EX PARTE MOTION FOR RELEASE OF MEDICAL RECORDS  
16

17 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
18 District Attorney, through LEAH BEVERLY, Deputy District Attorney, and moves this  
19 Honorable Court for an Order Releasing evidence which includes protected health information  
20 being held by Spring Mountain Treatment Center consisting of any and all medical records for  
21 patient: HAZEL IRAL, DOB: 02/04/95, concerning diagnosis, prognosis and/or treatment  
22 given or provided on or about March 19, 2014, to be released to a representative of the  
23 DISTRICT ATTORNEY'S OFFICE for the purpose of prosecuting the above referenced case  
24 charging the crime of CHILD ABUSE & NEGLECT (Category B Felony - NRS 200.508),  
25 USE OF CHILD IN PRODUCTION (Category A Felony - NRS 200.710), POSSESSION OF  
26 VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (Category B  
27 Felony - NRS 200.700, 200.730) and OPEN OR GROSS LEWDNESS (Gross Misdemeanor  
28 - NRS 201.210),

1 Pursuant to 45 CFR 164.512(f), Movant represents that the information sought is  
2 relevant and material to a legitimate law enforcement inquiry; that the request is specific and  
3 limited in scope to the extent reasonably practicable in light of the purpose for which the  
4 information is sought; and that de-identified information could not reasonably be used.

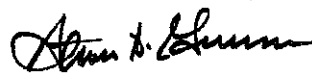
5 DATED this 2nd day of <sup>April</sup> March, 2014.

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

9 BY

  
10 LEAH C. BEVERLY  
11 Deputy District Attorney  
12 Nevada Bar #12556  
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CLERK OF THE COURT

**ORDR**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
LEAH C. BEVERLY  
Deputy District Attorney  
Nevada Bar #12556  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

CASE NO. C-13-288172-1

JOSHUA C. SHUE, aka, Joshua Caleb Shue,  
#1550230

DEPT NO. XXI

Defendant.

ORDER RELEASING MEDICAL RECORDS

Upon the ex parte application and representation of STEVEN B. WOLFSON, Clark County District Attorney, by and through LEAH BEVERLY, Deputy District Attorney, that certain records containing protected health information are necessary for the prosecution of the above-captioned criminal case are being held in the custody of Spring Valley Hospital; that said information is relevant and material to a legitimate law enforcement inquiry; that the application was specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and that de-identified information could not reasonably be used;

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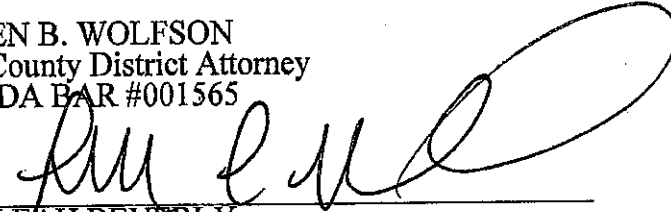
1 NOW THEREFORE, pursuant to 45 CFR 164.512(f), and GOOD CAUSE  
2 APPEARING, Spring Valley Hospital, shall release to a representative of the DISTRICT  
3 ATTORNEY'S OFFICE, any and all medical records concerning diagnosis, prognosis, and/or  
4 treatment of HAZEL IRAL, whose date of birth is 02/04/95, for the time period March 19,  
5 2014.

6 IT IS HEREBY ORDERED.

7 DATED this 31 day of March, 2014.

8  
9   
10 DISTRICT JUDGE 

11  
12 STEVEN B. WOLFSON  
13 Clark County District Attorney  
14 NEVADA BAR #001565

15 BY   
16 LEAH BEVERLY  
17 Deputy District Attorney  
18 Nevada Bar #12556  
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28 12F13527X/cmj/L-3

  
CLERK OF THE COURT

1 **EXMT**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 LEAH BEVERLY  
6 Deputy District Attorney  
7 Nevada Bar #12556  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

CASE NO. C-13-288172-1

12 JOSHUA C. SHUE, aka, Joshua Caleb Shue,  
13 #1550230

DEPT NO. XXI

14 Defendant.

15 EX PARTE MOTION FOR RELEASE OF MEDICAL RECORDS  
16

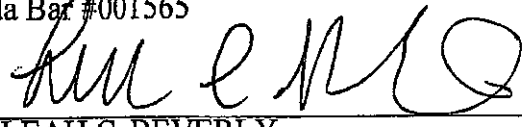
17 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
18 District Attorney, through LEAH BEVERLY, Deputy District Attorney, and moves this  
19 Honorable Court for an Order Releasing evidence which includes protected health information  
20 being held by Spring Valley Hospital consisting of any and all medical records for patient:  
21 HAZEL IRAL, DOB: 02/04/95, concerning diagnosis, prognosis and/or treatment given or  
22 provided on or about March 19, 2014, to be released to a representative of the DISTRICT  
23 ATTORNEY'S OFFICE for the purpose of prosecuting the above referenced case charging  
24 the crime of CHILD ABUSE & NEGLECT (Category B Felony - NRS 200.508), USE OF  
25 CHILD IN PRODUCTION (Category A Felony - NRS 200.710), POSSESSION OF VISUAL  
26 PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (Category B Felony -  
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1 Pursuant to 45 CFR 164.512(f), Movant represents that the information sought is  
2 relevant and material to a legitimate law enforcement inquiry; that the request is specific and  
3 limited in scope to the extent reasonably practicable in light of the purpose for which the  
4 information is sought; and that de-identified information could not reasonably be used.

5 DATED this 2nd day of <sup>April</sup> ~~March~~, 2014.

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

9 BY

  
10 LEAH C. BEVERLY  
11 Deputy District Attorney  
12 Nevada Bar #12556  
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CLERK OF THE COURT

1 **ORDR**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 LEAH C. BEVERLY  
6 Deputy District Attorney  
7 Nevada Bar #12556  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

12 -vs-

CASE NO. C-13-288172-1

13 JOSHUA C. SHUE, aka, Joshua Caleb Shue,  
14 #1550230

DEPT NO. XXI

15 Defendant.

16 ORDER RELEASING MEDICAL RECORDS

17 Upon the ex parte application and representation of STEVEN B. WOLFSON, Clark  
18 County District Attorney, by and through LEAH BEVERLY, Deputy District Attorney, that  
19 certain records containing protected health information are necessary for the prosecution of  
20 the above-captioned criminal case are being held in the custody of Spring Mountain Treatment  
21 Center; that said information is relevant and material to a legitimate law enforcement inquiry;  
22 that the application was specific and limited in scope to the extent reasonably practicable in  
23 light of the purpose for which the information is sought; and that de-identified information  
24 could not reasonably be used;

25 NOW THEREFORE, pursuant to 45 CFR 164.512(f), and GOOD CAUSE  
26 APPEARING, Spring Mountain Treatment Center, shall release to a representative of the

27 ///

28 ///

1 DISTRICT ATTORNEY'S OFFICE, any and all medical records concerning diagnosis,  
2 prognosis, and/or treatment of HAZEL IRAL, whose date of birth is 02/04/95, for the time  
3 period March 19, 2014.

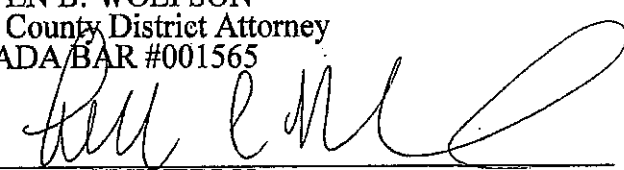
4 IT IS HEREBY ORDERED.

5 DATED this 2 day of April, 2014.

6  
7   
8 DISTRICT JUDGE

9  
10 STEVEN B. WOLFSON  
11 Clark County District Attorney  
12 NEVADA BAR #001565

13 BY

  
14 LEAH BEVERLY  
15 Deputy District Attorney  
16 Nevada Bar #12556  
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CLERK OF THE COURT

1 OML  
2 TERRENCE M. JACKSON, ESQUIRE  
3 Nevada Bar No. #0854  
4 Law Office of Terrence M. Jackson  
5 624 South Ninth Street  
6 Las Vegas, Nevada 89101  
7 (702)386-0001  
8 (702)386-0085 FAX

9 *Counsel for Joshua C. Shue*

10 **EIGHTH JUDICIAL DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 JOSHUA C. SHUE,  
16 #1550230

17 Defendant.

Case No: C-13-288172-1  
Dept. No.: XXI

**OPPOSITION TO STATE'S  
MOTION IN LIMINE**

18 COMES NOW the Defendant, JOSHUA SHUE, by and through his counsel, TERRENCE  
19 M. JACKSON, ESQ., and opposes the State's Motion in Limine to restrict the defense from proper  
20 cross examination at trial.

21 **POINTS AND AUTHORITIES**

22 I. The Credibility of a Witness is Always at Issue in a Criminal Case and the State's  
23 Attempt to Limit Cross Examination is Contrary to Law.

24 The State has previously opposed the Defendant's Motion to have a psychological  
25 examination of the alleged victim. The State now seeks to prevent the Defendant from uncovering  
26 the truth concerning the victim's mental status concerning the truth about any duress or coercion that  
27 she has been placed upon her to testify in this case.

28 This attempt by the State to limit cross examination is flagrantly unconstitutional. The facts  
of this case are compelling. Defendant submits that the pressure put upon Hazel Iral by the State of  
Nevada has actually led her to attempt suicide. The State however does not want the Defendant to  
be able to question Hazel Iral about her "mental health" status, past or present.

The mental health of a witness is always directly relevant to credibility as it goes to the bias

1 perception and competency of a witness. The government tries to suggest there exist no issues of fact  
2 concerning Hazel Iral's testimony. Defendant respectfully disagrees as her knowledge, consent, or  
3 direct or indirect participation in the creation of the purported physical evidence of child  
4 pornography can only be determined through her testimony on direct and cross examination.

5 Any facts that her testimony has been manipulated or tampered with, or any evidence that  
6 she is not a competent witness is extremely relevant at trial. Hazel Iral has never been cross  
7 examined by the defense. The admission of her Grand Jury testimony at trial would violate the Sixth  
8 Amendment confrontation clause.

9 Nothing is more fundamental in the criminal justice system than allowing an accused to  
10 present a defense to the charges against him. The United States Constitution and the Nevada  
11 Constitution allow a criminal defendant to present testimony and confront and cross examine  
12 witnesses. U.S. Const. Amend. V, VI, XIV; Nev. Const. Art. 1, Sec. 8. *See also, Chambers v.*  
13 *Mississippi*, 410 U.S. 284 (1984); *Washington v. Texas*, 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed.2d 1019  
14 (1967); *Vipperman v. State*, 96 Nev. 592, 614 P.2d 532 (1980).

15 The importance of the right to cross examination was cogently explained in *Kittelson v.*  
16 *Dretke*, 426 F.3d 306 (5th Cir. 2005) where the court recognized that the due process clause of the  
17 Fourteenth Amendment and compulsory process clause or confrontation clause of the Sixth  
18 Amendment protects a defendant's right to present his case:

19  
20 Kittelson argues that the trial court limited both his right to challenge the  
21 testimony of the State's witnesses and his right fairly to present the testimony of his  
22 own witnesses. "Whether rooted directly in the Due Process clause of the Fourteenth  
23 Amendment or in the Compulsory Process or Confrontation clauses of the Sixth  
24 Amendment, the Constitution guarantees criminal defendants a meaningful  
25 opportunity to present a complete defense." *United States v. Scheffer*, 523 U.S. 303,  
26 329 n. 16, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998) (internal citations and quotations  
27 omitted). The Sixth Amendment right to present a complete defense encompasses a  
28 defendant's rights under the Confrontation Clause to rebut the State's evidence  
through cross examination. *See, Webb v. Texas*, 409 U.S. 95, 93 S.Ct. 351, 34  
L.Ed.2d 330 (1972) (*per curiam*); *Washington v. Texas*, 388 U.S. 14, 87 S.Ct. 1920,  
18 L.Ed.2d 1019 (1967); *Taylor v. Illinois*, 484 U.S. 400, 108 S.Ct. 646, 98  
L.Ed.2d 798 (1988); *see also Crane v. Kentucky*, 476 U.S. 683, 690, 106 S.Ct. 2142,  
90 L.Ed.2d 636 (1986) ("Whether rooted directly in the Due Process Clause of the  
Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of  
the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful  
opportunity to present a complete defense.") (internal citations and quotations

1 omitted). The State does not context that either the broad Sixth Amendment right to  
2 put on a full defense or the Confrontation Clause right to rebut the State's evidence  
are clearly established through longstanding Supreme Court precedent.

3 Although the right to cross examination is not absolute, it is effectively denied when  
4 a defendant is prohibited from "expos[ing] to the jury the facts from which jurors as  
the sole triers of fact and credibility, could appropriately draw inferences relating to  
5 the reliability of the witnesses." *Davis*, 415 U.S. at 318, 94 S.Ct. 1105; *see*  
*Chambers v. Mississippi*, 410 U.S. 284, 295, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973).  
6 The absence of proper confrontation at trial "calls into question the ultimate integrity  
of the fact-finding process." *Chambers*, 410 U.S. at 295, 93 S.Ct. 1038. "The right  
to cross examination includes the opportunity to show that a witness is biased, or that  
the testimony is exaggerated or unbelievable." *Pennsylvania v. Ritchie*, 480 U.S. 39,  
7 51-53, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987). "[A] denial of cross examination  
without waiver ... would be constitutional error of the first magnitude." *Smith v.*  
8 *Illinois*, 390 U.S. 129, 131, 88 S.Ct. 748, 19 L.Ed.2d 956 (1968) (internal quotation  
9 marks omitted). *Id.* 318 (emphasis added)

10 The mere fact that Hazel Iral, the alleged victim, was a child or juvenile does not give her  
11 special procreation from cross examination. The mere fact a witness was a child of tender years has  
12 been held not to be a sufficient reason for the court to be extraordinarily protective or solicitous of  
13 the witness. In the case of *Davis v. Alaska*, 415 U.S. 309, 39 L.Ed.2d 341, the Supreme Court held  
14 that the accused's constitutional right will override exclusionary rules of evidence designed to  
15 protect a juvenile. The Court in that case analyzed the conflict between an accused's constitutional  
16 right and an Alaskan statute making juvenile proceedings confidential. The Supreme Court there  
17 recognized that while the statute and rule served an important public policy of rehabilitating juvenile  
18 offenders, the Court nevertheless struck the balance in favor of an accused's right to elicit facts about  
19 the credibility of key prosecution witnesses. The Court must do the same in this case.

## 20 CONCLUSION

21  
22 The State makes an assumption that the cross examination of Hazel Iral about her mental  
23 health issues should be limited because under NRS 48.035 the probative value of such evidence  
24 would be substantially outweighed by the danger of unfair prejudice, or confusion of the issues.  
25 Their self-serving assumption is false. What the State fears is that the jury will disregard the  
26 testimony of their mentally ill and uncredible witness, Hazel Iral. The probative value of evidence  
27 obtained by a thorough cross examination of Hazel Iral is vastly more important than any prejudicial  
28 effect of such evidence. The Motion in Limine should therefore be denied.



1 DATED this 15th day of April, 2014.

2  
3 /s/ Terrence M. Jackson  
4 TERRENCE M. JACKSON, ESQUIRE  
5 Counsel for Defendant, Joshua C. Shue

6 ...

7  
8 **CERTIFICATE OF SERVICE**  
9

10 I hereby certify that I am assistant to Terrence M. Jackson, Esq. And that I am a person  
11 competent to serve papers , not a party to the above-entitled action and on the 15th day of April,  
12 2014, I served a copy of the foregoing Opposition to State's Motion in Limine via efilng at the  
13 Clark County Courts *WizNet* to the attention of Deputy District Attorney Leah Beverly.  
14

15 PDMotions@ccdancv.com  
16

17 By: /s/ Ila C. Wills

18 An employee of T.M. Jackson, Esq.  
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CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*


STATE OF NEVADA  
VS  
JOSHUA SHUE

CASE NO.: C-13-288172-1  
DEPARTMENT 21

**NOTICE OF HEARING**

Please be advised that the above-entitled matter has been scheduled for Evidentiary Hearing, to be heard by the Honorable VALERIE ADAIR, at the Regional Justice Center, 200 Lewis Ave, Las Vegas, Nevada 89155, on the 19th day of May, 2014, at the hour of 9:30 AM, in RJC Courtroom 11C, Department 21.

HONORABLE VALERIE ADAIR


By:   
Sharry Frascarelli  
Judicial Executive Assistant

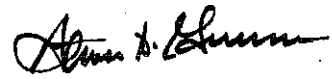
**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date e-filed, I served a copy of the foregoing document

☒ by placing a copy in the attorney's folder located in the Regional Justice Center to:

Leah Beverly, Esq. (Deputy District Attorney)  
Terrence Michael Jackson, Esq.

  
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Department 21

  
CLERK OF THE COURT

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EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JOSHUA C. SHUE,  
# 1550230

Defendant.

CASE NO.: C-13-288172-1

DEPT. NO.: XXI

**Motion to Dismiss Indictment Because of Violation Based on Inadequate Notice**

COMES NOW the DEFENDANT, Joshua C. Shue, by and through counsel and moves this Honorable Court to enter an Order the indictment be dismissed because it did not provide sufficient notice of the actual time/times the alleged crimes took place.

The indictment drafted by the State of Nevada after the Grand Jury hearing March 13, 2013, is impossibly vague and defective and in violation of due process because it does not state any time or times of the crime(s) alleged in the indictment.

Instead, the indictment which alleges a total of 41 counts including child abuse and neglect, use of child in production of pornography, possessions of visual presentation depicting sexual conduct of a child, and open or gross lewdness states these crimes occurred sometime during a nearly 32 month period, from January 1, 2010, until August 23, 2012. Not one specific date or time is mentioned for any count. It is respectfully submitted such purported notice stating the crime(s) occurred sometime in the previous 32 months is defective as it is the equivalent of no actual notice.

The case of *Wilson v. State*, 121 Nev. 345, 114 P.3d 285 (2003), found there was no defect in the indictment when the indictment stated that the crimes were committed on or about the 10th

1 day of November, 2001 and the 18th day of November, 2001. The court, relying on NRS 173.075(1)  
2 which requires an indictment contain 'a plain, concise and definite statement of the essential facts  
3 constituting the offense charged' stated:

4 ... 'this court has noted that there is no requirement that the State allege exact  
5 dates unless the situation is one in which time is an element of the crime charged.  
6 Instead, the State may provide approximate dates on which it believed the crime  
7 occurred. Id. 368, 369

8 In **this** case, the age of the victim is a critical element of most of the charges and failure to  
9 plead the dates with precision prevents the possibility of a defense. The indictment in *Wilson* was  
10 also completely distinguishable from the indictment in the instant case as a mere eight day gap in  
11 time provides reasonable notice to a defendant, while a more than two and one half year gap is totally  
12 inadequate notice and a violation of due process.

13 In *Cunningham v. State*, 100 Nev. 396, 683 P2d 500 (1984), the Supreme Court noted that  
14 while the State is not absolutely required to allege the exact date of the offenses charged, the state  
15 should, whenever possible, allege the exact date on which it believes a crime was committed, or as  
16 closely thereto as possible. Id. 400 (Emphasis added)

17 The State in this case made no effort whatsoever to allege any of the actual dates of the  
18 alleged crimes. For that reason this indictment is defective as written because it denies Defendant  
19 important statutory and Constitutional rights. In this case, the lack of notice in the indictment  
20 severely prejudices Defendant. Defendant, while attempting to develop a simple time line based  
21 defense strategy, has found it absolutely impossible to proceed because of the vagueness of the  
22 indictment. Because the State is not bound by the indictment as written to any particular dates,  
23 Defendant cannot raise many potential viable defenses.

24 Wherefore, the indictment should be dismissed for due process grounds, or alternatively the  
25 State should be compelled to rewrite the indictment to provide appropriate notice to the Defendant  
26 of the actual dates each count occurred or as closely thereto as possible.

27 DATED this 6th day of August, 2014

/s/ Terrence M. Jackson  
Terrence M. Jackson, Esquire  
Counsel for Defendant, Joshua C. Shue



  
CLERK OF THE COURT

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**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

7 THE STATE OF NEVADA, )

8 Plaintiff, )

9 v. )

10 JOSHUA C. SHUE,  
# 1550230 )

11 Defendant. )

CASE NO.: C-13-288172-1

DEPT. NO.: XXI

**DEFENDANT'S TRIAL BRIEF**

**I. FACTUAL STATEMENT**

15 Defendant was arrested on August 23, 2012. The Grand Jury returned a 41 count indictment  
16 against Joshua Shue on March 12, 2013. Shue had originally been charged by criminal complaint  
17 on August 24, 2012, with a gross misdemeanor; CAPTURING THE IMAGE OF PRIVATE AREA  
18 OF ANOTHER, NRS 206.601. An amended criminal complaint charging multiplicitous counts  
19 involving the same acts was later filed. These additional counts all were either child pornography  
20 or related charges apparently arising from a single video camera.

21 A preliminary hearing was set for March 18, 2013. On March 15, 2013 however, the Grand  
22 Jury met and heard testimony of two Las Vegas Metropolitan Police Officers: Officer Ryan Jaeger,  
23 LVMPD #5587 and Officer Vincente Ramirez, LVMPD #4916, and the alleged victim, Hazel Iral  
24 and her mother, Anita Iral.

25 Detective Jaeger informed the Grand Jury that he began his investigation as a sexual assault  
26 complaint. (GJT p. 10) He testified that when he questioned Shue concerning an incident which  
27 occurred August 27, 2012, Shue admitted he had taken pictures of Hazel Iral on a blue camera under  
28 her skirt. (GJT p. 14) Based upon these admissions, Jaeger sought search warrants to discover any  
other improper or illegal photos. (GJT p. 15, 16) Pursuant to warrant a search was done and a

1 forensic evaluation was then completed by Officer Vincente Ramirez who made copies of what he  
2 believed were relevant photos which were then introduced to the Grand Jury. (GJT p. 26)

3 At the Grand Jury hearing, Hazel Iral identified various exhibits, photos or video of her taken  
4 while she was showering or undressing in the bathroom. She also identified several other photos of  
5 her younger brother, Curt Iral, in a state of undress in the bathroom. (GJT p. 41, 44, 46) None of the  
6 photos Hazel identified depicted sexual conduct as defined in NRS 200.700(3). Hazel Iral stated she  
7 believed her age on each of the photos was 16 or approximately 16 years of age. (GJT pgs. 39, 41,  
8 43, 44, 49, 51, 53, 54, 55, 56, 57, 58) Finally, Anita Iral, the mother of Hazel Iral, testified that she  
9 had been threatened by Detective Jaeger and a representative of CPS (Children's Protective  
10 Services). (GJT p. 65-67) She testified that the representative of CPS told her she wouldn't get her  
11 children back if she didn't testify as CPS demanded. (GJT p. 68)

12 In pretrial proceedings Defendant has tried to raise the issue of Hazel Iral's bias. Defendant  
13 has noted her reluctance to testify in this case through various pretrial motions, filing requests for  
14 discovery, filing a Writ of Habeas Corpus, filing a Motion for Psychiatric Examination and a Motion  
15 to Dismiss, as well as Points and Authorities challenging the State's Motion in Limine.

16 The mental status of Hazel Iral came into sharp focus when she recently attempted suicide  
17 on or about March 19, 2014. Whether she was biased by continuous payments to her by the Clark  
18 County District Attorney for many months is another issue that has arisen during pretrial  
19 proceedings. This has been a matter that has provoked recent substantial media attention in other  
20 cases especially as it has called into question the policy of the District Attorney in these types of  
21 cases. Because of the actions of the District Attorney's office and the State of Nevada in the handling  
22 of this case, Defendant respectfully submits wide latitude during cross-examination of key state  
23 witnesses should be granted.

## 24 II. ISSUES

- 25
- 26 A. Whether the Photographic Images Seized Actually are Child Pornography. What  
27 Standards the Jury Must Use in Deciding That Issue?
- 28 B. Whether the Court Can Unreasonably Limit Cross Examination of Hazel Iral on

1                   Matter of Credibility Including Bias, Mental Status, and Payments From the  
2                   Government.

3           C.   Whether the Defendant is Entitled to His Theory of the Case Instructions and  
4           Other Necessary Legal Instructions.

5   ...

6           A.   THE JURY, NOT THE PROSECUTOR, MUST DETERMINE WHETHER THE  
7           PHOTOGRAPHIC EVIDENCE PRESENTED DURING THE CASE ACTUALLY  
8           MEETS THE LEGAL DEFINITION OF PORNOGRAPHY.

9

10           One of the elements of the many charges, which must be proved beyond a reasonable doubt,  
11   is that the Defendant produced or possessed material that was actually child pornography as defined  
12   in NRS 200.710 . The jury alone must determine whether the exhibits meet the legal definition of  
13   pornography. Interpreting the facts and law in a criminal case requires the jury to decide if the state  
14   has proved the elements of pornography. The jurors must use their common sense and apply reason  
15   to this decision. The jury, in exercising this decision must be convinced beyond a reasonable doubt  
16   all the elements have been proved. *Jackson v. Virginia*, 443 U.S. 307 (1979)

17           Defendant submits that the jury be instructed that mere nudity is not pornography. (*See*,  
18   Defense Proposed Instruction A) Otherwise, the statute, NRS 200.710, is too broad and in violation  
19   of due process. A reasonable person can only guess at what is, or is not, pornography and is  
20   punishable under the law as criminal behavior.

21           The facts are clear in this case that the pictures and video introduced in evidence at the Grand  
22   Jury hearing, and to be introduced at trial, show no sexual action whatever but merely show Hazel  
23   Iral in various states of undress and also her brother in the bathroom using the toilet. *See*, GJT p. 58:

24           Q.    "And Hazel, am I correct in saying that all the videos we saw today are generally the  
25           same thing of you or your brother going into the bathroom, getting undressed, taking  
26           a shower, getting out of the bathroom and doing other bathroom things; is that  
27           correct?"

28           A.    "Yes."



1 It is respectfully submitted all of the evidence shown in the photos or videos is not sufficient  
2 to qualify under the statutes, NRS 200.710 or NRS 200.730, as pornography. Pornography entails  
3 graphic depiction of sexual activity with intent to arouse. The Defendant submits proposed  
4 instruction A and H define what pornography is and what the State's evidence is, in this case, is **not**  
5 pornography and the jury properly instructed will so find.

6 **B. THE CREDIBILITY OF HAZEL IRAL MUST BE TESTED BY FAIR CROSS**  
7 **EXAMINATION TO ADEQUATELY DETERMINE HER CREDIBILITY.**

8 The credibility of Hazel Iral is at issue. For tactical reasons the State wishes to wrap a cocoon  
9 around Hazel Iral that insulates her from cross examination. The State insists that her mental status  
10 and her psychiatric history, or even her veracity, or potential bias, is irrelevant to the facts of this  
11 case. (See, State's Motion in Limine) This argument is absurd for the following reasons:

- 12 (1.) Without Hazel Iral's testimony, the State of Nevada cannot lay a proper foundation  
13 for most of the exhibits the State wishes to introduce into evidence. Establishing a  
14 proper foundation for an exhibit is essential and admission of evidence without the  
15 necessary foundation is error. Hazel's testimony is especially critical to establish her  
16 age in the photographs as well as to establish the photos were taken by someone other  
17 than herself.

18 The case of *U.S. v. Rembert*, 863 F.2d 1023 (1988) required that admission of photographic  
19 evidence meet the foundational requirement of Federal Rules of Evidence 901(a). The question then  
20 arises, are the photos self-authenticating or not therefore in need of any foundation?

21 The pictures in this case standing alone do not establish when they were taken, or how old  
22 Hazel was at the time the pictures were taken, or who the pictures were taken by, or how the pictures  
23 may have been scanned and/or downloaded to any computers or discs. The State's argument that the  
24 pictures speak for themselves is therefore defective because the images alone provide an incomplete  
25 picture and mean nothing without foundation or context.

- 26 (2.) Hazel Iral has knowledge that can exculpate the Defendant, Joshua Shue. If she  
27 chooses not to provide this knowledge, or to misrepresent the facts during her  
28 testimony, it may lead to a wrongful conviction.

1 Defendant submits if Hazel Iral testifies truthfully she will accept responsibility for herself  
2 producing some of the so called "pornographic" pictures and will therefore exculpate Joshua Shue  
3 from the alleged charges in the indictment. Whether she tells the truth to the jury is critical to the  
4 defense. Her recent actions reflecting her mental instability including her suicide attempt are  
5 extremely relevant evidence for the jury's credibility determination. Also relevant for the credibility  
6 of Hazel Iral is her bias caused by the coercive and manipulative tactics employed by the police and  
7 governmental authorities in this case. Relevant to the jury's determination of credibility are the prior  
8 threats made to her and her mother, along with the ongoing cash payments and other subtle, and not  
9 so subtle, manipulation which have biased her as a witness and have caused her to testify to facts  
10 that she knows are exaggerated or untrue.

11 Nothing is more fundamental in the criminal justice system than allowing an accused to  
12 present a complete defense to the charges against him. The United States Constitution and the  
13 Nevada Constitution allow a criminal defendant to present testimony and confront and cross-  
14 examine witnesses. U.S. Const. Amend. V, VI, XIV; Nev. Const. Art. 1, Sect. 8. *See also, Chambers*  
15 *v. Mississippi*, 410 U.S. 284 (1984); *Washington v. Texas*, 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed.2d  
16 1019 (1967), *Viperman v. State*, 96 Nev. 592, 614 P.2d 532 (1980) (The due process clause of the  
17 federal and state constitutions "assure an accused the right to introduce into evidence any testimony  
18 or documentation which would tend to prove the defendant's theory of the case") citing *United*  
19 *States v. Nixon*, 418 U.S. 683, 711 (1974) and *State v. Fouquette*, 67 Nev. 505, 514, 221 P.2d 404,  
20 409 (1950).

21 In *Kittelson v. Dretke*, 426 F.3d 306 (5th Cir. 2005), the court recognized that the due process  
22 clause of the Fourteenth Amendment and compulsory process clause or confrontation clause of the  
23 Sixth Amendment protects a defendant's right to present his case:

24 *Kittelson* argues that the trial court limited both his right to challenge the  
25 testimony of the State's witnesses and his right fairly to present the testimony of his  
26 own witnesses. "Whether rooted directly in the Due Process clause of the Fourteenth  
27 Amendment or in the Compulsory Process or Confrontation clauses of the Sixth  
28 Amendment, the Constitution guarantees criminal defendants a meaningful  
opportunity to present a complete defense." *United States v. Scheffer*, 523 U.S. 303,  
329 n. 16, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998) (internal citations and quotations  
omitted). The Sixth Amendment right to present a complete defense encompasses a  
defendant's rights under the Confrontation Clause to rebut the State's evidence

1 through cross-examination. *See, Webb v. Texas*, 409 U.S. 95, 93 S.Ct. 351, 34  
2 L.Ed.2d 330 (1972) (*per curiam*); *Washington v. Texas*, 388 U.S. 14, 87 S.Ct. 1920,  
3 18 L.Ed.2d 1019 (1967); *Taylor v. Illinois*, 484 U.S. 400, 410, 108 S.Ct. 646, 98  
4 L.Ed.2d 798 (1988); *see also Crane v. Kentucky*, 476 U.S. 683, 690, 106 S.Ct. 2142,  
5 90 L.Ed.2d 636 (1986) ("Whether rooted directly in the Due Process Clause of the  
6 Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of  
the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful  
opportunity to present a complete defense." (internal citations and quotations  
omitted) The State does not contest that either the broad Sixth Amendment right to  
put on a full defense or the Confrontation Clause right to rebut the State's evidence  
are clearly established through longstanding Supreme Court precedent.

7 Although the right to cross-examination is not absolute, it is effectively  
8 denied when a defendant is prohibited from "expos[ing] to the jury facts from which  
jurors as the sole triers of fact and credibility, could appropriately draw inferences  
relating to the reliability of the witness." *Davis*, 415 U.S. at 318, 94 S.Ct. 1105;  
9 *see Chambers v. Mississippi*, 410 U.S. 284, 295, 93 S.Ct. 1038, 35 L.Ed.2d. 297 (1973). The  
10 absence of proper confrontation at trial "calls into question the ultimate integrity of the fact-finding  
process." *Chambers*, 410 U.S. at 295, 93 S.Ct. 1038. "The right to cross-examination includes the  
11 opportunity to show that a witness is biased, or that the testimony is exaggerated or unbelievable."  
*Pennsylvania v. Ritchie*, 480 U.S. 39, 51-53, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987). "[A] denial of  
12 cross-examination without waiver ... would be constitutional error of the first magnitude." *Smith*  
13 *v. Illinois*, 390 U.S. 129, 131, 88 S.Ct. 748, 19 L.Ed.2d 956 (1968) (internal quotation marks  
omitted). *Id.* 318, 319

14 ...  
15 In *Brown v. Powell*, 975 F.2d 1, 4 (1st Cir. 1992), the court relying on *U.S. v. Van Arsdall*,  
475 U.S. 680 (1986) stated:

16 "Whether a trial court has abused its discretion in limiting the cross-  
17 examination of a witness for bias depends on 'whether the jury had sufficient other  
information before, it, without the excluded evidence, to make a discriminating  
appraisal of the possible biases and motivation of the witnesses.'" *Brown v. Powell*,  
18 975 F.2d 1, 4 (1st Cir. 1992) (quoting *United States v. Tracey*, 675 F.2d 433, 437 (1st  
Cir. 1982)) *See also, United States v. Lucian-Mosquera*, 63 F.3d 1142, 1153 (1st Cir.  
19 1995) (adopting the "discriminating appraisal" formulation); *United States v.*  
*Graham*, 83 F.3d 1466, 1475 (D.C. Cir. 1996) (same); *United States v. Salameh*, 152  
20 F.3d 88, 131 (2nd Cir. 1998) (same); *United States v. Ward*, 211 F.3d 356, 363 (7th  
Cir. 2000) (same); *United States v. Turner*, 198 F.3d 425, 429 (4th Cir. 1999) (To  
21 prohibit the cross-examination of a prosecution witness "on relevant evidence of bias  
and motive may violate the Confrontation Clause, if the jury is precluded from  
22 hearing evidence from which it could appropriately draw adverse inferences on the  
witness's credibility." (Emphasis added).

23  
24 Without a thorough cross-examination of Hazel Iral, the jury will not be able to determine  
25 the credibility or biases of Hazel Iral. This will seriously prejudice the Defendant and deny him  
26 fundamental Fifth and Sixth and Fourteenth Amendment rights.

27 ...

28 C. THE DEFENDANT IS ENTITLED TO HIS THEORY OF THE CASE

1 INSTRUCTIONS. DEFENDANT REQUESTS DEFENSE PROPOSED  
2 INSTRUCTIONS (A - I) BE GIVEN.  
3

4 Defendant submits the instructions he proposes are justified by the facts and law. Nevada law  
5 is clear that if even slight or marginal evidence supports a criminal defendant's theory of the case,  
6 he is entitled to appropriate theory of the case instructions. The facts of this case raise several  
7 important issues that require detailed jury instruction. Among the most important instructions  
8 Defendant submits are those concerning the legal definition of pornography and the credibility of  
9 witnesses, as well as the instructions concerning lesser included offenses.

10 Defendant may argue all appropriate instructions if they are supported by any evidence or  
11 law even weak and insubstantial evidence, and to propose theory of the case instructions that  
12 support his defense if he can establish any reasonable basis for the instruction. *Boykins v. State*, 116  
13 Nev. 171, 995 P.2d 474 (2000). *Rosas v. State*, 122 Nev. 1258, 147 P.3d 1101 (2008) held a  
14 defendant also has a right to have instructions on lesser included offenses given to the jury when  
15 appropriate and failure to give such instructions will result in reversible error.

16 The defendant is not even required to admit culpability in order to be entitled to instruction  
17 on lesser included offenses. As the Supreme Court concluded in *Rosas, supra*:

18 "The governing principle is that a defendant is entitled to a jury instruction  
19 on his or her theory of the case as long as there is some evidence to support it,  
20 regardless of who introduces the evidence and regardless of what other theories may  
be advanced. *Id.* 1269 (Emphasis added)

21 Defendant submits his list of proposed jury instructions is a partial list of defense instructions  
22 deemed necessary for his defense and he requests the right to supplement these as necessary. It is  
23 well settled that the trial court has the duty to give a correct and complete charge of the law  
24 applicable to the facts of the case. *State v. Teel*, 793 S.W.2d 236 (1990).

25 Respectfully submitted this 12th day of August, 2014

26 /s/ Terrence M. Jackson  
27 Terrence M. Jackson, Esquire  
Counsel for Defendant Shue

28 PROPOSED LIST OF DEFENSE INSTRUCTIONS

- 1  
2 A. PHOTOGRAPHIC IMAGES OF 'MERE NUDITY' IS NOT IN ITSELF  
3 PORNOGRAPHY  
4 B. DUTY TO FIND LESSER INCLUDED OFFENSES  
5 C. LESSER INCLUDED OFFENSE (NRS 200.730)  
6 'Knowing Possession' Depicting Person Under 16 as Subject Sexual Portrayl  
7 D. LESSER INCLUDED  
8 Capturing Private Image of Another (NRS 200.604)  
9 E. CAUTIONARY INSTRUCTION REGARDING PAYMENT TO WITNESSES  
10 F. CAUTIONARY INSTRUCTION REGARDING MENTAL HEALTH OF  
11 WITNESS  
12 G. LACK OF KNOWLEDGE  
13 H. POSSESSION OF CHILD PORNOGRAPHY  
14 I. CREDIBILITY OF LAW ENFORCEMENT OFFICER  
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DEFENSE INSTRUCTION 'A'

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1 'Lesser Included Offense'

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3 The crime of use of child in production includes the lesser crimes of capturing the private  
4 image of another. If you are not convinced beyond a reasonable doubt that the defendant is guilty and  
5 all of you are convinced beyond a reasonable doubt that the defendant is guilty of the lesser crime  
6 of capturing the private image of another (NRS 200.604), you may find the defendant guilty of  
7 capturing the private image of another. (NRS 200.604).

8 In order for the defendant to be found guilty of the lesser crime of capturing the private image  
9 of another, NRS 200.604, the government must prove each of the following elements beyond a  
10 reasonable doubt:

- 11 1. The Defendant knowingly captured the image of another's private areas;  
12 2. He did this without consent of the party.

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28 DEFENSE INSTRUCTION 'C'

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A person who knowingly and willfully has in his possession for any purpose any film, photograph or other visual presentation depicting a person under the age of 16 as the subject of a sexual portrayal or engaging in or simulating, or assisting others to engage in or simulate sexual conduct is guilty of the lesser charge of possession of visual presentation depicting sexual conduct of a child.

NRS 200.710, NRS 200.730

...

DEFENSE INSTRUCTION 'D'



1                                    'Capturing the Private Image of Another Person'

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3            It is unlawful to capture the private image of another person without their consent when such

4 persons had a reasonable expectation of privacy. If you find the Defendant did not commit the crime

5 of use of a child in production of pornography or possession of visual presentation depicting sexual

6 conduct of a child, you may find him guilty of the lesser included offense of capturing the private

7 image of another person without their consent.

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28                                    DEFENSE INSTRUCTION 'E'

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'There is evidence a principle witness for the State has received cash payments  
from the State of Nevada'

In evaluating the credibility of this witness, you may consider the effect the cash payment to the witness may have had on the witness's bias in favor of the State. You should also consider whether under the totality of circumstances, including the total amount of the payments in deciding whether the payments the witness received were justified. Even if the payment may be justified by some reason of policy, you may still consider whether the payments may have in some way improperly influenced the testimony of the witness.

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DEFENSE INSTRUCTION 'F'

1                   'The Mental Health of a Witness is Always a Relevant Factor in  
2                                   Determining a Witness's Credibility'

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4           Evidence a witness has made a recent attempt to commit suicide is a factor you may consider  
5 along with all other factors to ascertain whether the witness is worthy of belief. You may also  
6 consider evidence that a witness has engaged in acts of self harm such as cutting in determining  
7 whether they are worthy of belief. The mental status of a witness is always relevant in determining  
8 the credibility of a witness and you should evaluate carefully any evidence of mental instability of  
9 a witness in assessing the credibility of that witness.

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28                                   DEFENSE INSTRUCTION 'G'

1     'Lack of knowledge is a complete defense to the crime of possession of child pornography.'

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3             In order to be found guilty of Possession of Child Pornography, the Defendant must possess  
4 such pornography knowingly, that is with full knowledge of pornographic content of the material  
5 alleged to be pornography.

6             If you find the Defendant was not aware of the content of the computer discs which contained  
7 illegal or contraband material, you must find him not guilty.

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DEFENSE INSTRUCTION 'H'

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Credibility of Witnesses - Law Enforcement Officer

You have heard the testimony of law enforcement officer(s). The fact that a witness is employed as a law enforcement officer does not mean that (his)(her) testimony necessarily deserves more or less consideration or greater or lesser weight than that of any other witness.

You must decide, after reviewing all the evidence, whether you believe the testimony of the law enforcement witness and how much weight, if any, it deserves.

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An employee of T. M. Jackson, Esq.



CLERK OF THE COURT

1 **OPPM**

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 LEAH C. BEVERLY  
6 Deputy District Attorney  
7 Nevada Bar #0012556  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9  
10 THE STATE OF NEVADA,  
11 Plaintiff,

CASE NO: C288172

12 -vs-

DEPT NO: XXI

13 JOSHUA SHUE, #1550230  
14 Defendant.

15  
16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS INDICTMENT**

17 DATE OF HEARING: 8/19/2014  
18 TIME OF HEARING: 9:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through LEAH C. BEVERLY, Deputy District Attorney, and hereby  
21 submits the attached Points and Authorities in Opposition to Defendant's Motion to Dismiss  
22 Indictment.

23 This Opposition is made and based upon all the papers and pleadings on file herein, the  
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
25 deemed necessary by this Honorable Court.

26 ///

27 ///



POINTS AND AUTHORITIES  
STATEMENT OF THE CASE

An Indictment was filed on March 13, 2013 charging Joshua Shue (hereinafter "Defendant") with one count of Child Abuse and Neglect, 29 counts of Use of Child in Production, 10 counts of Possession of Visual Presentation Depicting Sexual Conduct of a Child, and one count of Open and Gross Lewdness. Defendant plead not guilty on March 28, 2013. The instant Motion to Dismiss was filed on August 6, 2014. The trial in this matter is currently set for August 25, 2014. The State's Response follows:

STATEMENT OF FACTS

During the late night hours of August 22, 2012, victim Hazel Iral returned home to the apartment she shared with her mother, two brothers and her mother's boyfriend Joshua Shue ("Defendant"). Grand Jury Transcript, ("GJT"), 36. Upon returning home, Hazel and Defendant began to talk about Hazel's outing that evening. Id. At some point that evening, Defendant used his camera to take a picture underneath Hazel's skirt. Id. After offering Hazel a Shirley temple drink that "tasted different", Defendant began kissing Hazel on her mouth despite the fact that Hazel had no sexual attraction to Defendant and did not want to kiss him. GJT, 36-37.

The following day, Hazel reported this incident to the police causing Detective Ryan Jaeger to interview Defendant on August 23, 2012. GJT, 11. During this interview, Defendant admitted to taking a picture with a blue camera under Hazel's skirt. GJT, 12. Following this interview, Detective Jaeger obtained a search warrant for the apartment where Defendant lived with Hazel which authorized him to seize all digital equipment located in the apartment. GJT, 15. Detective Jaeger then obtained a second search warrant to actually search the electronic items. GJT 16. Of particular relevance to this case was Defendant's Sony Vio laptop.

Upon conducting a forensic analysis on the computer, Detective Vince Ramirez uncovered that the computer was registered to Defendant. GJT, 25. In addition, Ramirez found over 140 video files as well as regular photographs in folders labeled "Yummm" and "Hmmm" depicting children engaging in bathroom activities and children engaging in sexual activities.

1 GJT, 25, 28.

2 Hazel Iral later identified herself and her brother Curt Iral as the subject of all of the  
3 video files listed in the Indictment. GJT, 38-57. In all of the videos, Defendant is seen setting  
4 up a video camera in the bathroom of the apartment and either Hazel or Curt are recorded in  
5 the bathroom showering, using the restroom, putting on lotion and conducting other bathroom  
6 routines. Id. All of the videos show full frontal nudity of the children's genitals. Id. Hazel  
7 specifically testified that each of the videos were recorded on a different day because she and  
8 her brother only showered once a day. Id. Hazel also testified that both she and her brother  
9 were under 18 at the time these videos were created. Id.

## 10 11 POINTS AND AUTHORITIES

### 12 I. THE INDICTMENT IS NOT DEFECTIVE AND PROVIDES PROPER NOTICE.

13  
14 Defendant claims in the instant motion that the Indictment is defective and should be  
15 dismissed because it is vague and does not give sufficient notice of when the crimes occurred.  
16 This claim is without merit and should be denied.

17 The Indictment in this case states that the crimes occurred on or between January 1, 2010  
18 and August 23, 2012. The Nevada Supreme Court has held that date ranges are permissible in  
19 an Information or Indictment. NRS 173.075 states in relevant part, "The indictment or the  
20 information must be a plain, concise and definite written statement of the essential facts  
21 constituting the offense charged."

22 In Wilson v. State, defendant Wilson was charged with multiple counts of use of minor  
23 in producing pornography or as the subject or a sexual portrayal in performance and multiple  
24 counts of possession of visual presentations depicting sexual conduct of a person under the  
25 age of 16- the same charges as in the instant case. Wilson v. State, 121 Nev. 345, 114 P.3d  
26 285 (2005). In Wilson, the State alleged that the crimes occurred within an eight day range.  
27 Id. The Court set forth the law regarding date ranges in charging documents. The Court held:

1 Wilson's final contention is that defects in the indictment  
2 violated his due process rights by failing to provide him with  
3 adequate notice and that the defects prejudiced him to such an  
4 extent that he was unable to mount a proper defense. Wilson  
5 points to the language of the indictment wherein the State  
6 accused him of crimes "committed at and within the County of  
7 Clark, State of Nevada, *on or 10th day of November, 2001*, [sic]  
8 and **\*\*301** the 18th day of November 2001." (Emphasis added.)  
9 21 Nevada law requires that an indictment must contain "a plain,  
10 concise and definite written statement of the essential facts  
11 constituting the offense charged."<sup>51</sup> However, this court has  
12 noted that there is no requirement that the State allege exact dates  
13 unless the situation is one in which time is an element of the  
14 crime charged.<sup>52</sup> Instead, **\*369** the State may provide  
15 approximate dates on which it is believed that the crime  
16 occurred.<sup>53</sup> In *Cunningham v. State*, this court held that it is  
17 permissible for the State to give a time frame for an offense  
18 instead of a specific date, provided that the dates listed are  
19 sufficient to place the defendant on notice of the charges.<sup>54</sup>  
20 "Otherwise, convictions for criminal misfeasance would only be  
21 valid when the State correctly guesses the [exact] date of an  
22 offense."<sup>55</sup> This court has made it clear, however, that the State  
23 may not fail to allege any date whatsoever in an indictment or  
24 information, for such a failure would deprive the defendant of  
25 adequate notice of the crime charged such that he would be  
26 incapable of preparing an adequate defense, which is the  
27 intended purpose behind the notice requirement  
28

19 Wilson v. State, 121 Nev. 345, 368-69, 114 P.3d 285, 300-01 (2005). The Court held that  
20 Wilson was not deprived of adequate notice of the charges against him or prejudiced to the  
21 extent that he was unable to adequately defend against the State's charges. Id. Of importance  
22 is that the Court never held that time is an element of the charges such that exact dates were  
23 required. As such, contrary to Defendant's claim in the instant motion, time is not an element  
24 of the charges and specific dates are not necessary.

25 In Cunningham v. State, the Court held that a two year time frame did not make the  
26 information defective. Cunningham v. State, 100 Nev. 396, 683 P.2d 500 (1984). The Court  
27 held:  
28

1 Appellant next contends that the information which was filed  
2 against him in this matter was deficient since it did not allege the  
3 exact date of the commission of the present offenses, \*400 but  
4 instead simply alleged that one of the acts of which he was  
5 convicted occurred "on or about the calendar year of 1981," and  
6 that the other two acts occurred "on or about the calendar years  
7 of 1981 and 1982, but prior to November 15, 1982." We  
8 disagree.

9 23 Unless time is an essential element of the offense charged,  
10 there is no absolute requirement that the state allege the exact  
11 date, and the state may instead give the approximate date on  
12 which it believes the crime occurred. *See Brown v. State*, 81 Nev.  
13 397, 404 P.2d 428 (1965); *Martinez v. State*, 77 Nev. 184, 360  
14 P.2d 836 (1961); *see generally* 41 Am.Jur.2d *Indictments and*  
15 *Informations* § 115 (1968). Time is clearly not an element of the  
16 offenses charged in the present case. *See Martinez v. State, supra*  
17 (time is not an element of the offense of rape); *see also People v.*  
18 *Wrigley*, 69 Cal.2d 149, 70 Cal.Rptr. 116, 443 P.2d 580 (1968)  
19 (time is not an essential element of the crime of committing lewd  
20 and lascivious acts upon a minor). As such, the state was not  
21 absolutely required to allege the exact date of the commission of  
22 the present offenses.

23 4 This does not mean, however, that the state may fail to allege  
24 any date whatsoever in the information or the indictment, since  
25 such a failure would clearly deprive the defendant of adequate  
26 notice of the charge against him. *See Grant v. Sheriff*, 95 Nev.  
27 211, 591 P.2d 1145 (1979); *see generally Simpson v. District*  
28 *Court*, 88 Nev. 654, 503 P.2d 1225 (1972). Moreover, the state  
should, whenever possible, allege the exact date on which it  
believes a crime was committed, or as closely thereto as possible.  
Cases such as the present one, however, pose special problems  
for the state in attempting to allege the exact date of the  
commission of the crime. Generally speaking, in a case involving  
a child victim, the child is often unable to indicate to the state  
with any precision the exact time of the commission of the  
offense. This problem is compounded in cases involving sexual  
abuse, since there are usually no witnesses to the offense other  
than the child. Additionally, in cases such as the present one  
which involve the sexual abuse of children by members of their  
own family, the children are often understandably reluctant to  
tell anyone of such occurrences, and often do not tell anyone  
until quite some time later. By that time, as here, the child is  
often unable to remember more than the general period in which

1 the offense took place. Faced with such problems, it \*401 clearly  
2 cannot be said that the state had an absolute obligation to draft an  
3 information with any more particularity than was done here. As  
4 noted by the Idaho Supreme Court:

5 It would be a very weak rule of law that would permit a man to  
6 ravish a fifteen year old girl ... and then say in effect: "You  
7 cannot convict me of this crime, as you did not guess the right  
8 date."

9 *See State v. Rogers*, 48 Idaho 567, 283 P. 44, 45 (1929).

10 We have considered appellant's remaining contention and have  
11 found it to be without merit.

12  
13 Cunningham v. State, 100 Nev. 396, 399-01, 683 P.2d 500, 502 (1984). As the use of date  
14 ranges provides sufficient notice to a Defendant, Defendant's claims in the instant motion  
15 are without merit.

16  
17 CONCLUSION

18 As all of Defendant's claims in the instant Motion are without merit, the State  
19 respectfully requests that Defendant's Motion be DENIED.

20 DATED this 10<sup>th</sup> day of August, 2014.

21 Respectfully submitted,

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

25 BY



26 LEAH C. BEVERLY  
27 Deputy District Attorney  
28 Nevada Bar #12556

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS INDICTMENT, was made this 18<sup>th</sup> day of August, 2014, by facsimile transmission to:

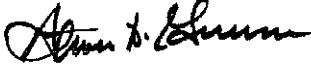
TERRENCE M. JACKSON, ESQ.  
702-386-0085

BY

C. Jimenez  
Secretary for the District Attorney's Office

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CLERK OF THE COURT

NWEW  
TERRENCE M. JACKSON, ESQ.  
Nevada Bar No.: 00854  
Law Office of Terrence M. Jackson  
624 South Ninth Street  
Las Vegas, NV 89101  
T: 702-386-0001 / F: 702-386-0085  
*Counsel for Joshua C. Shue*

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	CASE NO.: C-13-288172-1
	)	
Plaintiff,	)	DEPT. NO.: XXX
	)	
v.	)	
	)	
JOSHUA C. SHUE,	)	
aka Joshua Caleb Shue	)	
	)	
Defendant.	)	

**NOTICE OF WITNESSES**  
[NRS 174.234(1)(a)]

TO: STATE OF NEVADA, PLAINTIFF; and

TO: Maria Lavell, Chief Deputy D.A.-Criminal, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Counsel for the

Defendant submits this list of potential witnesses:

<u>NAME</u>	<u>ADDRESS</u>
FRANCES CARREON	3000 Roseville Way, Las Vegas, NV 89102
ANITA IRAL	3000 Roseville Way, Las Vegas, NV 89102
CURT IRAL	3000 Roseville Way, Las Vegas, NV 89102
FRANZKE IRAL	3000 Roseville Way, Las Vegas, NV 89102

None of these witnesses are expert witnesses or alibi witnesses and their testimony will be mostly limited to impeachment testimony of Hazel Iral. The potential exculpatory evidence of Frances Carreon and Franzke Iral was recently discovered during interviews on August 20, 2014.

All of the potential witnesses except possibly Frances Carreon have been subpoenaed by the State or were known to the State.

1 Respectfully submitted this 22<sup>nd</sup> day of August, 2014.

2  
3 /s/ Terrence M. Jackson  
4 Counsel for Defendant Joshua Shue

5  
6 CERTIFICATE OF SERVICE

7 The undersigned hereby certifies she is an employee of Terrence M. Jackson, Esquire,  
8 and is a person of such age and discretion as to be competent to serve papers, and that on the 22<sup>nd</sup>  
9 day of August, 2014, she served Defendant, JOSHUA C. SHUE'S, NOTICE OF WITNESSES,  
10 by electronic service through the court approved *wiznet* service provider, **as set forth below:**

11  
12 Steven B. Wolfson, Esquire  
13 Clark County District Attorney  
14 PDMotions@ccdanv.com

15  
16  
17  
18  
19 By: /s/ Ila C. Wills  
20 An employee of T. M. Jackson, Esq.

21  
22 ///

23  
24 ///

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1 INST

 ORIGINAL

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

AUG 29 2014 5:40 pm

BY, Denise Husted  
DENISE HUSTED, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JOSHUA SHUE

12 Defendant.

CASE NO: C288172

DEPT NO: XXI

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this case. It is  
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as  
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these  
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it  
20 would be a violation of your oath to base a verdict upon any other view of the law than that  
21 given in the instructions of the Court.

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

7 The order in which the instructions are given has no significance as to their relative  
8 importance.  
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2 An Indictment is but a formal method of accusing a person of a crime and is not of  
3 itself any evidence of his guilt.

4 In this case, it is charged in an Indictment on or between January 1, 2010 and August  
5 23, 2012, within the County of Clark, State of Nevada, contrary to the form, force and effect  
6 of statutes in such cases made and provided, and against the peace and dignity of the State of  
7 Nevada,

8 COUNT 1 - CHILD ABUSE & NEGLECT

9 did wilfully, unlawfully, feloniously and knowingly neglect, cause, or permit a child  
10 under the age of 18 years, to-wit: HAZEL IRAL, being approximately 17 years of age, to  
11 suffer unjustifiable physical pain, or mental suffering, or by permitting the said HAZEL  
12 IRAL to be placed in a situation where she might have suffered unjustifiable physical pain or  
13 mental suffering, by the Defendant taking pictures of the said HAZEL IRAL's genital area  
14 and/or by taking off her clothing and/or by inappropriately kissing the said HAZEL IRAL on  
15 the mouth and/or videotaping HAZEL IRAL in the nude while she showered and engaged in  
16 other bathroom activities.

17 COUNT 2 - USE OF CHILD IN PRODUCTION

18 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
19 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
20 subject of a sexual portrayal in a performance, to wit: lewd exhibition of genitals, for the  
21 purpose of producing a pornographic performance, to wit: by using a camera to take a  
22 photograph of the said HAZEL IRAL's genital area.

23 COUNT 3 - USE OF CHILD IN PRODUCTION

24 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
25 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
26 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
27 video file named PICT0058, for the purpose of producing a pornographic performance, to  
28 wit: by filming the genital areas of HAZEL IRAL as she showered and performed other

1 private bathroom routines.

2 COUNT 4 - USE OF CHILD IN PRODUCTION

3 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
4 entice, coerce or permit CURT IRAL, a minor under the age of fourteen years old to be the  
5 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
6 video file named PICT0058, for the purpose of producing a pornographic performance, to  
7 wit: by filming the genital areas of said CURT IRAL as he showered and performed other  
8 private bathroom routines.

9 COUNT 5 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
10 CONDUCT OF A CHILD

11 did then and there feloniously, knowingly and willfully, have in his possession, a  
12 film, photograph, or other visual presentation depicting a child under the age of sixteen years  
13 as the subject of a sexual portrayal or engaging in, or stimulating, or assisting others to  
14 engage in or stimulate sexual conduct, to wit: a computer video file named PICT0058,  
15 depicting a fully naked CURT IRAL standing nude in the bathroom, said video displaying  
16 full frontal nudity.

17 COUNT 6 - USE OF CHILD IN PRODUCTION

18 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
19 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
20 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
21 video file named PICT0031, for the purpose of producing a pornographic performance, to  
22 wit: by filming the genital areas of HAZEL IRAL as she showered and performed other  
23 private bathroom routines.

24 COUNT 7 - USE OF CHILD IN PRODUCTION

25 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
26 entice, coerce or permit CURT IRAL, a minor under the age of fourteen years old to be the  
27 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
28 video file named PICT0031, for the purpose of producing a pornographic performance, to

1 wit: by filming the genital areas of said CURT IRAL as he showered and performed other  
2 private bathroom routines.

3 COUNT 8 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
4 CONDUCT OF A CHILD

5 did then and there feloniously, knowingly and willfully, have in his possession, a  
6 film, photograph, or other visual presentation depicting a child under the age of sixteen years  
7 old as the subject of a sexual portrayal or engaging in, or stimulating, or assisting others to  
8 engage in or stimulate sexual conduct, to wit: a computer video file named PICT0031,  
9 depicting a fully naked CURT IRAL standing nude in the bathroom, said video displaying  
10 full frontal nudity.

11 COUNT 9 - USE OF CHILD IN PRODUCTION

12 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
13 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
14 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
15 video file named PICT0005, for the purpose of producing a pornographic performance, to  
16 wit: by filming the genital areas of HAZEL IRAL as she showered and performed other  
17 private bathroom routines.

18 COUNT 10 - USE OF CHILD IN PRODUCTION

19 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
20 entice, coerce or permit CURT IRAL, a minor under the age of fourteen years old to be the  
21 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
22 video file named PICT0005, for the purpose of producing a pornographic performance, to  
23 wit: by filming the genital areas of said CURT IRAL as he showered and performed other  
24 private bathroom routines.

25 COUNT 11 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
26 CONDUCT OF A CHILD

27 did then and there feloniously, knowingly and willfully, have in his possession, a  
28 film, photograph, or other visual presentation depicting a child under the age of sixteen years

1 old as the subject of a sexual portrayal or engaging in, or stimulating, or assisting others to  
2 engage in or stimulate sexual conduct, to wit: a computer video file named PICT0005,  
3 depicting a fully naked CURT IRAL standing nude in the bathroom, said video displaying  
4 full frontal nudity.

5 COUNT 12 - USE OF CHILD IN PRODUCTION

6 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
7 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
8 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
9 video file named PICT0007, for the purpose of producing a pornographic performance, to  
10 wit: by filming the genital areas of HAZEL IRAL as she showered and performed other  
11 private bathroom routines.

12 COUNT 13 - USE OF CHILD IN PRODUCTION

13 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
14 entice, coerce or permit CURT IRAL, a minor under the age of fourteen years old to be the  
15 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
16 video file named PICT0007, for the purpose of producing a pornographic performance, to  
17 wit: by filming the genital areas of said CURT IRAL as he showered and performed other  
18 private bathroom routines.

19 COUNT 14 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
20 CONDUCT OF A CHILD

21 did then and there feloniously, knowingly and willfully, have in his possession, a  
22 film, photograph, or other visual presentation depicting a child under the age of sixteen years  
23 old as the subject of a sexual portrayal or engaging in, or stimulating, or assisting others to  
24 engage in or stimulate sexual conduct, to wit: a computer video file named PICT0007,  
25 depicting a fully naked CURT IRAL standing nude in the bathroom, said video displaying  
26 full frontal nudity.

27 COUNT 15 - USE OF CHILD IN PRODUCTION

28 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,

1 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
2 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
3 video file named PICT0006, for the purpose of producing a pornographic performance, to  
4 wit: by filming the genital areas of HAZEL IRAL as she showered and performed other  
5 private bathroom routines.

6 COUNT 16 - USE OF CHILD IN PRODUCTION

7 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
8 entice, coerce or permit CURT IRAL, a minor under the age of fourteen years old to be the  
9 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
10 video file named PICT0006, for the purpose of producing a pornographic performance, to  
11 wit: by filming the genital areas of said CURT IRAL as he showered and performed other  
12 private bathroom routines.

13 COUNT 17 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
14 CONDUCT OF A CHILD

15 did then and there feloniously, knowingly and willfully, have in his possession, a  
16 film, photograph, or other visual presentation depicting a child under the age of sixteen years  
17 old as the subject of a sexual portrayal or engaging in, or stimulating, or assisting others to  
18 engage in or stimulate sexual conduct, to wit: a computer video file named PICT0006,  
19 depicting a fully naked CURT IRAL standing nude in the bathroom, said video displaying  
20 full frontal nudity.

21 COUNT 18 - USE OF CHILD IN PRODUCTION

22 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
23 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
24 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
25 video file named PICT0057, for the purpose of producing a pornographic performance, to  
26 wit: by filming the genital areas of HAZEL IRAL as she showered and performed other  
27 private bathroom routines.

28 COUNT 19 - USE OF CHILD IN PRODUCTION

1 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
2 entice, coerce or permit CURT IRAL, a minor under the age of fourteen years old to be the  
3 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
4 video file named PICT0057, for the purpose of producing a pornographic performance, to  
5 wit: by filming the genital areas of said CURT IRAL as he showered and performed other  
6 private bathroom routines.

7 COUNT 20 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
8 CONDUCT OF A CHILD

9 did then and there feloniously, knowingly and willfully, have in his possession, a  
10 film, photograph, or other visual presentation depicting a child under the age of sixteen years  
11 old as the subject of a sexual portrayal or engaging in, or stimulating, or assisting others to  
12 engage in or stimulate sexual conduct, to wit: a computer video file named PICT0057,  
13 depicting a fully naked CURT IRAL standing nude in the bathroom, said video displaying  
14 full frontal nudity.

15 COUNT 21 - USE OF CHILD IN PRODUCTION

16 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
17 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
18 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
19 video file named PICT0089, for the purpose of producing a pornographic performance, to  
20 wit: by filming the genital areas of HAZEL IRAL as she showered and performed other  
21 private bathroom routines.

22 COUNT 22 - USE OF CHILD IN PRODUCTION

23 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
24 entice, coerce or permit CURT IRAL, a minor under the age of fourteen years old to be the  
25 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
26 video file named PICT0089, for the purpose of producing a pornographic performance, to  
27 wit: by filming the genital areas of said CURT IRAL as he showered and performed other  
28 private bathroom routines.



1 COUNT 23 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
2 CONDUCT OF A CHILD

3 did then and there feloniously, knowingly and willfully, have in his possession, a  
4 film, photograph, or other visual presentation depicting a child under the age of sixteen years  
5 old as the subject of a sexual portrayal or engaging in, or stimulating, or assisting others to  
6 engage in or stimulate sexual conduct, to wit: a computer video file named PICT0089,  
7 depicting a fully naked CURT IRAL standing nude in the bathroom, said video displaying  
8 full frontal nudity.

9 COUNT 24 - USE OF CHILD IN PRODUCTION

10 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
11 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
12 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
13 video file named PICT0124, for the purpose of producing a pornographic performance, to  
14 wit: by filming the genital areas of HAZEL IRAL as she showered and performed other  
15 private bathroom routines.

16 COUNT 25 - USE OF CHILD IN PRODUCTION

17 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
18 entice, coerce or permit CURT IRAL, a minor under the age of fourteen years old to be the  
19 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
20 video file named PICT00124, for the purpose of producing a pornographic performance, to  
21 wit: by filming the genital areas of said CURT IRAL as he showered and performed other  
22 private bathroom routines.

23 COUNT 26 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
24 CONDUCT OF A CHILD

25 did then and there feloniously, knowingly and willfully, have in his possession, a  
26 film, photograph, or other visual presentation depicting a child under the age of sixteen years  
27 old as the subject of a sexual portrayal or engaging in, or stimulating, or assisting others to  
28 engage in or stimulate sexual conduct, to wit: a computer video file named PICT0124,

1 depicting a fully naked CURT IRAL standing nude in the bathroom, said video displaying  
2 full frontal nudity.

3 COUNT 27 - USE OF CHILD IN PRODUCTION

4 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
5 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
6 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
7 video file named PICT0073, for the purpose of producing a pornographic performance, to  
8 wit: by filming the genital areas of HAZEL IRAL as she showered and performed other  
9 private bathroom routines.

10 COUNT 28 - USE OF CHILD IN PRODUCTION

11 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
12 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
13 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
14 video file named PICT0075, for the purpose of producing a pornographic performance, to  
15 wit: by filming the genital areas of HAZEL IRAL as she showered and performed other  
16 private bathroom routines.

17 COUNT 29 - USE OF CHILD IN PRODUCTION

18 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
19 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
20 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
21 video file named PICT0002, for the purpose of producing a pornographic performance, to  
22 wit: by filming the genital areas of HAZEL IRAL as she showered and performed other  
23 private bathroom routines.

24 COUNT 30 - USE OF CHILD IN PRODUCTION

25 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
26 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
27 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
28 video file named PICT0002[214-847], for the purpose of producing a pornographic

1 performance, to wit: by filming the genital areas of HAZEL IRAL as she showered and  
2 performed other private bathroom routines.

3 COUNT 31 - USE OF CHILD IN PRODUCTION

4 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
5 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
6 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
7 video file named PICT0011[214-856], for the purpose of producing a pornographic  
8 performance, to wit: by filming the genital areas of HAZEL IRAL as she showered and  
9 performed other private bathroom routines.

10 COUNT 32 - USE OF CHILD IN PRODUCTION

11 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
12 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
13 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
14 video file named PICT0013[214-858], for the purpose of producing a pornographic  
15 performance, to wit: by filming the genital areas of HAZEL IRAL as she showered and  
16 performed other private bathroom routines.

17 COUNT 33 - USE OF CHILD IN PRODUCTION

18 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
19 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
20 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
21 video file named PICT0015[214-860], for the purpose of producing a pornographic  
22 performance, to wit: by filming the genital areas of HAZEL IRAL as she showered and  
23 performed other private bathroom routines.

24 COUNT 34 - USE OF CHILD IN PRODUCTION

25 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
26 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
27 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
28 video file named PICT0016, for the purpose of producing a pornographic performance, to

1 wit: by filming the genital areas of HAZEL IRAL as she showered and performed other  
2 private bathroom routines.

3 COUNT 35 - USE OF CHILD IN PRODUCTION

4 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
5 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
6 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
7 video file named PICT0025[214-870], for the purpose of producing a pornographic  
8 performance, to wit: by filming the genital areas of HAZEL IRAL as she showered and  
9 performed other private bathroom routines.

10 COUNT 36 - USE OF CHILD IN PRODUCTION

11 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
12 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
13 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
14 video file named PICT0026 and PICT0027[214-872], for the purpose of producing a  
15 pornographic performance, to wit: by filming the genital areas of HAZEL IRAL as she  
16 showered and performed other private bathroom routines.

17 COUNT 37 - USE OF CHILD IN PRODUCTION

18 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
19 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years to be the  
20 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
21 video file named PICT0030[214-875], for the purpose of producing a pornographic  
22 performance, to wit: by filming the genital areas of HAZEL IRAL as she showered and  
23 performed other private bathroom routines.

24 COUNT 38 - USE OF CHILD IN PRODUCTION

25 did then and there willfully, unlawfully, feloniously and knowingly use, encourage,  
26 entice, coerce or permit HAZEL IRAL, a minor over the age of fourteen years old to be the  
27 subject of a sexual portrayal in a performance, to wit: full frontal display of genitals in a  
28 video file named PICT0044, for the purpose of producing a pornographic performance, to

1 wit: by filming the genital areas of HAZEL IRAL as she showered and performed other  
2 private bathroom routines.

3 COUNT 39 - OPEN OR GROSS LEWDNESS

4 did then and there wilfully and unlawfully commit an act of open or gross lewdness  
5 by inappropriately kissing said HAZEL IRAL on the mouth.

6 COUNT 40 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
7 CONDUCT OF A CHILD

8 did then and there feloniously, knowingly and willfully, have in his possession, a  
9 film, photograph, or other visual presentation depicting a child under the age of sixteen years  
10 old as the subject of a sexual portrayal or engaging in, or stimulating, or assisting others to  
11 engage in or stimulate sexual conduct, to wit: a computer video file named {4ADE06C5-  
12 E63D-4364-B21E-540546F93E9E}-99e2250e821a640148cb04ae0bde9813.jpg, depicting an  
13 unidentified boy receiving oral sex from another male.

14 COUNT 41 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
15 CONDUCT OF A CHILD

16 did then and there feloniously, knowingly and willfully, have in his possession, a  
17 film, photograph, or other visual presentation depicting a child under the age of sixteen years  
18 old as the subject of a sexual portrayal or engaging in, or stimulating, or assisting others to  
19 engage in or stimulate sexual conduct, to wit: various pictures depicting a fully naked  
20 unidentified boy standing nude in the bathroom and bedroom, said pictures displaying full  
21 frontal nudity.

22 It is the duty of the jury to apply the rules of law contained in these instructions to the  
23 facts of the case and determine whether or not the Defendant is guilty of one or more of the  
24 offenses charged.  
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2 The evidence which you are to consider in this case consists of the testimony of the  
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

4 There are two types of evidence; direct and circumstantial. Direct evidence is the  
5 testimony of a person who claims to have personal knowledge of the commission of the  
6 crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof  
7 of a chain of facts and circumstances which tend to show whether the Defendant is guilty or  
8 not guilty. The law makes no distinction between the weight to be given either direct or  
9 circumstantial evidence. Therefore, all of the evidence in the case, including the  
10 circumstantial evidence, should be considered by you in arriving at your verdict. Statements,  
11 arguments and opinions of counsel are not evidence in the case. However, if the attorneys  
12 stipulate to the existence of a fact, you must accept the stipulation as evidence and regard  
13 that fact as proved.

14 You must not speculate to be true any insinuations suggested by a question asked a  
15 witness. A question is not evidence and may be considered only as it supplies meaning to  
16 the answer.

17 You must disregard any evidence to which an objection was sustained by the court  
18 and any evidence ordered stricken by the court.

19 Anything you may have seen or heard outside the courtroom is not evidence and must  
20 also be disregarded.

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2 To constitute the crime charged, there must exist a union or joint operation of an act  
3 forbidden by law and an intent to do the act.

4 The intent with which an act is done is shown by the facts and circumstances  
5 surrounding the case.

6 Do not confuse intent with motive. Motive is what prompts a person to act. Intent  
7 refers only to the state of mind with which the act is done.

8 Motive is not an element of the crime charged and the State is not required to prove a  
9 motive on the part of the Defendant in order to convict. However, you may consider  
10 evidence of motive or lack of motive as a circumstance in the case.

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2 A person who willfully causes a child who is less than 18 years of age to suffer  
3 unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed  
4 in a situation where the child may suffer physical pain or mental suffering as the result of  
5 abuse or neglect is guilty of Child Abuse, Neglect or Endangerment.  
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INSTRUCTION X

"Abuse or Neglect" means physical or mental injury of a non-accidental nature, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child under 18 years under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

1 "Sexual abuse" includes acts upon a child constituting:

- 2 1. Incest under NRS 201.180;
- 3 2. Lewdness with a child under NRS 201.230;
- 4 3. Sado-masochistic abuse under NRS 201.262;
- 5 4. Sexual assault under NRS 200.366;
- 6 5. Statutory sexual seduction under NRS 200.368;
- 7 6. Open or gross lewdness under NRS 201.210;
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1           “Sexual exploitation” includes forcing, allowing or encouraging a child:

2           1. To solicit for or engage in prostitution;

3           2. To view a pornographic film or literature; and

4           3. To engage in:

5           (a) Filming, photographing or recording on videotape; or

6           (b) Posing, modeling, depiction or a live performance before an audience,

7           which involves the exhibition of a child's genitals or any sexual conduct with a child, as

8           defined in NRS 200.700.

Mental Injury means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and impairment of his or her ability to function within his or her normal range of performance or behavior.

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2 The word "willfully", when applied to the intent with which an act is done or omitted,  
3 as used in the child abuse instruction, implies simply a purpose or willingness to commit the  
4 act or to make the omission in question. The word does not require in its meaning any intent  
5 to violate law, or to injure another, or to acquire any advantage.  
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2 A person who knowingly uses, encourages, entices, coerces or permits a minor to be  
3 the subject of a sexual portrayal in a performance is guilty of the crime of Use of Minor in  
4 Production regardless of whether the minor is aware that the sexual portrayal is part of a  
5 performance.  
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Minor means any person under the age of 18.

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"Performance" means any play, film, photograph, computer-generated image,  
electronic representation, dance or other visual presentation.



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"Sexual portrayal" means the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value.

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3 A person who knowingly and willfully has in his or her possession for any purpose  
4 any film, photograph or other visual presentation depicting a person under the age of 16  
5 years as the subject of a sexual portrayal or engaging in or simulating, or assisting others to  
6 engage in or simulate, sexual conduct is guilty of the crime of Possession of Visual  
7 Presentation Depicting Sexual Conduct of a Person Under 16 Years of Age.  
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Consent of a minor is not a defense for the crime of Use of Minor in Production or the crime of Possession of Visual Presentation Depicting Sexual Conduct of a Child.

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In order to be found guilty of Possession of Child Pornography, the Defendant must possess such pornography knowingly, that is with full knowledge of pornographic content of the material alleged to be pornography.

If you find the Defendant was not aware of the content of the computer discs which contained illegal or contraband material, you must find him not guilty.

Any person who commits any act of open and gross lewdness is guilty of the crime of Open and Gross Lewdness.

You are instructed that the word "open" is used to modify the term lewdness. As such, it includes acts which are committed in a private place, but which are nevertheless committed in an "open" as opposed to "secret" manner. You are further instructed that it includes an act done in an "open" fashion clearly intending that the act be offensive to the victim.

The term "gross" is defined as being indecent, obscene or vulgar.

The term "lewdness" is defined as an act of a sexual nature which the actor knows is likely to be observed by the victim who would be affronted by the act.

INSTRUCTION NO. 20

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the State has proven the charges beyond a reasonable doubt.

INSTRUCTION 21

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

1           The Defendant is presumed innocent until the contrary is proved. This presumption  
2 places upon the State the burden of proving beyond a reasonable doubt every material  
3 element of the crime charged and that the Defendant is the person who committed the  
4 offense.  
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6           A reasonable doubt is one based on reason. It is not mere possible doubt but is such a  
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of  
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a  
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is  
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or  
11 speculation.

12           If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a  
13 verdict of not guilty.  
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It is a constitutional right of a defendant during questioning that he may invoke his right to counsel. You must not draw any inference of guilt from this, nor should this fact be discussed by you or enter into your deliberation in any way.

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

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your  
9 decision should be the product of sincere judgment and sound discretion in accordance with  
10 these rules of law.  
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2 When you retire to consider your verdict, you must select one of your number to act  
3 as foreperson who will preside over your deliberation and will be your spokesperson here in  
4 court.

5 During your deliberation, you will have all the exhibits which were admitted into  
6 evidence, these written instructions and forms of verdict which have been prepared for your  
7 convenience.

8 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it  
9 signed and dated by your foreperson and then return with it to this room.

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2 If, during your deliberation, you should desire to be further informed on any point of  
3 law or hear again portions of the testimony, you must reduce your request to writing signed  
4 by the foreperson. The officer will then return you to court where the information sought  
5 will be given you in the presence of, and after notice to, the district attorney and the  
6 Defendant and his counsel.

7 Play backs of testimony are time-consuming and are not encouraged unless you deem  
8 it a necessity. Should you require a play back, you must carefully describe the testimony to  
9 be played back so that the court recorder can arrange her notes. Remember, the court is not  
10 at liberty to supplement the evidence.  
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Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN: Valerie Adan  
DISTRICT JUDGE



ORIGINAL

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

AUG 29 2014 5:40 pm

VER

DISTRICT COURT

CLARK COUNTY, NEVADA

*Denise Husted*  
DENISE HUSTED, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSHUA SHUE,

Defendant.

CASE NO: C288172

DEPT NO: XXI

VERDICT

We, the jury in the above entitled case, find the Defendant, as follows:

COUNT 1 – CHILD ABUSE, NEGLECT OR ENDANGERMENT

*(Please check the appropriate boxes)*

- ☒ Guilty of Child Abuse, Neglect or Endangerment  
☐ Not Guilty

COUNT 2 – USE OF CHILD IN PRODUCTION

*(Please check the appropriate boxes)*

- ☒ Guilty of Use of Child in Production  
☐ Not Guilty

COUNT 3 – USE OF CHILD IN PRODUCTION

*(Please check the appropriate boxes)*

- ☒ Guilty of Use of Child in Production  
☐ Not Guilty

**COUNT 4 – USE OF CHILD IN PRODUCTION**

*(Please check the appropriate boxes)*

☒ Guilty of Use of Child in Production

☐ Not Guilty

**COUNT 5 – POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD**

*(Please check the appropriate boxes)*

☒ Guilty of Possession of Visual Presentation Depicting Sexual Conduct of a Child

☐ Not Guilty

**COUNT 6 – USE OF CHILD IN PRODUCTION**

*(Please check the appropriate boxes)*

☒ Guilty of Use of Child in Production

☐ Not Guilty

**COUNT 7 – USE OF CHILD IN PRODUCTION**

*(Please check the appropriate boxes)*

☒ Guilty of Use of Child in Production

☐ Not Guilty

**COUNT 8 – POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD**

*(Please check the appropriate boxes)*

☒ Guilty of Possession of Visual Presentation Depicting Sexual Conduct of a Child

☐ Not Guilty

**COUNT 9 – USE OF CHILD IN PRODUCTION**

*(Please check the appropriate boxes)*

☒ Guilty of Use of Child in Production

☐ Not Guilty

**COUNT 10 – USE OF CHILD IN PRODUCTION**

*(Please check the appropriate boxes)*

☒ Guilty of Use of Child in Production

☐ Not Guilty

**COUNT 11 – POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
CONDUCT OF A CHILD**

*(Please check the appropriate boxes)*

☒ Guilty of Possession of Visual Presentation Depicting Sexual Conduct of a  
Child

☐ Not Guilty

**COUNT 12 – USE OF CHILD IN PRODUCTION**

*(Please check the appropriate boxes)*

☒ Guilty of Use of Child in Production

☐ Not Guilty

**COUNT 13 – USE OF CHILD IN PRODUCTION**

*(Please check the appropriate boxes)*

☒ Guilty of Use of Child in Production

☐ Not Guilty

**COUNT 14 – POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
CONDUCT OF A CHILD**

*(Please check the appropriate boxes)*

☒ Guilty of Possession of Visual Presentation Depicting Sexual Conduct of a  
Child

☐ Not Guilty



**COUNT 15 – USE OF CHILD IN PRODUCTION**

*(Please check the appropriate boxes)*

☒ Guilty of Use of Child in Production

☐ Not Guilty

**COUNT 16 – USE OF CHILD IN PRODUCTION**

*(Please check the appropriate boxes)*

☒ Guilty of Use of Child in Production

☐ Not Guilty

**COUNT 17 – POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
CONDUCT OF A CHILD**

*(Please check the appropriate boxes)*

☒ Guilty of Possession of Visual Presentation Depicting Sexual Conduct of a  
Child

☐ Not Guilty

**COUNT 18 – USE OF CHILD IN PRODUCTION**

*(Please check the appropriate boxes)*

☒ Guilty of Use of Child in Production

☐ Not Guilty

**COUNT 19 – USE OF CHILD IN PRODUCTION**

*(Please check the appropriate boxes)*

☒ Guilty of Use of Child in Production

☐ Not Guilty

**COUNT 20 – POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
CONDUCT OF A CHILD**

*(Please check the appropriate boxes)*

☒ Guilty of Possession of Visual Presentation Depicting Sexual Conduct of a  
Child

☐ Not Guilty

1 **COUNT 21 – USE OF CHILD IN PRODUCTION**

2 *(Please check the appropriate boxes)*

3 ☒ Guilty of Use of Child in Production

4 ☐ Not Guilty

5 **COUNT 22 – USE OF CHILD IN PRODUCTION**

6 *(Please check the appropriate boxes)*

7 ☒ Guilty of Use of Child in Production

8 ☐ Not Guilty

9  
10 **COUNT 23 – POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL**  
11 **CONDUCT OF A CHILD**

12 *(Please check the appropriate boxes)*

13 ☒ Guilty of Possession of Visual Presentation Depicting Sexual Conduct of a  
14 Child

15 ☐ Not Guilty

16 **COUNT 24 – USE OF CHILD IN PRODUCTION**

17 *(Please check the appropriate boxes)*

18 ☒ Guilty of Use of Child in Production

19 ☐ Not Guilty

20 **COUNT 25 – USE OF CHILD IN PRODUCTION**

21 *(Please check the appropriate boxes)*

22 ☒ Guilty of Use of Child in Production

23 ☐ Not Guilty

24 **COUNT 26 – POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL**  
25 **CONDUCT OF A CHILD**

26 *(Please check the appropriate boxes)*

27 ☒ Guilty of Possession of Visual Presentation Depicting Sexual Conduct of a  
28 Child

☐ Not Guilty

1 **COUNT 27 – USE OF CHILD IN PRODUCTION**

2 *(Please check the appropriate boxes)*

3 ☒ Guilty of Use of Child in Production

4 ☐ Not Guilty

5 **COUNT 28 – USE OF CHILD IN PRODUCTION**

6 *(Please check the appropriate boxes)*

7 ☒ Guilty of Use of Child in Production

8 ☐ Not Guilty

9 **COUNT 29 – USE OF CHILD IN PRODUCTION**

10 *(Please check the appropriate boxes)*

11 ☒ Guilty of Use of Child in Production

12 ☐ Not Guilty

13 **COUNT 30 – USE OF CHILD IN PRODUCTION**

14 *(Please check the appropriate boxes)*

15 ☒ Guilty of Use of Child in Production

16 ☐ Not Guilty

17 **COUNT 31 – USE OF CHILD IN PRODUCTION**

18 *(Please check the appropriate boxes)*

19 ☒ Guilty of Use of Child in Production

20 ☐ Not Guilty

21 **COUNT 32 – USE OF CHILD IN PRODUCTION**

22 *(Please check the appropriate boxes)*

23 ☒ Guilty of Use of Child in Production

24 ☐ Not Guilty

25 **COUNT 33 – USE OF CHILD IN PRODUCTION**

26 *(Please check the appropriate boxes)*

27 ☒ Guilty of Use of Child in Production

28 ☐ Not Guilty

1 **COUNT 34 – USE OF CHILD IN PRODUCTION**

2 *(Please check the appropriate boxes)*

3 ☒ Guilty of Use of Child in Production

4 ☐ Not Guilty

5 **COUNT 35 – USE OF CHILD IN PRODUCTION**

6 *(Please check the appropriate boxes)*

7 ☒ Guilty of Use of Child in Production

8 ☐ Not Guilty

9 **COUNT 36 – USE OF CHILD IN PRODUCTION**

10 *(Please check the appropriate boxes)*

11 ☒ Guilty of Use of Child in Production

12 ☐ Not Guilty

13 **COUNT 37 – USE OF CHILD IN PRODUCTION**

14 *(Please check the appropriate boxes)*

15 ☒ Guilty of Use of Child in Production

16 ☐ Not Guilty

17 **COUNT 38 – USE OF CHILD IN PRODUCTION**

18 *(Please check the appropriate boxes)*

19 ☒ Guilty of Use of Child in Production

20 ☐ Not Guilty

21 **COUNT 39 – OPEN AND GROSS LEWDNESS**

22 *(Please check the appropriate boxes)*

23 ☒ Guilty of Open and Gross Lewdness

24 ☐ Not Guilty

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1 **COUNT 40** – POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
2 CONDUCT OF A CHILD

3 *(Please check the appropriate boxes)*

4 ☒ Guilty of Possession of Visual Presentation Depicting Sexual Conduct of a  
5 Child

6 ☐ Not Guilty

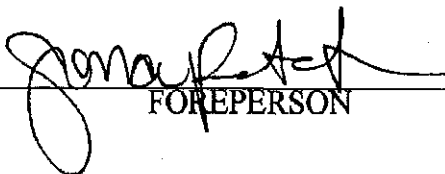
7 **COUNT 41** – POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL  
8 CONDUCT OF A CHILD

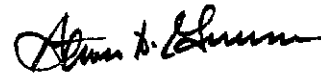
9 *(Please check the appropriate boxes)*

10 ☒ Guilty of Possession of Visual Presentation Depicting Sexual Conduct of a  
11 Child

12 ☐ Not Guilty

13  
14 DATED this 29<sup>th</sup> day of August, 2014.

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17 FOREPERSON  
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CLERK OF THE COURT

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

JOSHUA C. SHUE,  
# 1550230

Defendant.

CASE NO.: C-13-288172-1

DEPT. NO.: XXI

EX PARTE ORDER

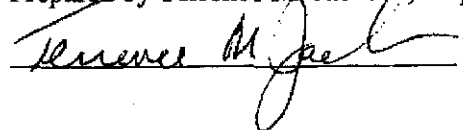
This matter having come before the court and there appearing good cause therefore, based upon Counsel representation that defendant, JOSHUA SHUE, who is in custody, is now indigent.

IT IS ORDERED, ADJUDGED AND DECREED that Dr. John Paglini be appointed for the purpose of completing a psychological evaluation of the defendant pursuant to N.R.S. 176A.110.

DATED this 17th day of November, 2014.

  
JUDGE VALERIE ADAIR  
DISTRICT COURT JUDGE

Prepared by Terrence M. Jackson, Esq.



*Alan D. Lavin*

CLERK OF THE COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSHUA C. SHUE  
aka Joshua Caleb Shue  
#1550230

Defendant.

CASE NO. C288172-1

DEPT. NO. XXI

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1  
– CHILD ABUSE & NEGLECT (Category B Felony) in violation of NRS 200.508;  
COUNTS 2, 3, 4, 6, 7, 9, 10, 12, 13, 15, 16, 18, 19, 21, 22, 24, 25, 27, 28, 29, 30, 31,  
32, 33, 34, 35, 36, 37 and 38 – USE OF CHILD IN PRODUCTION (Category A Felony)  
in violation of NRS 200.710; COUNTS 5, 8, 11, 14, 17, 20, 23, 26, 40 and 41 –  
POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A  
CHILD (Category B Felony) in violation of NRS 200.700, 200.730; and COUNT 39 –  
OPEN OR GROSS LEWDNESS (Gross Misdemeanor) in violation of NRS 201.210; and  
the matter having been tried before a jury and the Defendant having been found guilty

1 of the crimes of COUNT 1 – CHILD ABUSE & NEGLECT (Category B Felony) in  
2 violation of NRS 200.508; COUNTS 2, 3, 4, 6, 7, 9, 10, 12, 13, 15, 16, 18, 19, 21, 22,  
3 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 – USE OF CHILD IN  
4 PRODUCTION (Category A Felony) in violation of NRS 200.710; COUNTS 5, 8, 11, 14,  
5 17, 20, 23, 26, 40 and 41 – POSSESSION OF VISUAL PRESENTATION DEPICTING  
6 SEXUAL CONDUCT OF A CHILD (Category B Felony) in violation of NRS 200.700,  
7 200.730; and COUNT 39 – OPEN OR GROSS LEWDNESS (Gross Misdemeanor) in  
8 violation of NRS 201.210; thereafter, on the 15<sup>th</sup> day of January, 2015, the Defendant  
9 was present in court for sentencing with counsel TERRENCE M. JACKSON, ESQ., and  
10 good cause appearing,  
11

12  
13 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in  
14 addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee  
15 including testing to determine genetic markers, \$3,540.39 Fine (Count 1) and  
16 \$28,000.00 Fine (\$1,000.00 each as to COUNTS, 2, 3, 4, 6, 7, 9, 10, 12, 13, 15, 16, 18,  
17 19, 21, 22, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38), the Defendant is  
18 SENTENCED to the Nevada Department of Corrections (NDC) as follows: **COUNT 1 -**  
19 a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of  
20 TWENTY-FOUR (24) MONTHS; **COUNT 2 –** LIFE with the possibility of parole after  
21 FIVE (5) YEARS have been served, CONSECUTIVE to COUNT 1; **COUNT 3 -** LIFE  
22 with the possibility of parole after FIVE (5) YEARS have been served, CONCURRENT  
23 with COUNT 2; **COUNT 4 –** LIFE with the possibility of parole after TEN (10) YEARS  
24 have been served, CONCURRENT with COUNT 3; **COUNT 5 –** a MAXIMUM of  
25 THIRTY-SIX (36) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12)  
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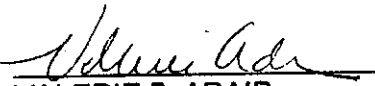


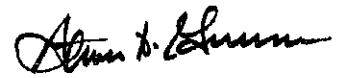
1 MONTHS, CONCURRENT with COUNT 4; **COUNT 6** - LIFE with the possibility of  
2 parole after FIVE (5) YEARS have been served, CONCURRENT with COUNT 3;  
3 **COUNT 7** - LIFE with the possibility of parole after TEN (10) YEARS have been served,  
4 CONCURRENT with COUNT 6; **COUNT 8** – a MAXIMUM of THIRTY-SIX (36)  
5 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS,  
6 CONCURRENTLY; **COUNT 9** – LIFE with the possibility of parole after FIVE (5)  
7 YEARS have been served, CONCURRENTLY; **COUNT 10** - LIFE with the possibility of  
8 parole after TEN (10) YEARS have been served, CONCURRENTLY; **COUNT 11** – a  
9 MAXIMUM of THIRTY-SIX (36) MONTHS with a MINIMUM Parole Eligibility of TWELVE  
10 (12) MONTHS, CONCURRENTLY; **COUNT 12** – LIFE with the possibility of parole  
11 after FIVE (5) YEARS have been served, CONCURRENTLY; **COUNT 13** - LIFE with  
12 the possibility of parole after TEN (10) YEARS have been served, CONCURRENTLY;  
13 **COUNT 14** – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole  
14 Eligibility of TWELVE (12) MONTHS, CONCURRENTLY; **COUNT 15** – LIFE with the  
15 possibility of parole after FIVE (5) YEARS have been served, CONCURRENTLY;  
16 **COUNT 16** - LIFE with the possibility of parole after TEN (10) YEARS have been  
17 served, CONCURRENTLY; **COUNT 17** – a MAXIMUM of SEVENTY-TWO (72)  
18 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS,  
19 CONCURRENTLY; **COUNT 18** – LIFE with the possibility of parole after FIVE (5)  
20 YEARS have been served, CONCURRENTLY; **COUNT 19** - LIFE with the possibility of  
21 parole after TEN (10) YEARS have been served, CONCURRENTLY; **COUNT 20** – a  
22 MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of  
23 TWELVE (12) MONTHS, CONCURRENTLY; **COUNT 21** – LIFE with the

1 possibility of parole after FIVE (5) YEARS have been served, CONCURRENTLY;  
2 **COUNT 22** - LIFE with the possibility of parole after TEN (10) YEARS have been  
3 served, CONCURRENTLY; **COUNT 23** - a MAXIMUM of SEVENTY-TWO (72)  
4 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS,  
5 CONCURRENTLY; **COUNT 24** - LIFE with the possibility of parole after FIVE (5)  
6 YEARS have been served, CONCURRENTLY; **COUNT 25** - LIFE with the possibility of  
7 parole after TEN (10) YEARS have been served, CONCURRENTLY; **COUNT 26** - a  
8 MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of  
9 TWENTY-THREE (23) MONTHS, CONCURRENTLY; **COUNT 27** - LIFE with the  
10 possibility of parole after FIVE (5) YEARS have been served, CONCURRENTLY;  
11 **COUNT 28** - LIFE with the possibility of parole after FIVE (5) YEARS have been  
12 served, CONCURRENTLY; **COUNT 29** - LIFE with the possibility of parole after FIVE  
13 (5) YEARS have been served, CONCURRENTLY; **COUNT 30** - LIFE with the  
14 possibility of parole after FIVE (5) YEARS have been served, CONCURRENTLY;  
15 **COUNT 31** - LIFE with the possibility of parole after FIVE (5) YEARS have been  
16 served, CONCURRENTLY; **COUNT 32** - LIFE with the possibility of parole after FIVE  
17 (5) YEARS have been served, CONCURRENTLY; **COUNT 33** - LIFE with the  
18 possibility of parole after FIVE (5) YEARS have been served, CONCURRENTLY;  
19 **COUNT 34** - LIFE with the possibility of parole after FIVE (5) YEARS have been  
20 served, CONCURRENTLY; **COUNT 35** - LIFE with the possibility of parole after FIVE  
21 (5) YEARS have been served, CONCURRENTLY; **COUNT 36** - LIFE with the  
22 possibility of parole after FIVE (5) YEARS have been served, CONCURRENTLY;  
23 **COUNT 37** - LIFE with the possibility of parole after FIVE (5) YEARS have been  
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1 served, CONCURRENTLY; **COUNT 38** – LIFE with the possibility of parole after FIVE  
2 (5) YEARS have been served, CONCURRENTLY; **COUNT 39** – THREE HUNDRED  
3 SIXTY-FOUR (364) DAYS in the Clark County Detention Center (CCDC),  
4 CONCURRENTLY; **COUNT 40** – a MAXIMUM of SEVENTY-TWO (72) MONTHS with  
5 a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENTLY; and  
6 **COUNT 41** – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole  
7 Eligibility of TWELVE (12) MONTHS, CONCURRENTLY; with ONE HUNDRED  
8 FORTY-ONE (141) DAYS credit for time served.  
9

10 DATED this 20 day of January, 2015  
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15 VALERIE P. ADAIR  
16 DISTRICT COURT JUDGE  
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CLERK OF THE COURT

1 **MAPA**  
2 **TERRENCE M. JACKSON, ESQ.**  
3 Nevada Bar No.: 00854  
4 Law Office of Terrence M. Jackson  
5 624 South Ninth Street  
6 Las Vegas, NV 89101  
7 T: 702-386-0001 / F: 702-386-0085  
8 Counsel for Defendant, JOSHUA C. SHUE

6 **EIGHTH JUDICIAL DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 THE STATE OF NEVADA, )

9 Plaintiff, )

10 v. )

11 JOSHUA C. SHUE,  
12 # 1550230 )

13 Defendant. )

CASE NO.: C-13-288172-1

DEPT. NO.: XXI

14 **MOTION FOR APPOINTMENT OF ATTORNEY FOR APPEAL**

15  
16 COMES NOW the DEFENDANT, Joshua C. Shue, by and through counsel  
17 TERRENCE M. JACKSON, ESQ., and moves this Honorable Court to enter an Order to appoint  
18 an attorney for represent defendant referenced-above for his direct appeal.

19 As grounds for this motion defendant states:

- 20 1. That although he retained counsel Terrence M. Jackson for trial he is now indigent and  
21 unable to pay the cost of an appeal.  
22 2. Defendant will state under penalty of perjury he has no assets and he has no income, he is  
23 currently incarcerated.  
24 3. Defendant cannot pay either reasonable attorneys fees or the cost of transcripts and other fees  
25 associated with a complex criminal appeal.  
26 4. Defendant is facing multiple life sentences pursuant to judgment of conviction issued January  
27 21, 2015 with the Clerk of the Court.

28 ///

1 DATED this 23d day of January, 2015.

2 /s/ Terrence M. Jackson  
3 Terrence M. Jackson, Esquire  
4 Law Office of Terrence M. Jackson  
5 624 South Ninth Street  
6 Las Vegas, NV 89101  
7 Counsel for Defendant, Joshua C. Shue

8 **NOTICE OF MOTION**

9 TO: Clark County District Attorney:

10 Please take notice that Defendant's MOTION TO APPOINT COUNSEL FOR APPEAL in  
11 the above-captioned case will be heard on 05 day of Feb., 2015, at the hour of 9:30 am  
12 a.m./p.m. in the Eighth Judicial District Court, Department 21.

13 /s/ Terrence M. Jackson  
14 Terrence M. Jackson, Esquire  
15 Counsel for Defendant, Joshua Shue

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that I am an assistant to Terrence M. Jackson, Esquire, I am competent to  
18 serve papers and not a party to the above-entitled action and that on the 23d day of January, 2015,  
19 I served a copy of the foregoing: Defendant, Joshua C. Shue's, MOTION FOR APPOINTMENT OF  
20 ATTORNEY FOR APPEAL:

21 [X] Via Electronic Service to the Eighth Judicial District Court, *Wiz-Net E-file* Service as  
22 follows:

23  
24 STEVEN B. WOLFSON, ESQ.  
25 Clark County District Attorney  
PDMotions@ccdany.com

26 By: /s/ Beverly Jackson  
27 An employee of Terrence M. Jackson  
28 ...

1 NOAS  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR No. 0556  
4 309 South Third Street, Suite 226  
5 Las Vegas, Nevada 89155  
6 (702) 455-4685  
7 Attorney for Defendant

  
CLERK OF THE COURT

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA, )  
11 )  
12 Plaintiff, ) CASE NO. C-13-288172-1  
13 )  
14 v. ) DEPT. NO. XXI  
15 )  
16 JOSHUA C. SHUE, )  
17 )  
18 Defendant. )  
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NOTICE OF APPEAL

TO: THE STATE OF NEVADA

STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,  
NEVADA and DEPARTMENT NO. XXI OF THE EIGHTH JUDICIAL  
DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE  
COUNTY OF CLARK.

NOTICE is hereby given that Defendant, Joshua C. Shue,  
presently incarcerated in the Nevada State Prison, appeals to the  
Supreme Court of the State of Nevada from the judgment entered  
against said Defendant on the 21<sup>st</sup> day of January, 2015 whereby he  
was convicted of Ct. 1 - Child Abuse & Neglect, Cts. 2, 3, 4, 6,  
7, 9, 10, 12, 13, 15, 16, 18, 19, 21, 22, 24, 25, 27, 28, 29, 30,  
31, 32, 33, 34, 35, 36, 37 and 38 - Use of Child In Production;  
Cts. 5, 8, 11, 14, 17, 20, 23, 26, 40 and 41 - Possession of  
Visual Presentation Depicting Sexual Conduct of a Child; Ct. 39 -  
Open or Gross Lewdness and sentenced to \$25 Admin. fee; \$150 DNA  
analysis fee; genetic testing; \$3,540.39 fine (Ct. 1) and \$28,000

1 fine (\$1,000 each as to Cts. 2, 3, 4, 6, 7, 9, 10, 12, 13, 15, 16,  
2 18, 19, 21, 22, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37,  
3 and 38); Ct. 1 - 24-72 months in prison; Ct. 2 - 5 years to Life  
4 served consecutive to Ct. 1 - Ct. 3 - 5 years to Life Concurrent  
5 with Ct. 2 - Ct. 4 - 10 years to Life concurrent with Ct. 3 - Ct.  
6 5 - 12-36 months in prison concurrent with Ct. 4; Ct. 6 - 5 years  
7 to Life in prison concurrent with Ct. 3; Ct. 7 - 10 years to Life  
8 concurrent with Ct. 6; Ct. 8 - 12-36 months in prison  
9 concurrently; Ct. 9 - 5 years to Life in prison, concurrently; Ct.  
10 10 - 10 years to Life in prison, concurrently; Ct. 11 - 12-36  
11 months in prison, concurrently; Ct. 12 - 5 years to Life in prison  
12 concurrently; Ct. 12 - 5 years to Life in prison, concurrently;  
13 Ct. 13 - 10 years to Life in prison, concurrently; Ct. 14 - 12-72  
14 months in prison, concurrently; Ct. 15 - 5 years to Life in prison  
15 concurrently; Ct. 16 - 10 years to Life concurrently; Ct. 17 - 12-  
16 72 months concurrently; Ct. 18 - 5 years to Life in prison,  
17 concurrently; Ct. 19 - 10 years to Life in prison, concurrently;  
18 Ct. 20 - 12-72 months in prison concurrent; Ct. 21 - 5 years to  
19 Life in prison, concurrently; Ct. 22 - 10 years to Life in prison,  
20 concurrently; Ct. 23 - 12-72 months in prison; Ct. 24 - 5 years to  
21 Life in prison, concurrently; Ct. 25 - 10 years to Life in  
22 prison, concurrently; Ct. 26 - 23-72 months in prison,  
23 concurrently; Ct. 27 - 5 years to Life in prison, concurrently;  
24 Ct. 28 - 5 years to Life in prison, concurrently; Ct. 29 - 5 years  
25 to Life in prison, concurrently; Ct. 30 - 5 years to Life in  
26 prison, concurrently; Ct. 31 - 5 years to Life in prison,  
27 concurrently; Cts, 32, 33, 34, 35, 36, 37, 38 - 5 years to Life in  
28 prison, concurrently; Ct. 39 - 364 days in CCDC, concurrently; Ct.

1 40 - 12-72 months in prison, concurrently; Ct. 41 - 12-72 months  
2 in prison concurrently - 141 days CTS.

3 DATED this 12<sup>th</sup> day of February, 2015.

4 PHILIP J. KOHN  
5 CLARK COUNTY PUBLIC DEFENDER

6  
7 By: /s/ William M. Waters  
8 WILLIAM M. WATERS, #9456  
9 Deputy Public Defender  
309 S. Third Street, Ste. 226  
Las Vegas, Nevada 89155  
(702) 455-4685

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DECLARATION OF MAILING

Carrie Connolly, an employee with the Clark County Public Defender's Office, hereby declares that she is, and was when the herein described mailing took place, a citizen of the United States, over 21 years of age, and not a party to, nor interested in, the within action; that on the 12<sup>th</sup> day of February, 2015, declarant deposited in the United States mail at Las Vegas, Nevada, a copy of the Notice of Appeal in the case of the State of Nevada v. Joshua C. Shue, Case No. C-13-288172-1, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to Joshua C. Shue, c/o High Desert State Prison, P.O. Box 650, Indian Springs, NV 89018. That there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 12<sup>th</sup> day of February, 2015.

/s/ Carrie M. Connolly  
An employee of the Clark County  
Public Defender's Office

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing  
was made this 12<sup>th</sup> day of February, 2015 by Electronic Filing to:

District Attorneys Office  
E-Mail Address:

PDMotions@clarkcountyda.com

Jennifer.Garcia@clarkcountyda.com

Eileen.Davis@clarkcountyda.com

/s/ Carrie M. Connolly  
Secretary for the  
Public Defender's Office

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****March 13, 2013**

---

C-13-288172-1      State of Nevada  
                                 vs  
                                 Joshua Shue

---

**March 13, 2013      11:45 AM      Grand Jury Indictment**

**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 03F

**COURT CLERK:** Shelly Landwehr

**RECORDER:** Renee Vincent

**REPORTER:**

<b>PARTIES</b>	Beverly, Leah C.	Attorney
<b>PRESENT:</b>	Laurent, Christopher J.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Chris Pace, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 12AGJ131X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-13-288172-1, Department 21. Ms. Beverly requested a warrant and argued bail. COURT ORDERED, WARRANT WILL ISSUE \$75,000.00 TOTAL BAIL. FURTHER, case 12F13527X DISMISSED. Exhibit(s) 1-8 lodged with Clerk of District Court.

B.W.

**PRINT DATE:** 03/19/2013

**Page 1 of 1**

**Minutes Date:** March 13, 2013

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****March 28, 2013**

---

C-13-288172-1

State of Nevada

vs

Joshua Shue

---

**March 28, 2013****9:30 AM****All Pending Motions****HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Dulce Romea; Keri Cromer/kc; Dania Batiste; Sharon Coffman**RECORDER:** Janie Olsen**REPORTER:****PARTIES****PRESENT:**

Beverly, Leah C

Jackson, Terrence Michael

Shue, Joshua C

State of Nevada

District Attorney

Attorney

Defendant

Plaintiff

**JOURNAL ENTRIES**

- DEFENDANT'S MOTION TO RESET BAIL AS PREVIOUSLY SET BY MAGISTRATE JUDGE OR GRANT A BAIL LESS THAN \$75,000.00...INDICTMENT WARRANT RETURN

Mr. Jackson advised he has not received a copy of State's opposition. Matter trailed for Mr. Jackson to read opposition. Matter recalled. Argument by Mr. Jackson. Colloquy regarding what constitutes pornography. Court requested State provide pictures for review in order to make a determination on severity. Court noted Mr. Jackson can provide case law to determine the definition of pornography. COURT ORDERED, Deft.'s motion continued pending review. DEFT. SHUE ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial.

**CUSTODY**

4/25/13 9:30AM MOTION TO RESET BAIL

10/3/13 9:30AM CALENDAR CALL

**PRINT DATE:** 03/29/2013**Page 1 of 2****Minutes Date:**

March 28, 2013

C-13-288172-1

10/7/13 9:30AM JURY TRIAL

PRINT DATE: 03/29/2013

Page 2 of 2

Minutes Date: March 28, 2013

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**April 25, 2013**

C-13-288172-1      State of Nevada  
                                 vs  
                                 Joshua Shue

**April 25, 2013**

**9:30 AM**

**Motion**

**HEARD BY:**    Adair, Valerie

**COURTROOM:**    RJC Courtroom 11C

**COURT CLERK:**    Denise Husted; Katrina Hernandez/kh

**RECORDER:**    Janie Olsen

**PARTIES**

<b>PRESENT:</b>	Beverly, Leah C	District Attorney
	Jackson, Terrence Michael	Attorney for Defendant
	Shue, Joshua C	Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Arguments by Mr. Jackson contending the bail currently set is excessive given the non-violent nature of the charges. Ms. Beverly argued the bail is appropriate. COURT FINDS, the bail amount is not excessive, and advised the issue can be revisited after matter is heard on May 5th, and ORDERED, Motion DENIED WITHOUT PREJUDICE; Bail STANDS.

**CUSTODY**

**PRINT DATE:**    04/29/2013

**Page 1 of 1**

**Minutes Date:**    April 25, 2013

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**May 02, 2013**

C-13-288172-1

State of Nevada

vs

Joshua Shue

May 02, 2013

9:30 AM

Petition for Writ of Habeas  
Corpus

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Denise Husted; Katrina Hernandez/kh

RECORDER: Janie Olsen

**PARTIES**

**PRESENT:**

Beverly, Leah C

Jackson, Terrence Michael

Scow, Richard H.

Shue, Joshua C

State of Nevada

District Attorney

Attorney for Defendant

District Attorney

Defendant

Plaintiff

**JOURNAL ENTRIES**

- Arguments by Mr. Jackson contending the Defendant was prejudiced during the Preliminary Hearing and argued the number of counts are excessive. Colloquy regarding legal definition of pornography. Further Arguments by Mr. Jackson asserting it does not meet the statute. Arguments by Mr. Scow that Defendant was properly charged. COURT ORDERED, matter UNDER ADVISEMENT. A decision will be issued from Chambers in the form of a Minute Order.

**CUSTODY**

PRINT DATE: 05/03/2013

Page 1 of 1

Minutes Date: May 02, 2013

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 19, 2013**

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C-13-288172-1

State of Nevada

vs

Joshua Shue

---

**August 19, 2013**

**3:00 PM**

**Decision**

**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:**

**RECORDER:** Janie Olsen

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- COURT ORDERED, Petition for Writ of Habeas Corpus is DENIED.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 26, 2013**

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C-13-288172-1      State of Nevada  
   vs  
   Joshua Shue

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**September 26, 2013    9:30 AM      Motion in Limine**

**HEARD BY:**    Adair, Valerie

**COURTROOM:**    RJC Courtroom 11C

**COURT CLERK:**    Phyllis Irby

**RECORDER:**    Janie Olsen

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Jackson, Terrence Michael	Attorney for the Deft
	Lavell, Maria	Attorney for the State
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- DEFT NOT PRESENT. Ms. Lavell informed the Court the State has basic opposition with a caveat that this is a sex based crime but the State doesn't want to precluded from discussing the sexual implications, but the State doesn't intend on suggesting there was a sexual assault. Mr. Jackson has concerns that the Detective testified with the Grand Jury there was a sexual assault, which was not the case, therefore, Mr. Jackson argued he doesn't want the Detective to state this was a sexual assault crime because that would be prejudicial. Court concurred. COURT ORDERED, MOTION GRANTED. DEFT'S PRESENCE WAIVED.

NIC

10-03-13 9:30 AM CALENDAR CALL (DEPT. XXI)

10-07-13 9:30 AM JURY TRIAL (DEPT. XXI)

**PRINT DATE:**    09/27/2013

**Page 1 of 1**

**Minutes Date:**    September 26, 2013

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 03, 2013**

C-13-288172-1      State of Nevada  
                                 vs  
                                 Joshua Shue

**October 03, 2013      9:30 AM      All Pending Motions**

**HEARD BY:**    Adair, Valerie

**COURTROOM:**    RJC Courtroom 11C

**COURT CLERK:**    Denise Husted

**RECORDER:**    Janie Olsen

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Jackson, Terrence Michael	Attorney for the Defendant
	Monje, Ofelia L.	Attorney for the State
	Shue, Joshua C	Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- CALENDAR CALL...DEFENDANT'S MOTION FOR INDIVIDUAL VOIR DIRE OF JURORS BY COUNSEL TO PROTECT DEFENDANT'S RIGHT TO A FAIR TRIAL...DEFT'S MOTION TO VACATE AND RESET TRIAL DATE

There being no opposition by the State, COURT ORDERED, trial date VACATED and RESET. The Court explained its policy regarding Defendant Motion for Individual Voir Dire of Jurors by Counsel to Protect Defendant's Right to a Fair Trial and ORDERED, motion DENIED. However, if an issue arises, the Court will reconsider and question the juror individually on limited questioning.

**BOND**

5/29/14 9:30 AM CALENDAR CALL

6/2/14 9:30 AM JURY TRIAL

**PRINT DATE:**    10/14/2013

**Page 1 of 1**

**Minutes Date:**    October 03, 2013

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 08, 2013

C-13-288172-1      State of Nevada  
vs  
Joshua Shue

October 08, 2013      9:30 AM      Motion

HEARD BY:    Adair, Valerie

COURTROOM:    RJC Courtroom 11C

COURT CLERK:    Phyllis Irby

RECORDER:    Janie Olsen

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Graham, Elana L.	Attorney for the State
	Jackson, Terrence Michael	Attorney for the Deft
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- DEFT NOT PRESENT. Mr. Jackson informed the Court the State has filed an opposition to the Motion, therefore, he requested to file a Reply and a evidentiary hearing be set. The State has a opposition to a evidentiary hearing. COURT ORDERED, DEFT'S PRESENCE WAIVED, Mr. Jackson's Reply is due by 10/29/13. HEARING SET.

BOND

11-07-13 9:30 AM HEARING (DEPT. XXI)

PRINT DATE:    10/09/2013

Page 1 of 1

Minutes Date:

October 08, 2013

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 07, 2013**

C-13-288172-1

State of Nevada

vs

Joshua Shue

November 07, 2013

9:30 AM

All Pending Motions

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Dania Batiste

RECORDER: Janie Olsen

**PARTIES**

**PRESENT:**

Beverly, Leah C

Jackson, Terrence Michael

Deputy District Attorney

Attorney for Defendant

**JOURNAL ENTRIES**

- HEARING.....DEFENDANT'S MOTION FOR PSYCHIATRIC EXAMINATION OF ALLEGED VICTIM

Defendant not present. Mr. Jackson advised he attempted to subpoena the documents from the District Attorney's office, however, he was told the information would not be produced; and the alleged victim's credibility is an issue. Additionally, Mr. Jackson claimed the State is providing the alleged victim with money and gifts.

Ms. Beverly argued against Mr. Jackson's allegations, stating that bribing the alleged victim with monies and/or gifts is criminal, and Mr. Jackson's claims are false. Ms. Beverly also argued that defense counsel has not met the requirements that would necessitate a psychiatric evaluation.

Court NOTED it is not believable that the State would do such an act, and there is no evidence to corroborate Mr. Jackson's claims; however, he may file any Motions he wishes. Further arguments by counsel.

COURT ORDERED, Defendant's Motion is DENIED, noting there is no basis for an examination, and this is not the type of case for such evaluation. COURT FURTHER ORDERED, State to provide documentation if the witness was paid or compensated; Defendant's presence WAIVED.

5/29/2014 9:30 AM CALENDAR CALL

6/2/2014 9:30 AM JURY TRIAL

PRINT DATE: 11/08/2013

Page 1 of 1

Minutes Date:

November 07, 2013

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 17, 2013

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C-13-288172-1      State of Nevada  
   vs  
   Joshua Shue

---

December 17, 2013      9:30 AM      Motion for Discovery

HEARD BY:    Adair, Valerie

COURTROOM:    RJC Courtroom 11C

COURT CLERK:    Denise Husted

RECORDER:    Janie Olsen

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Beverly, Leah C	Attorney for the State
	Jackson, Terrence Michael	Attorney for the Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Defendant's presence WAIVED. Ms. Beverly stated that she provided the discovery to Mr. Jackson that she had; what was not provided did not exist. Mr. Jackson argued that the victim is receiving funds from the Attorney General's office which shows they are showing undue influences over one of the witnesses. The Court instructed Mr. Jackson that he needs more back up regarding his allegations; hearsay is not enough. Mr. Jackson stated that that they provided funds to help this individual move. The Court reiterated that someone telling Mr. Jackson something is still not enough; affidavits need to be done. Additionally, Ms. Beverly already informed counsel that they did not do what is being alleged. Further arguments by Mr. Jackson. The Court advised that it will not make a special order compelling the victim to speak to the investigator; if she wishes to speak to the investigator, it is up to her. Following further arguments, COURT ORDERED, CPS records are to be provided to the Court in-camera and matter SET for a status check.

BOND

2/4/14 9:30 AM STATUS CHECK: CPS RECORDS

PRINT DATE:    12/30/2013

Page 1 of 2

Minutes Date:

December 17, 2013



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 04, 2014**

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C-13-288172-1      State of Nevada  
                                 vs  
                                 Joshua Shue

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**February 04, 2014      9:30 AM      Status Check**

**HEARD BY:**    Adair, Valerie

**COURTROOM:**    RJC Courtroom 11C

**COURT CLERK:**    Denise Husted

**RECORDER:**    Janie Olsen

**REPORTER:**

**PARTIES**

**PRESENT:**      Beverly, Leah C                      Attorney for the State  
                         Jackson, Terrence Michael      Attorney for the Defendant  
                         State of Nevada                      Plaintiff

**JOURNAL ENTRIES**

- The Court stated that the CPS records were not received, therefore not reviewed. Ms. Beverly informed the Court that the records would be provided. She also stated she requested reciprocal discovery from Mr. Jackson and that it wasn't provided. Mr. Jackson stated he will contact Ms. Beverly. COURT ORDERED, a strict stay from the victim and the project where she lives is ORDERED; matter CONTINUED.

CONTINUED TO: 2/20/14 9:30 AM

**PRINT DATE:**    02/10/2014

**Page 1 of 1**

**Minutes Date:**    February 04, 2014

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 20, 2014**

C-13-288172-1      State of Nevada  
   vs  
   Joshua Shue

**February 20, 2014      9:30 AM      Status Check: CPS Records**

**HEARD BY:**    Adair, Valerie

**COURTROOM:**    RJC Courtroom 11C

**COURT CLERK:**    Tia Everett

**RECORDER:**    Patti Slattery

**PARTIES**      Ofelia Monje, Deputy District Attorney, present on behalf of the State.  
**PRESENT:**

**JOURNAL ENTRIES**

- Ofelia Monje, Deputy District Attorney, present on behalf of the State.

Court noted Defendant and counsel Mr. Jackson are not present this morning; however, this matter is on calendar regarding CPS records to which the Court has reviewed the CPS records and Metro disciplinary records and has determined they will be provided to parties as they go toward veracity. Further, Court stated copies will be made and parties shall be contacted when the records are ready to be picked up.

**BOND**



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****April 08, 2014**

C-13-288172-1

State of Nevada

vs

Joshua Shue

**April 08, 2014****9:30 AM****Defendant's Motion to Vacate Trial Date and Reset****HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Andrea Natali**RECORDER:** Janie Olsen

<b>PARTIES</b>	Jackson, Terrence Michael	Attorney for Deft.
<b>PRESENT:</b>	Lavell, Maria	Attorney for State
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Deft. not present. Mr. Jackson requested Deft.'s presence be waived. COURT SO NOTED. Mr. Jackson stated he had received several phone calls from the victim's mother indicating the victim was being pressured; therefore, requested counsel to be appointed for the victim. Further, Mr. Jackson stated a hearing may need to be set for testimony related to the evidence he anticipates presenting at the time trial. In addition, Mr. Jackson requested two weeks to respond to the State's Motion in Limine as he was just served with the motion on Thursday. Opposition by Ms. Lavell regarding the allegations of the victim being pressured and to appoint counsel; however, advised there was no objection to setting a hearing for the victim to testify. Further statement by Mr. Lavell regarding service of the State's Motion in Limine. COURT NOTED, victims are not normally appointed counsel and the statements relayed to Mr. Jackson may not be true; therefore, ORDERED, request to appoint counsel for the victim DENIED; evidentiary hearing TO BE SET for the Court to question the victim, mother, and any other witnesses regarding the concerns raised today. Colloquy regarding whether the aforementioned evidentiary hearing should be sealed and whether the exclusion of witnesses would be invoked. COURT FURTHER ORDERED, request to seal the evidentiary hearing DENIED. COURT ADVISED, counsel not to prepare briefs or coach the witnesses. As to the State's Motion in Limine, COURT ORDERED, matter VACATED and RESET; Defense reply due 4/23/14.

As to the Defendant's Motion to Vacate Trial Date and Reset, COURT ORDERED, Trial Date STANDS. Argument by Mr. Jackson regarding a scheduling conflict with trial date. COURT SO NOTED.

PRINT DATE: 04/09/2014

Page 1 of 2

Minutes Date:

April 08, 2014

COURT ADVISED, counsel will receive a letter from chambers indicating the date and time set for the evidentiary hearing.

BOND

5/29/14 9:30 AM - STATE'S MOTION IN LIMINE...CALENDAR CALL

6/2/14 9:30 AM - JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****May 19, 2014**

C-13-288172-1      State of Nevada  
                                 vs  
                                 Joshua Shue

**May 19, 2014      9:30 AM      Evidentiary Hearing**

**HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Denise Husted**RECORDER:** Janie Olsen**REPORTER:****PARTIES**

<b>PRESENT:</b>	Beverly, Leah C	Attorney for the State
	Jackson, Terrence Michael	Attorney for the Defendant
	Shue, Joshua C	Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Mr. Jackson stated that the defendant is in need of a Tagalog interpreter. The Court advised that the defendant spoke to Mr. Jackson in English. A member of the Court's staff checked with the interpreter's office and an interpreter was not ordered in advance. Colloquy regarding witnesses. Upon Court's inquiry, Mr. Jackson said the defendant testified to the Grand Jury in English and works in a casino. The Court stated that the matter will proceed today and parties can do what they can.

Anita Iral SWORN AND TESTIFIED. HAZEL IRAL SWORN AND TESTIFIED. The Court noted that this is one of these situations where everyone is telling the truth, but what does it mean. Plaintiff received money because of being in the foster system, which has nothing to do with the testimony in this case. There is no evidence of prosecutorial misconduct as the police did not force her to testify and there was no improper coaching. COURT FINDS, there was nothing improper done to influence the victim's testimony; will copy the CPS records for the State and defense. FURTHER, motion to continue trial is DENIED as Hazel Iral seems to have worked through the issues and is poised, therefore there is no reason to continue the trial. Mr. Jackson stated he wants an individual

PRINT DATE: 08/06/2014

Page 1 of 2

Minutes Date: May 19, 2014

psychological evaluation due to the attempted suicide. COURT FINDS, suicide attempt does not make testimony no credible and there is nothing to suggest she wasn't being truthful about the reason for the attempt; here credibility as a witness is intact. COURT ORDERED, motion DENIED.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**May 29, 2014**

C-13-288172-1      State of Nevada  
                                 vs  
                                 Joshua Shue

**May 29, 2014      9:30 AM      All Pending Motions**

**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Denise Husted

**RECORDER:** Janie Olsen

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Jackson, Terrence Michael	Attorney
	Jones, Tierra D.	Attorney for the State
	Shue, Joshua C	Defendant for the Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- CALENDAR CALL...STATE'S MOTION IN LIMINE

Mr. Jackson stated he is ready for trial. Ms. Jones advised that the State is not ready. COURT ORDERED, trial date VACATED and RESET.

Colloquy regarding State's Motion in Limine. COURT ORDERED, the motion will be decided at the time of trial.

BOND

8/21/14 9:30 AM CALENDAR CALL

8/25/14 9:30 AM JURY TRIAL

PRINT DATE: 05/30/2014

Page 1 of 1

Minutes Date: May 29, 2014

**DISTRICT COURT  
CLARK COUNTY, NEVADA  
COURT MINUTES**

**Felony/Gross Misdemeanor****August 19, 2014**

C-13-288172-1      State of Nevada  
                                 vs  
                                 Joshua Shue

**August 19, 2014      9:30 AM      Defendant's Motion to Dismiss Indictment Because of  
Violation Based on Inadequate Notice**

**HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Dania Batiste**RECORDER:** Debbie Winn**PARTIES**

**PRESENT:**      Beverly, Leah C      Deputy District Attorney  
                         Jackson, Terrence Michael      Attorney for Defendant

**JOURNAL ENTRIES**

- Mr. Jackson argued in support of the Motion, citing the "Cunningham" case, and stated pursuant to the Nevada Supreme Court, the State is not required to allege the exact date of an offense charged; however, whenever possible, should do so as closely thereto as possible. Mr. Jackson further argued that the issue of age will be critical, and the State needs to give notice when those alleged incidents occurred; and moved to dismiss for violating Defendant's due process rights.

Opposition by Ms. Beverly, citing the "Wilson" case, and argued that the State is not attempting to hide any information; further, the date in the Indictment is when Defendant was residing with the Iral family, and the end date is when the police became involved. Further arguments by counsel.

Court stated its findings, NOTING that although the State could have pled this case more specifically, Defendant's due process rights are not violated, and adequate notice was provided; additionally, the State will have to prove its case beyond a reasonable doubt, including the age of the witness(es).

**COURT ORDERED, Motion to Dismiss is DENIED; calendar call and trial dates STAND.**

**BOND**

8/21/2014      9:30 am      Calendar Call  
8/25/2014      9:30 am      Jury Trial

**PRINT DATE:** 08/19/2014**Page 1 of 1****Minutes Date:** August 19, 2014

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 21, 2014**

C-13-288172-1      State of Nevada  
                                 vs  
                                 Joshua Shue

**August 21, 2014      9:30 AM      Calendar Call**

**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Phyllis Irby

**RECORDER:** Janie Olsen

**REPORTER:**

**PARTIES**

**PRESENT:**

Beverly, Leah C

Attorney for the State

Jackson, Terrence Michael

Attorney for the Deft

Shue, Joshua C

Defendant

State of Nevada

Plaintiff

**JOURNAL ENTRIES**

- The State announced ready for trial. Parties discussed scheduling conflicts. COURT ORDERED, TRIAL VACATED, MATTER REFERRED TO OVERFLOW. 5 Days, State - 6 Witnesses, Defense - 4 Witnesses.

**BOND**

8-22-14 8:45 AM OVERFLOW (DEPT. XVII)

**PRINT DATE:** 08/22/2014

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**Minutes Date:** August 21, 2014

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 22, 2014**

C-13-288172-1      State of Nevada  
   vs  
   Joshua Shue

**August 22, 2014      8:45 AM      Overflow**

**HEARD BY:** Villani, Michael      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Carol Donahoo

**RECORDER:** Patti Slattery

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Maria Lavell, Chf Dep DA, present on behalf of the State and Terrence Jackson, Esq., present on behalf of Deft. Shue, who is also present.

State and Defense announced ready; the trial is expected to take five (5) days. COURT ORDERED, matter REFERRED to Department XXX for Jury Trial. Court instructed both counsel to provide their proposed Jury Instructions to Chambers on the first day of trial. Any special instructions should include case citations.

**BOND**

**08/25/14 10:30 AM JURY TRIAL**

**PRINT DATE:** 09/02/2014

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**Minutes Date:** August 22, 2014



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 25, 2014

C-13-288172-1      State of Nevada  
                                 vs  
                                 Joshua Shue

August 25, 2014      9:30 AM      Jury Trial

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Denise Husted

RECORDER: Janie Olsen

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Beverly, Leah C	Attorney for the State
	Jackson, Terrence Michael	Attorney for the Defendant
	Lavell, Maria	Attorney for the State
	Shue, Joshua C	Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury selection. Ms. Beverly stated that as to the Motion in Limine, some issues have already been decided and some will be discussed as the trial proceeds. The Court informed counsel that there is no good faith reason to ask the question regarding rent being paid through the Foster Program. Opposition by Mr. Jackson. IN THE PRESENCE OF THE JURY. Introductions by the Court and counsel. CONFERENCE AT BENCH. Jury selection proceeded. OUTSIDE THE PRESENCE OF THE JURY. The Court stated that Mr. Jackson approached the bench regarding a challenge of one of the potential jurors. Then Mr. Jackson stated that he wanted the Court to recuse itself and then continued saying this out loud in front of the jurors. The Court further stated that Mr. Jackson was told at the bench that he was putting the cart before the horse and that this Court has nothing against Mr. Jackson nor his client, but does disagree with his conduct. Upon Court's inquiry, Ms. Leah and Ms. Lavelle stated that this comported with their recollection. Mr. Jackson stated that he feels that the Court is biased against him. The Court informed Mr. Jackson that the fact that he disagrees with the Court's rulings is not a basis for recusal. Ms. Beverly objected to Mr. Jackson's motion for recusal; the potential juror has done her job for

PRINT DATE: 08/26/2014

Page 1 of 2

Minutes Date: August 25, 2014

thirteen years and said she could be fair. QUESTIONING OF JUROR OUTSIDE THE PRESENCE OF THE OTHER JURORS. COURT ORDERED, for cause challenge is DENIED. FURTHER, Mr. Jackson's renewed motion to recuse is DENIED as well. IN THE PRESENCE OF THE JURY. Jury selection. CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury selection. IN THE PRESENCE OF THE JURY. Jury SELECTED AND SWORN. Indictment read by the clerk. Evening recess. MATTER CONTINUED.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 26, 2014

C-13-288172-1      State of Nevada  
vs  
Joshua Shue

August 26, 2014      10:30 AM      Jury Trial

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Denise Husted

RECORDER: Janie Olsen

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Beverly, Leah C	Attorney for the State
	Jackson, Terrence Michael	Attorney for the Defendant
	Lavell, Maria	Attorney for the State
	Shue, Joshua C	Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- IN THE PRESENCE OF THE JURY. Opening statements by Leah Beverly. Mr. Jackson reserved the right to opening statements at this time. EXCLUSIONARY FULE INVOKED. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. The Court instructed Ms. Leah to show any evidence to Mr. Jackson prior to showing it to the jury. Mr. Jackson requested that the bench conferences be recorded. The Court explained to him that this Courtroom is not equipped to comply with his request. The Court reminded counsel not to make speaking objections, but to object properly. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. The Court informed counsel that it may be possible to record the bench conferences, however Ms. Olsen contacted IT and they cannot come to the Courtroom right away; it may take some time due to their scheduling. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. The Court discussed the fact that the State's witness divulged that the Defendant requested counsel. Mr. Jackson MOVED for a mistrial. The Court informed counsel that it can't cure a negative inference. It may be able to be cured by asking about the right to counsel. COURT ORDERED, motion for

PRINT DATE: 09/08/2014

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Minutes Date: August 26, 2014

MISTRIAL is DENIED. IN THE PRESENCE OF THE JURY. Mr. Jackson MOVED for a mistrial and wanted the record to show his continuing request for a mistrial. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. CONFERENCE AT BENCH. Testimony and exhibits per worksheet. Evening recess. MATTER CONTINUED.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 27, 2014

C-13-288172-1      State of Nevada  
vs  
Joshua Shue

August 27, 2014      10:30 AM      Jury Trial

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Denise Husted

RECORDER: Janie Olsen

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Beverly, Leah C	Attorney for the State
	Jackson, Terrence Michael	Attorney for the Defendant
	Lavell, Maria	Attorney for the State
	Shue, Joshua C	Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY. The Court informed counsel that the technology for recording bench conferences will not be ready today. Colloquy regard issue of detective's testimony from the previous day. Pursuant to constance interruptions to the Court by Mr. Jackson, the Court admonished him as to his constant interrupting, rudeness, belligerence. The Court informed him that if it does not cease, Mr. Jackson will be subject to sanctions.

The Court stated its recollection that Ms. Leah stopped questioning the detective after his response; Mr. Jackson is trying to cause his own mistrial. COURT ORDERED, motion for mistrial is DENIED for the reasons already stated. Further arguments by Mr. Jackson. The Court again stated that there are no grounds for a mistrial. IN THE PRESENCE OF THE JURY. CONFERENCE AT BENCH. IN THE PRESENCE OF THE JURY. Testimony and exhibits per worksheet. Mr. Jackson said he intended to ask about the payments received by the victim for CPS. COURT ORDERED, that is DENIED; issue has been gone through many times. Arguments by Mr. Jackson that he wants to check into the defendant's mental status. COURT ORDERED, DENIED. COURT FINDS, there is no reason to

PRINT DATE: 09/09/2014

Page 1 of 2

Minutes Date: August 27, 2014

discuss her mental status. Mr. Jackson stated he has a right to ask if she was taking drugs. The Court informed him that this is not a case that is not clear. Frankly, the Court informed Mr. Jackson is preposterous because parties watch her video for two hours. The fact that she was hospitalized for a suicide attempt and was depressed after she was taken from her home is not a surprise. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. The State RESTED. OUTSIDE THE PRESENCE OF THE JURY. The Stated objected to Mr. Jackson's first witness as he did not provide a five day notice; she requested an offer of proof of the relevance of calling this witness. Mr. Jackson advised this witness is going to testify as to Hazel's voracity. The Court recognized that the notice was untimely, but will allow her testimony.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****August 27, 2014**

C-13-288172-1      State of Nevada  
   vs  
   Joshua Shue

**August 27, 2014      10:30 AM      Jury Trial**

**HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Denise Husted**RECORDER:** Janie Olsen**REPORTER:****PARTIES**

<b>PRESENT:</b>	Beverly, Leah C	Attorney for the State
	Jackson, Terrence Michael	Attorney for the Defendant
	Lavell, Maria	Attorney for the State
	Shue, Joshua C	Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY. The Court informed counsel that the technology for recording bench conferences will not be ready today. Colloquy regard issue of detective's testimony from the previous day. Pursuant to constance interruptions to the Court by Mr. Jackson, the Court admonished him as to his constant interrupting, rudeness, belligerence. The Court informed him that if it does not cease, Mr. Jackson will be subject to sanctions.

The Court stated its recollection that Ms. Leah stopped questioning the detective after his response; Mr. Jackson is trying to cause his own mistrial. COURT ORDERED, motion for mistrial is DENIED for the reasons already stated. Further arguments by Mr. Jackson. The Court again stated that there are no grounds for a mistrial. IN THE PRESENCE OF THE JURY. CONFERENCE AT BENCH. IN THE PRESENCE OF THE JURY. Testimony and exhibits per worksheet. Mr. Jackson said he intended to ask about the payments received by the victim for CPS. COURT ORDERED, that is DENIED; issue has been gone through many times. Arguments by Mr. Jackson that he wants to check into the defendant's mental status. COURT ORDERED, DENIED. COURT FINDS, there is no reason to

PRINT DATE: 09/09/2014

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Minutes Date: August 27, 2014

discuss her mental status. Mr. Jackson stated he has a right to ask if she was taking drugs. The Court informed him that this is not a case that is not clear. Frankly, the Court informed Mr. Jackson is preposterous because parties watch her video for two hours. The fact that she was hospitalized for a suicide attempt and was depressed after she was taken from her home is not a surprise. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. The State RESTED. OUTSIDE THE PRESENCE OF THE JURY. The Stated objected to Mr. Jackson's first witness as he did not provide a five day notice; she requested an offer of proof of the relevance of calling this witness. Mr. Jackson advised this witness is going to testify as to Hazel's voracity. The Court recognized that the notice was untimely, but will allow her testimony.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****August 28, 2014**

C-13-288172-1      State of Nevada  
                                 vs  
                                 Joshua Shue

**August 28, 2014      10:30 AM      Jury Trial**

**HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Denise Husted**RECORDER:** Patti Slattery**REPORTER:****PARTIES**

<b>PRESENT:</b>	Beverly, Leah C	Attorney for the State
	Jackson, Terrence Michael	Attorney for the Defendant
	Lavell, Maria	Attorney for the State
	Shue, Joshua C	Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- IN THE PRESENCE OF THE JURY. The Court informed parties that while at lunch, there she recognized a juror, but he wasn't wearing his badge so it could be seen. She doesn't recall discussing the case. but out of an abundance of caution the juror was brought in without the other jurors present. The juror said he did see the Judge at lunch, but was unable to hear her conversation.. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. The Court instructed counsel to return at 9:00 AM on Friday to discuss jury instructions; the jury will come back at 10:00 AM. Evening recess. MATTER CONTINUED.

PRINT DATE: 09/09/2014

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Minutes Date: August 28, 2014

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****August 29, 2014**

C-13-288172-1      State of Nevada  
                                 vs  
                                 Joshua Shue

**August 29, 2014      9:30 AM      Jury Trial**

**HEARD BY:** Adair, Valerie**COURTROOM:** RJC Courtroom 11C**COURT CLERK:** Denise Husted**RECORDER:** Jill Jacoby**REPORTER:****PARTIES**

<b>PRESENT:</b>	Beverly, Leah C	Attorney for the State
	Jackson, Terrence Michael	Attorney for the Defendant
	Lavell, Maria	Attorney for the State
	Shue, Joshua C	Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY. Settling of jury instructions. Parties stipulated that the Court not read the Indictment as it was read on 8/25/14 by the clerk. IN THE PRESENCE OF THE JURY. CONFERENCE AT THE BENCH. Testimony and exhibits present per worksheet. Defense rested. OUTSIDE THE PRESENCE OF THE JURY. Mr. Jackson MOVED for a directed verdict as the State has not met their burden of proof. Opposition by Ms. Beverly. COURT FINDS, there is enough evidence for the jury and ORDERED, Motion for a Directed Verdict is DENIED. IN THE PRESENCE OF THE JURY. The Court instructed jurors on the law of the case. Closing arguments by Ms. Beverly. Closing arguments by Ms. Lavelle. Rebuttal arguments by Ms. Lavell.

At the hour of 1:05 PM the jury retired to deliberate.

At the hour of 5:40 PM the jury returned with the following verdict:

**COUNT 1 - CHILD ABUSE & NEGLECT (F) - GUILTY;**

PRINT DATE: 09/02/2014

Page 1 of 2

Minutes Date: August 29, 2014

COUNTS 2-4, 6, 7, 9, 10, 12, 13, 15, 16, 18, 19, 21, 22, 24, 25, 27-38 - USE OF CHILD IN PRODUCTION (F) - GUILTY;

COUNTS 5, 8, 11, 14, 17, 20, 23, 26, 40, 41 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) - GUILTY;

COUNT 39 - OPEN OR GROSS LEWDNESS (GM) - GUILTY.

Jurors polled at the request of Mr. Jackson. The Court thanks and excused the jurors from service.

Ms. Lavelle requested that the defendant be remanded. Opposition by Mr. Jackson. COURT FINDS, based on the seriousness of the charges and that only \$75,000.00 has been posted, COURT ORDERED, defendant REMANDED AND HELD WITHOUT BOND. Further, matter referred to the Division of Parole and Probation for a presentence investigation report and SET for sentencing. BOND, EXONERATED.

CUSTODY (CCDC)

12/9/14 9:30 AM SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**December 09, 2014**

C-13-288172-1      State of Nevada  
vs  
Joshua Shue

**December 09, 2014    9:30 AM      Sentencing**

**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Denise Husted

**RECORDER:** Janie Olsen

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Jackson, Terrence Michael	Attorney for the Defendant
	Jones, Tierra D.	Attorney for the State
	Shue, Joshua C	Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- COURT ORDERED, CONTINUED at the request of Mr. Jackson; physician preparing report needs time to complete the report. COURT ORDERED, matter CONTINUED.

**CUSTODY**

**CONTINUED TO:** 1/15/15 9:30 AM

**PRINT DATE:** 12/09/2014

**Page 1 of 1**

**Minutes Date:** December 09, 2014

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 05, 2015**

C-13-288172-1      State of Nevada  
   vs  
   Joshua Shue

**February 05, 2015      9:30 AM      Motion for Appointment**

**HEARD BY:** Smith, Douglas E.      **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Denise Husted

**RECORDER:** Janie Olsen

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Bateman, Caroline	Attorney for the State
	Jackson, Terrence Michael	Attorney for the Defendant
	Shue, Joshua C	Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

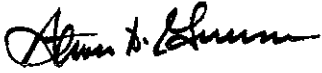
- The Court noted that it spoke with Drew Christensen; Mr. Jackson is WITHDRAWN as counsel of record. Mr. Christensen apprised the Court that the Public Defender's office will CONFIRM Mr. Jackson stated that the Notice of Appeal needs to be filed before 2/19/15 and he will provide the documents in a timely manner.

**CUSTODY**

**PRINT DATE:** 02/10/2015

**Page 1 of 1**

**Minutes Date:** February 05, 2015



CLERK OF THE COURT

1 TRAN

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA  
5

6 STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 JOSHUA C. SHUE, AKA JOSHUA  
10 CALEB SHUE,

11 Defendant.

CASE NO. C288172-1  
DEPT. XXI

12  
13 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

14 THURSDAY, MARCH 28, 2013

15 TRANSCRIPT OF PROCEEDINGS RE:  
16 DEFENDANT'S MOTION TO RESET BAIL AS PREVIOUSLY SET BY  
17 MAGISTRATE JUDGE OR GRANT A BAIL LESS THAN \$75,000.00  
INDICTMENT WARRANT RETURN

18 APPEARANCES:

19 FOR THE STATE: LEAH C. BEVERLY, ESQ.  
20 Deputy District Attorney

21 FOR THE DEFENDANT: TERRENCE M. JACKSON, ESQ.  
22

23  
24  
25 RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

1 LAS VEGAS, CLARK COUNTY, NV., THURS., MAR. 28, 2013

2  
3 THE COURT: State versus Joshua Shue. And where is Mr. Shue?

4 MR. JACKSON: He's in custody.

5 THE COURT: All right. He's present in custody. This is your motion to reset  
6 bail, and we did receive an opposition from the State.

7 MR. JACKSON: I haven't received that opposition.

8 THE COURT: You haven't?

9 MR. JACKSON: Nope.

10 THE COURT: Do you want to get a copy and then you can read it in the  
11 vestibule and we will trail it?

12 MR. JACKSON: Yeah, if they have a copy I'd like to take a look at it.

13 THE COURT: All right. State, do you have an extra copy for Mr. Jackson?

14 MS. BEVERLY: I can give him a copy.

15 THE COURT: Mr. Jackson, I'm giving you my copy.

16 MR. JACKSON: All right. It will take me about 30 seconds to read it.

17 THE COURT: All right. We'll trail this a few minutes then.

18 (Matter trailed.)

19 (Matter recalled.)

20 THE COURT: State versus Joshua Shue.

21 And, Mr. Jackson, you had an opportunity to read over the State's  
22 opposition?

23 MR. JACKSON: Yes, Your Honor.

24 THE COURT: All right. And are you prepared to go forward then this  
25 morning?

1 MR. JACKSON: Yes.

2 THE COURT: All right. Anything you'd like to add to what's already been  
3 provided to the Court?

4 MR. JACKSON: Well, just very briefly. The defendant was initially charged  
5 with a gross misdemeanor in this matter. The State decided to file additional  
6 charges by way of a criminal complaint about six or seven months later after getting  
7 his computer. I had asked for months to get discovery, and we set a preliminary  
8 hearing. At the State's request I continued it. The State went in and argued in front  
9 of the magistrate, and I provided Your Honor a copy of the transcript before the  
10 magistrate, to raise the bail.

11 The magistrate after lengthy argument said, no, we're not going to raise  
12 the bail. He's made all his court appearances. He's lived here his whole life, and,  
13 you know, we're going to have a prelim. But the State chose to go in front of the  
14 Grand Jury.

15 Now, they put their side of it in front of the Grand Jury. They put their  
16 side of it in their motion. I can tell the Court I've looked at the pictures that they've  
17 recovered, and whether or not it is or is not what they claim -- it would be for a jury  
18 to decide -- I'm also going to be filing a motion --

19 THE COURT: Well, why doesn't someone give me a copy of the pictures,  
20 and I can look at them, and I can make a determination as to the likelihood of, in my  
21 opinion, conviction and the strength of the State's evidence based on the pictures,  
22 and also I can make a determination as to how dangerous I think he is to the  
23 community.

24 MR. JACKSON: That's fine.

25 THE COURT: I'm happy to do that.



1 MR. JACKSON: I have no objection to that. All right. In fact, I think that --  
2 and I'd also like to provide the Court with some case law as to what is and what is  
3 not pornography because I have done research --

4 THE COURT: Isn't that one of those you know it when you see it?

5 MR. JACKSON: That's what Justice Stewart said, and full frontal nudity is not  
6 enough to make pornography. The multiple counts they've charged in this case is  
7 gross prosecutorial overcharging.

8 The initial charge which was taking an image, a gross misdemeanor  
9 was a fair charge, and the prosecution has gone way overboard here. The  
10 magistrate had it right when the magistrate said, we're going to leave the bail at  
11 2,000.

12 THE COURT: Let's do this, Mr. Jackson. First of all, you know, it depends on  
13 the purpose for which the picture was taken. I mean, full frontal nudity if it's taken,  
14 you know, as part of a medical thing or some other thing like that, of course it's not.  
15 It depends on the purpose for which it's taken.

16 So here is what I would say. Why don't we have either you or the State  
17 provide me with the pictures. Right now I'm not inclined to lower the bail. You can  
18 provide me with the case law; obviously also provide it to the State, and we'll revisit  
19 this issue once I've had an opportunity to look at the pictures, and then when you  
20 say, well, the pictures aren't offensive or the pictures aren't pornographic, I have  
21 something in front of me and I can say, no, yes, I agree it is or it isn't in my  
22 assessment. If I look at the pictures and I don't find them offensive, then, you know,  
23 it will be my judgment that I should lower the bail.

24 If conversely I look at the pictures and I say, while in a vacuum these  
25 pictures could be innocuous, given the circumstances that have been alleged by the

1 State they are not innocuous, then I'm disinclined to order the bail. So why don't we  
2 do it that way.

3 MS. BEVERLY: Your Honor, can I just make some representations quickly?

4 THE COURT: Sure.

5 MS. BEVERLY: Leah Beverly for the State.

6 Mr. Jackson in my opinion is misinterpreting what's going on here  
7 because these are not just pictures. These are hundreds of videos. We've only  
8 charged --

9 THE COURT: Right, they're video -- according to your allegations in the  
10 opposition, they're -- the defendant was videotaping in the bathroom, correct?

11 MS. BEVERLY: Exactly, that's correct. And not only --

12 THE COURT: And there's been pictures, still pictures up underneath the  
13 dresses.

14 MS. BEVERLY: Yes. Your Honor, there's also pictures of another victim who  
15 is not related to these particular children in the video --

16 THE COURT: Counsel, here's the bottom line. I'm not doing anything today  
17 to lower the bail. The bail stands today. We can both argue here, you know, on and  
18 on and on, back and forth. I'm not lowering the bail today. Provide the pictures.  
19 We'll set it over for a continued hearing.

20 As of right now, based on the allegations and the history of the case  
21 and what he's been indicted on and the evidence as I understand it, I'm not inclined  
22 to lower the bail.

23 However, Mr. Jackson, I'm happy to review more information and  
24 continue the hearing, and if after I've reviewed more information I'm inclined to  
25 agree with you or agree partially with you, then perhaps I'll lower the bail. As of

1 today, I'm not going to lower the bail.

2           So it's a waste of time for the State to keep arguing, and it's a waste of  
3 time for you to keep arguing because I'll say it again, I'm not going to do anything  
4 today until I've seen the pictures. You say they're not pornographic; she says they  
5 are. I'm going to look at them. I'm going to tell you, wait a minute, you know,  
6 there's no good rhyme or reason this guy was taking these pictures except for, you  
7 know, an aberrant sexual interest. If that's what I think, then you're looking at the  
8 \$75,000 bail, which in that case I might think it's a little bit low.

9           But, you know, Mr. Jackson, would you like to volunteer to provide the  
10 pictures or maybe it's easier for the State.

11           MR. JACKSON: Maybe the State should because they --

12           THE COURT: It's easier for the State.

13           So, State, provide me with the pictures, and we'll set this over for --  
14 here's your new date.

15           Any supplemental briefing or case law that you want to provide, either  
16 side provide that to the Court and then obviously to opposing counsel.

17           Clerk, please give the date. I'll give the date --

18           THE CLERK: April 25<sup>th</sup> at 9:30.

19           THE COURT: Thank you.

20           MR. JACKSON: Your Honor, should we -- we can wait till that date to enter a  
21 formal plea.

22           THE COURT: Oh, I'm sorry, he hasn't been arraigned yet?

23           MR. JACKSON: He hasn't been arraigned.

24           THE COURT: Why don't we just arraign him today unless you'd rather not  
25 arraign him today?

1 MR. JACKSON: No, let's arraign him today.

2 THE COURT: Okay. And I apologize. It wasn't calendared for initial  
3 arraignment.

4 All right. Mr. Shue, you have received a copy, have you, of the  
5 Indictment charging you in Count No. 1 with child abuse and neglect, numerous  
6 counts of use of child in production of pornography, three counts of possession of  
7 visual presentation depicting sexual conduct of a child and one count of open and  
8 gross lewdness.

9 Have you received a copy of that Indictment?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. And what is your true name?

12 THE DEFENDANT: Joshua Caleb Shue.

13 THE COURT: All right. And does your true name appear on that Indictment?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you understand that if that is not your true name you must  
16 declare your true name to me at this time?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. And how old are you, sir?

19 THE DEFENDANT: 38.

20 THE COURT: How far did you go in school?

21 THE DEFENDANT: I completed high school and some college.

22 THE COURT: Okay. Do you read, write and understand the English  
23 language?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Okay. Do you waive the formal reading of the Indictment and

1 the list of witnesses, meaning -- okay. The clerk can read the whole thing out loud  
2 here in open court this morning, if you'd like, or you can waive that and she won't  
3 read the whole thing out loud because you and your lawyer have already read it.

4 THE DEFENDANT: Okay.

5 THE COURT: Which would you like to do?

6 THE DEFENDANT: We can waive it then. If my attorney has it then I don't  
7 need it.

8 THE COURT: All right. And you've seen it as well?

9 THE DEFENDANT: I've seen it, yes.

10 THE COURT: Okay. Do you understand the nature of the charges contained  
11 against you in the Indictment?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. And have you had an opportunity to discuss these  
14 charges with your attorney Mr. Jackson?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right. As to the charges set forth in the Indictment, how do  
17 you plead, guilty or not guilty?

18 THE DEFENDANT: Not guilty.

19 THE COURT: All right. Now, you understand that you have the right to have  
20 a trial within 60 days. Do you wish to invoke your right to a trial within 60 days, or do  
21 you wish to waive and give up this right?

22 MR. JACKSON: Your Honor, because we may be filing a writ, I believe by  
23 statute, we should waive the right to a trial within 60 days. So that's compelled by  
24 statute.

25 THE COURT: Okay. Unless you want to invoke it and then if you file the writ

1 then obviously that would waive it.

2 So based on talking with your lawyer, he intends to file a writ, and you  
3 want to waive your right to a trial within 60 days to enable Mr. Jackson, your lawyer,  
4 to file a writ based on things that occurred before the Grand Jury? I don't know what  
5 the basis will be, but there are various things he can raise by way of a writ.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right then, we'll go ahead and the clerk will give you a trial  
8 setting.

9 THE JEA: Jury trial on October 7<sup>th</sup>, calendar call on October 3<sup>rd</sup> at 9:30.

10 THE COURT: And does that give both sides adequate time to prepare in this  
11 matter?

12 MS. BEVERLY: Absolutely.

13 THE COURT: Mr. Jackson, does that give you adequate time to prepare?

14 MR. JACKSON: Yes.

15 THE COURT: All right. Thank you, sir. We'll see you back here regarding  
16 the bail motion.

17 MS. BEVERLY: Thank you.

18 MR. JACKSON: Thank you.

19 THE COURT: All right. Thank you.

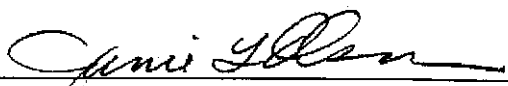
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video  
22 proceedings in the above-entitled case.

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24

25

  
JANIE L. OLSEN  
Recorder/Transcriber

  
CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JOSHUA C. SHUE, AKA JOSHUA  
CALEB SHUE,

Defendant.

CASE NO. C288172-1  
DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

THURSDAY, APRIL 25, 2013

TRANSCRIPT OF PROCEEDINGS RE:  
DEFENDANT'S MOTION TO RESET BAIL

APPEARANCES:

FOR THE STATE:

LEAH C. BEVERLY, ESQ.  
Deputy District Attorney

FOR THE DEFENDANT:

TERRENCE M. JACKSON, ESQ.

RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

2  
3 THE COURT: State versus Joshua Shue who is present in custody. This is  
4 the continuation of the defendant's motion to reset bail. We received the evidence  
5 and have looked it over.

6 Mr. Jackson, anything else you want to state?

7 MR. JACKSON: Well, I'd emphasize that I don't think anything has changed  
8 since the charges were originally filed. The -- and when it went before the  
9 magistrate, the magistrate refused to increase the bail at the district attorney's  
10 request, and then the district attorney while we were waiting for a prelim went to the  
11 Grand Jury, and the Grand Jury, of course, not even being aware of that set bail at  
12 75,000.

13 Now, I've filed -- in filing points and authorities have filed points and  
14 authorities saying the Grand Jury may have been wrong. That will be for the Court  
15 to decide at a later time, next week, I believe, but, you know, the issue is this person  
16 has lived in town his whole life. His father is here; his family's here. He's not  
17 charged with sexual assault or a crime of violence. He's charged at most with  
18 having pictures. Pictures. They want him to have a \$75,000 bail, which is  
19 impossible for him or his family to make.

20 Whether he did something else or whatever, they haven't charged him.  
21 They've managed to stack a whole bunch of charges, and the Grand Jury, I would  
22 argue, the unwitting tool of the prosecutor said, yes, okay, we've got, you know,  
23 some 40 some counts or whatever. Each count we'll set a bail of 2,000 or whatever  
24 it comes up to \$75,000.

25 This I think is an excessive amount of bail. Your Honor has looked at



1 the pictures. Whether they're so horrible they deserve that kind of bail is  
2 questionable, but I would say the original bail of \$2,000 which the defendant posted  
3 out of his money is sufficient.

4 If the Court's going to hold him for trial, it's going to make it almost  
5 impossible for me to defend him. He can't work. I'm going to ask the Court to  
6 appoint me to represent him. I'm going to ask for a number of other things I'm going  
7 to have to file motions on, but it presents tremendous Sixth Amendment rights for  
8 him. He's locked up.

9 He does not, to my knowledge, have any record aside from this. Now, I  
10 think the prosecution has gone overboard here, and I'm not disputing that they have  
11 filed serious charges, but I think that the initial bail is sufficient to assure his  
12 presence, and I don't think that there's any reason to believe he will be afraid or be a  
13 danger to society.

14 I think that you can craft conditions so that he will not be a danger to  
15 anyone. He can stay away from any of those people the prosecution wants him to  
16 stay away from. That's what the magistrate did. I'll submit it with that.

17 THE COURT: State.

18 MS. BEVERLY: Yes, Your Honor. Leah Beverly for the State.

19 Now that the -- Mr. Jackson isn't exactly correct. When Judge Sullivan  
20 decided not to increase the bail, she had not seen anything in this case. Now the  
21 Grand Jury has seen this case. Now Your Honor has seen the videos in this case.  
22 These are not just pictures. These are videos, over and over and over again, and I  
23 only charged 41 counts. I could have charged a lot more counts but for purposes of  
24 trial I chose not to.

25 The fact is, Your Honor, Mr. Jackson is saying he doesn't have a

1 criminal record, and he's not a danger to society. He is a danger to society. The  
2 reason that he doesn't have an on-the-record criminal history is because he's never  
3 been caught. These videos are over a --

4 MR. JACKSON: I believe that's an improper argument. Your Honor, for all  
5 due respect I'm going to object to saying the reason he doesn't have a record is he  
6 hasn't been caught --

7 MS. BEVERLY: That's the truth.

8 MR. JACKSON: -- that's totally improper, and I ask the Court to sanction the  
9 prosecutor.

10 THE COURT: No, I'm not going to sanction --

11 MR. JACKSON: You can't make an argument like that.

12 THE COURT: Mr. Jackson, I'm not going to sanction her. The Court will  
13 accept he's never had any negative contacts with law enforcement. How long and  
14 how old the pictures are is part of the charges in this case.

15 So I agree with you she can't say, well, the only reason he hasn't been  
16 in trouble before is because he hasn't been caught. What she can say is, well, we  
17 know he's possessed these images for some time, or the images are old or  
18 something like that to suggest that this was an ongoing offense. That's certainly  
19 appropriate argument; although I agree with you she can't say well, the reason he  
20 hasn't racked up felonies in the past is because nobody ever caught him. What she  
21 can say is this wasn't, you know, he didn't just possess it on this one particular day.  
22 He had it for some time prior.

23 So I'm considering oral argument only in that narrow context, okay.

24 MS. BEVERLY: I do apologize, Your Honor. My point in saying that is to say  
25 that these are not videos that occurred on one day. These are videos that occurred

1 over and over and over again. And now that the Grand Jury has seen these videos,  
2 now that Your Honor has seen these videos, these are just continuous streams of --  
3 I don't want to say it in open court, but we know what the videos are, and the fact is  
4 that he is a danger to not only the older victim but also the younger victim as being  
5 on the streets.

6           These are Category A and B felonies. \$75,000 is extremely reasonable  
7 considering the amount of charges and the seriousness of these allegations.

8           THE COURT: Okay. Here's what I'm going to do. You know, with respect to  
9 the flight risk, I mean, he had serious felonies hanging over his head before; he has  
10 serious felonies hanging over his head now, although more. You know, he is  
11 obviously aware that there's additional evidence, which makes the case more  
12 compelling perhaps than it was before.

13           I think you have to look at the totality. If you isolate, you know, each of  
14 the images, the subsequent images that he took, yes, you know, one image alone  
15 without the context could be considered more innocuous than the way we're looking  
16 at them, but you have to look at them in the context.

17           So I think that the \$75,000 bail is not excessive, but we're going to be  
18 back here on May 2<sup>nd</sup> looking at the petition, and depending on how -- you know, I  
19 haven't read everything for that -- depending on how that goes, then obviously if that  
20 petition is granted in whole or in part then the Court will revisit the bail issue at that  
21 time.

22           So for purposes of today, bail stands. Again, we'll look at the issues  
23 raised in the petition, and at that point in time depending on the Court's ruling we'll  
24 revisit the bail issue.

25           MS. BEVERLY: All right, Your Honor.

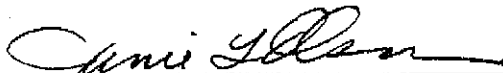
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MR. JACKSON: Thank you, Your Honor.

THE COURT: Thank you.

-oOo-

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case.



JANIE L. OLSEN  
Recorder/Transcriber

  
CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JOSHUA C. SHUE, AKA JOSHUA  
CALEB SHUE,

Defendant.

CASE NO. C288172-1  
DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

TUESDAY, MAY 2, 2013

TRANSCRIPT OF PROCEEDINGS RE:  
DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

APPEARANCES:

FOR THE STATE:

RICHARD H. SCOW, ESQ.  
Chief Deputy District Attorney  
LEAH C. BEVERLY, ESQ.  
Deputy District Attorney

FOR THE DEFENDANT:

TERRENCE M. JACKSON, ESQ.

RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

1 LAS VEGAS, CLARK COUNTY, NV., TUES., MAY 2, 2013

2  
3 THE COURT: State versus Joshua Shue who is present in custody.

4 And this is the defendant's habeas petition which I've reviewed  
5 everything.

6 Mr. Jackson, would you like to add anything to what has already been  
7 provided to the Court?

8 MR. JACKSON: Well, I've got a few words to say.

9 THE COURT: That's fine.

10 MR. JACKSON: I just received the government's response yesterday. I'd just  
11 like to make a few comments if the Court would please.

12 THE COURT: Well, we can -- you can either respond orally today --

13 MR. JACKSON: I can respond orally.

14 THE COURT: Okay. That's fine. You can respond orally.

15 MR. JACKSON: Number one, the first issue I don't think the government  
16 responded to adequately, that was whether or not the defendant was prejudiced by  
17 the detective bringing out inadmissible evidence before the Grand Jury.

18 THE COURT: The double hearsay of the --

19 MR. JACKSON: Well, I think the Grand Jury was -- well, it wasn't hearsay; it  
20 was -- it was evidence of other crimes. I think the Grand Jury was poisoned by the  
21 detective with the prosecutor's I don't know if it was connivance or with their leading  
22 through it bringing up questioning about the fact they brought in --

23 THE COURT: You're talking about that the detective stated that the mother of  
24 the girl told him that the girl had told the mother that she thought she had been  
25 drugged and --

1 MR. JACKSON: And sexually assaulted.

2 THE COURT: -- that that's why -- and assaulted, and that's why she was  
3 taken to UMC?

4 MR. JACKSON: Yeah. Now, this -- the prosecution attempts to suggest that,  
5 well, we've charged him with the crime of battery, gross misdemeanor. There's a  
6 whole big difference between a battery, gross misdemeanor and a sexual assault.  
7 They never charged him with the sexual assault or any drugging, battery or anything  
8 like that, yet the detective brought that before the Grand Jury. So immediately they  
9 are looking at these pictures they later showed in a whole different tone, a whole  
10 different point of view.

11 They didn't need to bring that out. That was totally improper, and it  
12 totally poisoned the Grand Jury. If it came out at a trial, I'd be jumping up saying  
13 mistrial, mistrial. This is improper under 48.035, and I think the courts would grant it;  
14 if not the appellate court would grant it because this is a kind of improper evidence  
15 that should not come before a jury, and by law also it shouldn't come before a Grand  
16 Jury.

17 Now, they'll say no harm no foul, but I don't think we can say that  
18 because we look at the other issues here. The other issue is they charge him with  
19 40-some counts. He's got more charges than the Boston Marathon bombers, and  
20 what we have is one instance of he allegedly turns on a camera in a bathroom, and  
21 the camera runs for maybe a couple weeks. Takes -- maybe it took 10,000 pictures.  
22 They could have charged him with 10,000 counts if they wished.

23 But it's one incident involving one or two victims at most, but where do  
24 we draw the line. Do we say each day is a different event? Do we say each time  
25 she goes into the shower is a different event?

1           The evidence reflects the camera was running continuously. There was  
2 no indication the camera was viewed more than once. There's no indication that  
3 what was taken off the camera was distributed to anyone or anything else.

4           The case law I've cited suggests that when you have one continuous  
5 incident like this, when you have one act, it should be considered one charge. Now,  
6 how they divided it up when it's a continuous transaction like this, coming up with 40  
7 different counts, it's multiplicitous, the 29 counts were multiplicitous, and also they  
8 merge.

9           It certainly makes it convenient for the government to go to trial when  
10 someone's facing 40 counts in front of a jury. Well, he's got 40 counts of this. He's  
11 looking at all these counts. He must be guilty of something. At most he should be  
12 facing one or two counts if he's guilty of anything.

13           The third issue is even more important. If you look at the statute, and  
14 you look at the pictures, what was on the pictures wasn't a crime. The government  
15 tries to say, this is the second part of the statute. I looked at the definition, and it  
16 requires there be sexual acts. You've got to read the statute together.

17           What is pornography? If it's not void for vagueness, it requires the  
18 doing of sexual acts.

19           THE COURT: Well, I think it could be erotic depiction under certain  
20 circumstance -- well, an erotic depiction of, you know, a minor. It can be  
21 pornography whether or not the minor is engaging in sexual acts or not. So, you  
22 know, like I said, I think we discussed this before. You know, a clinical depiction of a  
23 nude person clearly that wouldn't be pornography. But I think that, you know, it's  
24 you know it when you see it. There's a little bit of a judgment call, and you look at --  
25 you have to look at the circumstances of it, you know, what's the point of



1 photographing someone, you know. Is this a picture for the National Geographic of,  
2 you know, tribal people in their, you know, who maybe are unclothed, or, you know,  
3 is this a surreptitious recording of people for apparently no other purpose.

4 It's not for a medical purpose. It's not for a diagnostic purpose. It's not  
5 for an archeological or, you know, anthropological purpose. I don't know. Historical,  
6 I mean, I don't see, you know, what -- I mean, I think you have to look at the  
7 situation, and you're allowed to look at the situation and the totality of everything.  
8 To say, well, what is this, you know. Like I said, of course nudity is not always  
9 pornography, and we discussed that before, but it can be.

10 MR. JACKSON: Your Honor, but the cases I cited are directly on point. I'll  
11 cite for the Court the case out of Kansas, State versus Leibow (phonetic). It's a --  
12 and this was a case almost identical. It says if the defendant -- if the defendant  
13 himself made and possessed videotapes which showed a nude 16-year-old girl to  
14 satisfy his own sexual desires, that was still not sufficient to classify the harmless  
15 videos as pornography. The Court noted, While we can assume under the facts of  
16 the case that Leibow made and possessed the videotapes with the intent to arouse  
17 or satisfy his sexual desires or appeal to his prurient interests, the nudity depicted  
18 on the videotape is that of a child in a harmless moment.

19 Clearly a 16-year-old girl unaware that she is being videotaped in the  
20 nude while in the bathroom cannot be said to be engaging in sexually explicit  
21 conduct or an exhibition of nudity.

22 Now, that's exactly what happened here. There were pictures taken  
23 while she was in the bathroom showering, getting in and out of the bathroom,  
24 exactly the same. Whether the defendant did it for his own sexual gratification or  
25 not doesn't make it pornography. What's pornography is if you're engaged in the

1 specific acts delineated by the Nevada Revised Statute, and that wasn't happening.  
2 There wasn't sexual penetration. There wasn't bestiality. There wasn't any of those  
3 things --

4 THE COURT: No, there was -- it's bathroom behavior, I mean, showering,  
5 maybe using the --

6 MR. JACKSON: Well, all right, but --

7 THE COURT: That's what I'm saying, it's normal --

8 MR. JACKSON: But that's not --

9 THE COURT: I know, we're in agreement on that point. It's not, you know,  
10 it's normal behavior that would occur by somebody who thought that they were  
11 using the bathroom in the privacy of their own home. I mean, I think we're all in  
12 agreement. The State thinks that. I think that, and you think that. I don't see a  
13 dispute there.

14 MR. JACKSON: But they charged him with felony charges and this -- there is  
15 a gross misdemeanor statute that the defendant was originally charged with before  
16 this prosecutor took over, which is taking an image of another. That's what he may  
17 be guilty of. That's what he was originally charged with.

18 Now, why they decided to charge, you know, 40 felonies or whatever is  
19 beyond me. It's an abuse of prosecutorial discretion, and they went before the  
20 Grand Jury while we were waiting for a prelim, and then they asked to raise the bail  
21 to \$75,000, which is outrageous in the facts of this case because all the case law is  
22 against them.

23 This person has never been arrested. They don't have the -- they didn't  
24 file any sexual assault charges, but they're charging harmless videos against him  
25 and making it like his multiple sexual counts of misbehavior. They're pictures on a

1 video taken from a camera that don't show anything pornographic yet they want him  
2 to go to trial facing life sentences or 5 to life or whatever. It's absurd.

3 I've cited another case for the Court, which is in my brief, and I'd like  
4 the Court to look at those cases carefully because the cases delineate this kind of --  
5 these kind of actions are not -- are not the kinds of things that was meant to be  
6 considered as child pornography or pornography that is production of pornography  
7 or whatever.

8 There is a crime, and that's the gross misdemeanor charge, and that's  
9 all he should be held to answer on.

10 There's a Florida case, Lockwood. In Lockwood the Court said, The  
11 record reflects the tape does not show a presentation of sexual conduct as defined  
12 by the statute. That's almost the identical statute to Nevada. The presentation  
13 shows rather the innocent, normal everyday occurrence of a female child  
14 undressing, showering, performing acts of female hygiene and donning her clothes.  
15 None of which meets any of the detailed sexual acts contained in the statute. It thus  
16 appears the motion for judgment of acquittal should have been granted.

17 The statute in Lockwood read, Sexual conduct means actual or  
18 simulated sexual intercourse, deviant sexual intercourse, sexual bestiality,  
19 masturbation or sadomasochist, I could go on but it's almost identical --

20 THE COURT: No, you don't -- I mean, we can both read. You don't need --

21 MR. JACKSON: It's almost identical to the Nevada statute. None of that  
22 happened in this case. You've got a young woman getting in and out of the shower.  
23 You've got a young boy sitting on a toilet. That's what the cameras said. Obviously  
24 if the pictures were taken for sexual gratification, that may show that there's some  
25 voyeuristic intent.

1 THE COURT: Well, okay, let's be real here. Why the heck else would they  
2 have been taken? You're saying that doesn't matter, and the real issue is what  
3 conduct is depicted on the images --

4 MR. JACKSON: Yes.

5 THE COURT: -- that is essentially your argument. So your argument is  
6 basically it's irrelevant as to what his intent or the purpose of the photos were --

7 MR. JACKSON: That's what the case law says.

8 THE COURT: Right, but let's be real here. There's no other, in my view,  
9 conceivable explanation as to why he's doing this.

10 MR. JACKSON: I agree there may be voyeuristic intent, but that doesn't  
11 make it pornography.

12 THE COURT: I mean, I understand you're saying it's what's depicted in the  
13 image. It's, you know, is there some kind of sexual behavior, if you will, depicted in  
14 the image and that that's what puts it over the threshold as to being pornography or  
15 not, and simply a picture of the nude form regardless if it's taken surreptitiously,  
16 regardless if it's for the sole purpose of some kind of sexual gratification on the part  
17 of the taker, the photo taker or the image maker that therefore it is irrelevant; that's  
18 essentially your argument, correct?

19 MR. JACKSON: My argument is the law is clear --

20 THE COURT: And that the nudity in and of itself is sort of by definition without  
21 some other kind of behavior, gesticulation, you know, even facial gesture is just  
22 nudity and that the intent of the taker or the maker, as I said, is irrelevant. Is that  
23 essentially -- that's what you're saying, right?

24 MR. JACKSON: My argument is it doesn't meet the statute unless it's  
25 pornography, and pornography has to be carefully defined otherwise it's void for

1 vagueness. It is carefully defined in NRS 200.710 where it defines the acts that  
2 make pornography up, and that wasn't what occurred here, and at the Grand Jury  
3 they didn't establish that, and they never even instructed the Grand Jury what  
4 pornography was.

5 Also, the Grand Jury was tainted by the -- by the prosecutor's actions  
6 and the detective's actions. I mean, you've got to -- you know, you've got to look at  
7 that. This was a totally improper poisoned Grand Jury. They didn't know the law,  
8 and they were tainted by the actions of the prosecutor.

9 THE COURT: Does the State wish to respond beyond what you've already  
10 done?

11 MR. SCOW: I think the brief lays it out pretty well, and if there's anything that  
12 you would like me to address specifically, I will. Otherwise, it's just really briefly --

13 THE COURT: That's fine.

14 MR. SCOW: It's clear that we can charge one of two ways in this use of  
15 minor. Under Subsection 1, it's sexual conduct which all the law is based on and all  
16 his arguments are based on, but he ignores Subsection 2, which is a sexual  
17 portrayal, which is the depiction of a person in a manner which appeals to the  
18 prurient interests in sex and which does not have serious literary, artistic, political or  
19 scientific value, which are the examples that Your Honor was given.

20 If there's video of children in a park playing, you're recording your kids,  
21 that's harmless. But when you take it in the bathroom surreptitiously record their  
22 nude bodies, then you're within, clearly within these statutes, and he's properly  
23 charged.

24 THE COURT: All right. Here's what I'm going to do. I'm going to review  
25 everything more fully, and I'll issue a decision from chambers, and obviously you

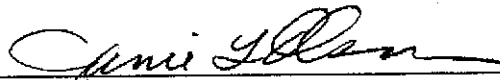
1 don't need to come back for that. That will be on Monday. So look for a minute  
2 order sometime Monday. Feel free to call the department if you don't see it and ask  
3 about it.

4 MR. JACKSON: Thank you, Your Honor.

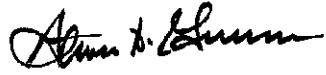
5 THE COURT: All right. Thank you.

6 -oOo-

7 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video  
8 proceedings in the above-entitled case.

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10 JAMIE L. OLSEN  
11 Recorder/Transcriber  
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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JOSHUA C. SHUE, AKA JOSHUA  
CALEB SHUE,

Defendant.

CASE NO. C288172-1  
DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

THURSDAY, SEPTEMBER 26, 2013

TRANSCRIPT OF PROCEEDINGS RE:  
DEFENDANT'S MOTION IN LIMINE

APPEARANCES:

FOR THE STATE:

MARIA LAVELL, ESQ.  
Chief Deputy District Attorney

FOR THE DEFENDANT:

TERRENCE M. JACKSON, ESQ.

RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

1 LAS VEGAS, CLARK COUNTY, NV., THURS., SEPT. 26, 2013

2  
3 THE COURT: State versus Joshua Shue.

4 And are you asking that we waive Mr. Shue --

5 MR. JACKSON: Waive his presence today. He'll be here next week at  
6 calendar call.

7 THE COURT: Okay. We'll waive his appearance.

8 This is the defendant's motion in limine, and we have not received an  
9 opposition from the State.

10 MS. LAVELL: Your Honor, it's my understanding that counsel is asking the  
11 State not allow the detective to mention that he responded to this particular event  
12 based on alleged sexual assault conduct.

13 THE COURT: Right.

14 MS. LAVELL: The State has no plans on introducing sexual conduct. It  
15 doesn't mean, however, that we won't say it was sex-based conduct of some sort  
16 because it in fact was.

17 May we approach?

18 THE COURT: Sure.

19 MR. JACKSON: Well, why don't we just put it all on the record --

20 MS. LAVELL: Let's do that.

21 MR. JACKSON: -- because it's -- you know, here's the issue.

22 MS. LAVELL: Well, if I can just finish?

23 MR. JACKSON: All right.

24 THE COURT: Mr. Jackson, have you ever -- well, you'll be given ample  
25 opportunity to respond. I mean, she didn't file a written opposition --



1 MR. JACKSON: I realize that.

2 THE COURT: -- so I thought that she was going to say that she had no  
3 opposition.

4 It sounds like the State has no basic opposition with a caveat. So let's  
5 hear what the caveat is, and then if we can't -- meaning you -- agree with that, then  
6 you can respond. But if she's basically not opposing it, there's nothing for  
7 everybody to fight about except for the one issue that she's going to focus on.

8 So, Ms. Lavell, go ahead.

9 MS. LAVELL: And kind of jumping to the end. If it becomes a huge issue,  
10 they can just say they responded, but the bottom line is these were -- they  
11 responded in regards to basically kiddie porn, and that's sex based, and there's no  
12 way of getting around that. That's obviously going to come out during trial. So the  
13 State doesn't want to be limited in regards to discussing the sexual aspect of the  
14 defendant's crimes; however, we certainly aren't suggesting that there was a sexual  
15 assault.

16 We're not suggesting that there was any sexual conduct. Probably the  
17 most close in line was when the individual allegedly photographed his step-daughter  
18 under her dress while she was in it. And so, you know, obviously this is sex based.  
19 So we don't want to be precluded from discussing the sexual implications, but we  
20 certainly aren't intending to nor do we have any reason or basis to suggest that  
21 there was a sexual assault.

22 THE COURT: Right. Well, the term sexual complaint, which Mr. Jackson  
23 seems to be complaining about, if he says it that way, that suggests that there's a  
24 victim who was complaining.

25 Is that what you're concerned about, Mr. Jackson?

1 MR. JACKSON: Well, you know, the facts as it came out, the way the  
2 detective testified in front of the Grand Jury is that there was a potential sexual  
3 assault, and that simply didn't happen. There's never been any sexual assault  
4 charges made.

5 The mother in this is -- panicked and thought possibly her daughter may  
6 have been a victim. It turned out that wasn't the case. Inadvertently, other -- one  
7 thing led to another, and some objects which the State claims are pornography,  
8 which we don't concede, were found as a result of that investigation.

9 Now, how the State gets to that in the trial I don't know, but we don't  
10 want the police officer saying, we went there to investigate a sexual assault because  
11 that's prejudicial --

12 THE COURT: Right, I agree with you that is prejudicial. He won't say it. He  
13 won't say anything that suggests that there was a complaint that this other unrelated  
14 person could have been a victim.

15 MR. JACKSON: Thank you.

16 MS. LAVELL: And I have to --

17 THE COURT: Of a sexual assault.

18 MS. LAVELL: A victim of a sexual assault because clearly she was a victim.

19 THE COURT: Right. But not of --

20 MS. LAVELL: Not of a sexual assault, and we don't plan on suggesting that,  
21 using that terminology or --

22 THE COURT: Or anybody else that's been charged was the victim of a  
23 sexual --

24 MS. LAVELL: Absolutely not. This is all about kiddie porn.

25 THE COURT: All right. Then keep it focused that way.

1 MS. LAVELL: Yes, Your Honor.

2 THE COURT: And, Mr. Jackson, if they, you know, ask a question that, you  
3 know, suggests something, or we can bring the detective in beforehand or  
4 something like that to give him an admonishment if that would make you more  
5 comfortable.

6 MR. JACKSON: I think that might be appropriate before we impanel a jury. I  
7 have -- I'll probably be filing other motions. I haven't stopped working on motions,  
8 Your Honor, and we have one next week regarding -- set at calendar call regarding  
9 how we question the jury in picking the jury. I have a couple others in the works.

10 THE COURT: That's fine. Okay. So we can, you know, admonish the  
11 detective, you know, whether it's before jury selection, I don't know that we need to  
12 do it then, certainly before he testifies.

13 MR. JACKSON: All right. Thank you.

14 MS. LAVELL: Judge, if I could just make a record. All of the discovery has  
15 been provided to Mr. Jackson including additional copies of all the videos and  
16 photos.

17 MR. JACKSON: Well, that was one of the things I was going to raise at  
18 calendar call because I've got -- might as well deal with that now.

19 I got a list of additional witnesses, but I've got no discovery concerning  
20 those witnesses. Now, this is what, you know, they give me a list of a bunch of  
21 names, and I've got nothing connecting those names to anything. They're just  
22 names floating out there.

23 One of them I got a name and I don't have an address or anything, and  
24 I got nothing in my discovery concerning this one person. So I'll probably be filing a  
25 motion to strike him from the Information. I've got no discovery, no address. I've

1 just got a name. I mean, that's wonderful, but it doesn't --

2 THE COURT: Do you know what he's talking about, Ms. Lavell?

3 MS. LAVELL: Your Honor, this isn't my case, although I think I am going to  
4 be second chair, but I am not familiar with it.

5 THE COURT: All right. Since you're not that familiar with who these names,  
6 you know, whose names these are and whether there's discovery relating to them or  
7 whether they're actually going to be called or anything like that, let's go ahead and  
8 table this issue until we come back at the calendar call.

9 MR. JACKSON: Yes.

10 THE COURT: At that time, Ms. Lavell, I expect somebody to be here who is  
11 familiar with all of these issues, and maybe some of these witnesses aren't even  
12 going to be called; in which case, you know, the State can just stand up and say  
13 we're not calling that person. Then we don't need to spend 15 minutes discussing  
14 whether or not the notice was appropriate.

15 MS. LAVELL: And does he have any other issues that we're going to need to  
16 address so we can prepare for that and not kind of be blindsided at calendar call?

17 MR. JACKSON: Well, you're not going to be blindsided, because anything I  
18 file I file timely unless it's --

19 After I complete my investigation, I will advise the State if there's any  
20 other issues. There are some issues regarding witness intimidation, which I intend  
21 to raise. So I don't want to be blindsided about that.

22 THE COURT: Mr. Jackson, you're always welcome to file any motions that  
23 are filed in a timely fashion, and we'll certainly deal with those, and we'll expect the  
24 State to also respond in a timely fashion.

25 MR. JACKSON: Thank you, Your Honor.

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THE COURT: All right. Thank you.

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case.



JANIE L. OLSEN  
Recorder/Transcriber

  
CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JOSHUA C. SHUE, AKA JOSHUA  
CALEB SHUE,

Defendant.

CASE NO. C288172-1  
DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

THURSDAY, OCTOBER 3, 2013

CALENDAR CALL

DEFENDANT'S MOTION FOR INDIVIDUAL VOIR DIRE OF JURORS BY  
COUNSEL TO PROTECT DEFENDANT'S RIGHT TO A FAIR TRIAL

APPEARANCES:

FOR THE STATE:

MARIA LAVELL, ESQ.  
Chief Deputy District Attorney

FOR THE DEFENDANT:

TERRENCE M. JACKSON, ESQ.

RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

1 LAS VEGAS, CLARK COUNTY, NV., THURS., OCT. 3, 2013

2  
3 MR. JACKSON: My client is present. This matter I filed a motion to vacate,  
4 and the district attorney is not opposing it, is my understanding. Leah Beverly does  
5 not oppose my motion to vacate the trial date and reset it if the Court would please.

6 THE COURT: All right. There's no opposition. What are -- when are you  
7 looking for?

8 MR. JACKSON: Sometime after the first of the year would, I think, would fit  
9 my schedule. I don't know about the State and the Court.

10 THE COURT: Okay. Sometime after the first of the year and that will give  
11 you adequate time?

12 MR. JACKSON: Uh-huh.

13 THE JEA: How about March 17<sup>th</sup>.

14 MR. JACKSON: Thank you. Your Honor.

15 THE JEA: Jury trial, March 17<sup>th</sup>, calendar call March 13<sup>th</sup>, both at 9:30.

16 MR. JACKSON: All right. Thank you very much.

17 THE COURT: Do you want me to rule on the motion for individual voir dire at  
18 this time?

19 MR. JACKSON: You know, I don't know if the -- I'd like to argue it. I don't  
20 know if Ms. Beverly isn't here --

21 THE COURT: Okay. Well, let's go ahead and pass it then. It doesn't really --  
22 we don't need to deal with it. I'll just tell you typically what I do in these cases,  
23 question everyone as a group, and if they look like they're uncomfortable or they say  
24 they're uncomfortable, or they say something which could taint the rest of the jury,  
25 then we might take a break or table that juror till we take a break and then question

1 them individually.

2 MR. JACKSON: All right. Well --

3 THE COURT: Typically I don't do individual voir dire. The only time I've done  
4 it was on the Desai case because of the extraordinary pretrial publicity. But other  
5 than that, it's not -- it's not something I do, but like I said, if the need arises based on  
6 a response or something like that, then I'm happy to question -- for example,  
7 typically, you know, when we deal with the issue of pretrial publicity, we question the  
8 jurors individually just asking that -- just when they've indicated they've read, seen  
9 or heard something then of course we question them privately.

10 MR. JACKSON: My only concern is in these cases involving sexual matters,  
11 sometimes I've had four or five jurors raise their hand that they've either been the  
12 victim of a sexual matter when they were a child or whatever, and they're reluctant  
13 to discuss that in front of other jurors. And I think it also taints the jury panel.

14 Because of that, I think that it creates -- it creates a dynamic that in  
15 these particular kind of cases can lead to a skewed jury. It can lead to prejudicing  
16 the other jurors even the ones that haven't themselves been victims, and, you know,  
17 if it looks like there's no problem, you know, I can see maybe no need for it, but if it  
18 develops --

19 THE COURT: Right. If it looks like, like I said, if it looks like there's people --  
20 somebody's uncomfortable or maybe they're withholding something, certainly we  
21 can question that juror privately just like we would a juror who maybe had a situation  
22 with a, you know, somebody, the district attorney's office where that could taint the  
23 whole panel or something like that. So, you know, if the need arises we can  
24 question on just limited areas jurors individually. But we're not going to do the whole  
25 questioning individually, and we're not going to make a blanket rule. We're going to



1 see how it goes. It's kind of a fluid process, and then if we feel like we need to do it,  
2 but certainly can make whatever records you need to make and whatnot.

3 So let's table this issue. That's my preliminary ruling on that, and I'm  
4 sure you'll have other motions and whatnot to file in this case.

5 MR. JACKSON: There's another motion that's pending and I just filed, motion  
6 for psychological examination of the victim. That was filed just this week. That's  
7 mainly one of the reasons for the continuance. The State hasn't responded to that.  
8 That will probably be set in a couple weeks. I don't know. So the case is  
9 proceeding along, and I may be filing other motions as the case progresses.

10 THE COURT: All right. Thank you. We'll see you back here then probably in  
11 a few weeks.

12 (Case recalled.)

13 MR. JACKSON: Your Honor, could we recall the Shue case. Ms. Beverly  
14 came up to me in the hall and said that date that we set wasn't a good date for her.

15 THE COURT: All right. That's fine. Where's Ms. Beverly now.

16 MS. LAVELL: Your Honor, Maria Lavell for the State. I was in another  
17 courtroom. I'm sorry.

18 THE COURT: That's fine. We gave a March date. What date does the State  
19 want?

20 MS. LAVELL: We're asking for any week in June if possible.

21 MR. JACKSON: I wouldn't object to that.

22 THE COURT: Okay. We'll give you a new date.

23 THE JEA: June 2<sup>nd</sup> for the jury trial, May 29<sup>th</sup> for calendar call, both at 9:30.

24 MR. JACKSON: 5, 29. All right. I won't get a written acknowledgment from  
25 my client. He's already left the building. I went down looking for him, but when I

1 saw Ms. Beverly, she said, no, no, I can't do that date. So that's fine. I'm sure that  
2 date will be fine with my client. If there's a problem I'll put it back on.

3 THE COURT: Okay.

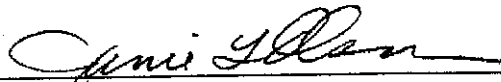
4 MS. LAVELL: And, Your Honor, I'm sorry. I missed the first part of the show,  
5 so I didn't know what happened with the various motions that were on calendar, did  
6 you set those --

7 THE COURT: Basically, you can probably get the notes from the deputy, but I  
8 said I'm going to follow my standard procedure on jury selection. If there's  
9 something, you know, that somebody has trouble talking or they are uncomfortable  
10 or we think that they maybe are being deceptive or something like that, we can do  
11 individual voir dire solely on that issue with those jurors that appear to need it.

12 And Mr. Jackson is free to make whatever records he needs to make  
13 and motions throughout the proceeding.

14 -oOo-

15 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video  
16 proceedings in the above-entitled case.

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18 JANIE L. OLSEN  
19 Recorder/Transcriber  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

DEPT. XXI

**RECORDER'S TRANSCRIPT OF PROCEEDINGS  
DEFENDANT'S MOTION FOR PSYCHIATRIC EXAMINATION OF  
ALLEGED VICTIM**

TERRENCE M. JACKSON, ESQ.

1

1 TUESDAY, OCTOBER 8, 2013 AT 9:54 A.M.

2  
3 THE COURT: All right. State versus Joshua Shue.

4 MR. JACKSON: Your Honor, the State filed a response to this motion  
5 yesterday. I'd like time to respond. Also, I'd like an evidentiary hearing on it. The  
6 government alleged in their motion that I was alleging certain facts that weren't true.  
7 I have two witnesses that will support the facts I allege, who are the government's  
8 witnesses, I'd like --

9 THE COURT: Why don't we do this.

10 MR. JACKSON: -- I'd like to call as witnesses.

11 THE COURT: Let's address the issue of whether or not you should have an  
12 evidentiary hearing --

13 MR. JACKSON: Okay.

14 THE COURT: -- in your reply brief. And we'll give you -- how long do you  
15 need?

16 MR. JACKSON: You know, I'd like a couple weeks to respond. You know, I  
17 -- I'll get a statement from my investigator of what the witnesses I have said.

18 THE COURT: Yeah, you can do it by way of affidavit initially.

19 MR. JACKSON: Okay.

20 THE COURT: And then if we -- if the Court decides, well, you know, we need  
21 to flesh this out --

22 MR. JACKSON: All right.

23 THE COURT: -- then we'll have an evidentiary hearing.

24 MR. JACKSON: That's fine.

25 THE COURT: Obviously, if the affidavits say something such as, you know,

1 so and so of the District Attorney's Victim Witness Office did this or that, then you  
2 may file a sur-reply addressing only those factual issues --

3 MS. GRAHAM: Right.

4 THE COURT: -- understood, by way of affidavit.

5 MS. GRAHAM: Right, Your Honor.

6 I would just point out the State would be -- based on the facts of this  
7 case and the facts alleged, the State would absolutely be objecting to an evidentiary  
8 hearing, but we will, of course, address that in the briefing.

9 THE COURT: Right.

10 MR. JACKSON: Okay.

11 THE COURT: Let's address it when Mr. Jackson --

12 MS. GRAHAM: Perfect.

13 THE COURT: -- files his reply.

14 MS. GRAHAM: Will do.

15 THE COURT: And like I said, if he makes a factual statement attributed to  
16 somebody in your office --

17 MS. GRAHAM: Right.

18 THE COURT: -- then certainly you can address that and put your version on  
19 the record by way of a sur-reply --

20 MS. GRAHAM: Perfect.

21 THE COURT: -- and an affidavit from whoever that person may be. Okay?

22 MR. JACKSON: My affidavit's going to be what witnesses told me, not --

23 THE COURT: And that's fine.

24 MR. JACKSON: -- what anybody at the DA's Office --

25 THE COURT: That's -- that's fine. I'm just saying if for some reason there

1 was something in here concerning -- the reason I said that, is there something here  
2 concerning that there's been incentives given and things like that.

3 MR. JACKSON: Yeah.

4 THE COURT: So, you know --

5 MR. JACKSON: Right.

6 THE COURT: -- if that's -- if -- you know, there -- that hasn't been done then  
7 they can address that by way of affidavit, depending on what your affidavit says.  
8 Again, they're going to look at the affidavit that you file. If there's certain factual  
9 assertions relating to employees of the District Attorney's Office and they dispute  
10 those, they may also do that by way of affidavit, and then the Court will make a  
11 determination if an evidentiary hearing is appropriate. The point of me saying --

12 MR. JACKSON: I think that's appropriate.

13 THE COURT: -- what I just said is that I believe if factual assertions are made  
14 relating to an employee of the District Attorney's Office that they have a right to  
15 make their own factual assertions and make them part of the record, whereas  
16 normally, as you know, they would not be allowed to file any kind of responsive  
17 pleading or any response to your brief.

18 So, the court clerk will give you -- two weeks, is that sufficient for your  
19 reply?

20 MR. JACKSON: What date is that? I know I'm going to be out of town early  
21 November --

22 THE COURT CLERK: It's October 22<sup>nd</sup>.

23 MR. JACKSON: -- in the Ninth Circuit. Can we make it the week after? I'm  
24 going to be preparing on some things. If you make it the 29<sup>th</sup>.

25 THE COURT CLERK: The 29<sup>th</sup>?

1 MR. JACKSON: Yeah.

2 THE COURT: That's fine.

3 MS. GRAHAM: Your Honor, I have a question. For our objection to the  
4 evidentiary hearing, if Mr. Jackson doesn't raise anything specifically to State --  
5 people in our office, would you still like that addressed through a motion or just  
6 argument?

7 THE COURT: Just argument.

8 MS. GRAHAM: Okay.

9 THE COURT: And then a hearing date thereafter.

10 THE COURT CLERK: Hearing date will be November 5<sup>th</sup> at 9:30 a.m.

11 MR. JACKSON: Could we make it -- I will be in San Francisco on November  
12 the 4<sup>th</sup> and probably coming back the 5<sup>th</sup>. Can we make it --

13 THE COURT CLERK: How about the 12<sup>th</sup>?

14 MR. JACKSON: -- two days after?

15 THE COURT: How about the 7<sup>th</sup>?

16 THE COURT CLERK: The 12<sup>th</sup> or the --

17 MR. JACKSON: The 7<sup>th</sup> is fine.

18 THE COURT: November 7<sup>th</sup>.

19 THE COURT CLERK: The 7<sup>th</sup>?

20 MR. JACKSON: The 7<sup>th</sup> is fine.

21 THE COURT CLERK: November 7<sup>th</sup> at 9:30 a.m.

22 THE COURT: All right. And you're asking us to waive your client's  
23 appearance for today.

24 MR. JACKSON: Yes.

25 THE COURT: That's fine.

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MR. JACKSON: He's working.

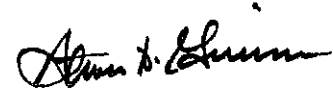
[Proceedings concluded at 9:58 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
SANDRA PRUCHNIC  
Court Transcriber



  
CLERK OF THE COURT

1 RTRAN  
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JOSHUA C. SHUE, aka  
12 JOSHUA CALEB SHUE

13 Defendant.

CASE#: C288172

DEPT. XXI

14 BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE  
15 THURSDAY, NOVEMBER 7, 2013

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**  
17 **HEARING; DEFENDANT'S MOTION FOR PSYCHIATRIC EXAMINATION OF**  
18 **ALLEGED VICTIM**

19 APPEARANCES:

20 For the State:

LEAH C. BEVERLY, ESQ.  
Deputy District Attorney

21 For the Defendant:

TERRENCE M. JACKSON, ESQ.

22  
23  
24  
25 RECORDED BY: JANIE OLSEN, COURT RECORDER

1 THURSDAY, NOVEMBER 7, 2013 AT 9:30 A.M.

2  
3 THE COURT: State versus Joshua Shue.

4 And where is Mr. Shue? He's out on bond.

5 MR. JACKSON: Yes.

6 THE COURT: Are you asking that we waive his appearance for today?

7 MR. JACKSON: Yes, Your Honor.

8 THE COURT: All right. We'll go ahead and waive his appearance.

9 And this is your motion for a psychiatric examination. We did receive  
10 an opposition and I think reply. And do you have anything you'd like to add, Mr.  
11 Jackson, to --

12 MR. JACKSON: You --

13 THE COURT: -- what has already been provided to the Court?

14 MR. JACKSON: You received my -- the affidavits --

15 THE COURT: Right.

16 MR. JACKSON: -- from my investigator, Mr. Abbott?

17 Well, the thing that I'd like to add is that we're concerned and I haven't  
18 had a chance to prepare my discovery motion. I did attempt to subpoena  
19 documents from the District Attorney's Office since the last court appearance. And I  
20 got letters from both the district attorney and a CPA that they wouldn't release the  
21 information I requested. So I will be -- I'm working on preparing a discovery motion.  
22 But the information that I sought, which I think is relevant, is -- concerns directly  
23 whether or not the alleged child victim is receiving benefits from the District  
24 Attorney's Office. That was represented by the witnesses we spoke to. They  
25 believe that she was getting certain funds or --

1 THE COURT: Like for counseling or something --

2 MR. JACKSON: No.

3 THE COURT: -- is that what you're talking about?

4 MR. JACKSON: Like for money to buy TV sets. Like for money to spend for  
5 various things. Now this is important because in a recent case it was developed that  
6 the same unit of the District Attorney's Office had destroyed the records on this  
7 and --

8 THE COURT: Are you talking about the case that was in front of Judge  
9 Cadish recently?

10 MR. JACKSON: Yes.

11 THE COURT: Is that the case you're talking about?

12 MR. JACKSON: And there is concerns, and especially since based on the  
13 information we received from the witness, specifically --

14 THE COURT: Well, let me cut you off.

15 MR. JACKSON: All right.

16 THE COURT: First of all, it seems unlikely that they're buying TV sets for the  
17 victims; however, if that's true then certainly you need to be notified about that.

18 MR. JACKSON: And I --

19 THE COURT: I would agree with you. Just like, you know, they should  
20 disclose to you what witness fees are being paid or if they're providing counseling  
21 services, not directly of course, but through -- you know, I know sometimes there's a  
22 fund for that. I would be surprised, to put it mildly, if they were buying electronics  
23 and TVs and things of that nature, but certainly if that were occurring you would be  
24 entitled to know about it.

25 MR. JACKSON: I will file a motion and specifically asking for the records of

1 the District Attorney's Office and what they have provided to this witness. Also, I will  
2 file a motion -- I've been told by CPS they won't provide information based on a  
3 Nevada statute. I think this Court has the inherent authority --

4 THE COURT: Typically what happens is if you make a motion and I grant it I  
5 sign an order.

6 MR. JACKSON: Right.

7 THE COURT: The records from CPS come to me for in-camera review and  
8 then I make a finding as to whether they're relevant or not relevant. If they're  
9 relevant then I of course make copies and distribute a copy to the defense, a copy to  
10 the State. If they're not relevant the records go into a sealed packet.

11 MR. JACKSON: For appeal.

12 THE COURT: They become a Court's exhibit and they're available for review  
13 by the Supreme Court if requested.

14 MR. JACKSON: I --

15 THE COURT: So that's what we do here. And I think --

16 MR. JACKSON: I'll go through that procedure.

17 THE COURT: -- that's pretty uniform.

18 MR. JACKSON: Now, the -- you know -- to just very briefly sum up my  
19 motion. I think this is a classic case for the Court ordering a psychiatric evaluation.  
20 The witness is going to be a critical witness for the State. She is going to testify to  
21 what happened and we want to ask her significant questions. I think her credibility is  
22 an issue. I think she has serious psychological problems. I think we can  
23 demonstrate that -- them and I think we have a right to this information and I would  
24 submit it with that.

25 THE COURT: All right.

1 State, do you want to respond?

2 MS. BEVERLY: Yes, Your Honor.

3 And I would like to make a record. First, I did file a sur-reply yesterday.

4 THE COURT: Right.

5 MS. BEVERLY: I'm sure --

6 THE COURT: Mm-hmm.

7 MS. BEVERLY: Before I talk about the actual motion, I need to make a  
8 record about the things that I'm being accused of because what Mr. Jackson is  
9 accusing me of is essentially a crime; it is bribing a witness. Saying that I am  
10 providing -- and he specifically uses my name, so that's why I filed the motion from  
11 my -- for myself. He is accusing me of bribing a witness by providing televisions,  
12 computers, cameras, cell phones. Number one, that is a complete violation of my  
13 oath as an attorney. Number two, it's a criminal offense and I can be prosecuted by  
14 my own office if I were doing that. So I would like this Court to make a finding that  
15 that is simply not true. The information that he provides in his motion is that, well,  
16 the mom said she got the gifts so I must have provided them. So I -- I would really  
17 ask this Court to make a finding based on my affidavit and knowing I'm the one  
18 prosecuting this case that that's simply false.

19 THE COURT: All right.

20 MR. JACKSON: Well --

21 THE COURT: At this point, you know, we got two affidavits. I will say this,  
22 that -- you know, like I said already, it's not believable to me that the district attorney  
23 is doing these things. Now if the District Attorney's Office said, okay, you can  
24 borrow this, you know, television to look at the video, even that would be unusual.  
25 But there's no evidence that that happened in this case because typically you'd have

1 the witness come in to your office, sit there, show them the video, or the photos, or  
2 the tape or whatever it is you wanted to watch. You know, I don't know where the  
3 mother's getting this information but, you know, she thinks this happened. You  
4 know, I just don't see anything credible, but certainly, Mr. Jackson, you can -- you've  
5 indicated an intent to file a motion. You're welcome to file whatever motion you  
6 want to file --

7 MR. JACKSON: I will.

8 THE COURT: -- so feel free to do that.

9 MR. JACKSON: Well --

10 THE COURT: I don't know what else -- what else to say.

11 MR. JACKSON: It's a question of credibility. I think maybe we should have  
12 an evidentiary hearing and bring all the parties in --

13 THE COURT: All right. At this point --

14 MR. JACKSON: -- and we can question them under oath.

15 THE COURT: -- Mr. Jackson, we are not going to set an evidentiary hearing  
16 until I get a better foundation --

17 MR. JACKSON: Okay.

18 THE COURT: -- for where this information is coming from so that we can -- I  
19 can determine whether there's a need to assess credibility, which is what you do, as  
20 you know, in an evidentiary hearing. If I find that there's not sufficient evidence that  
21 calls for me to have a hearing where I have to assess the credibility of the various  
22 witnesses then I don't see a need for an evidentiary hearing. So at this point I don't  
23 see a need, but you've indicated a desire to file a motion. You're certainly, as I just  
24 said, always welcome to file whatever motion you feel that you need to file; so go  
25 ahead and file that.

1 I certainly think, you know, generally you're entitled to a record of  
2 whatever payments were made to a witness. Now, that's probably the witness fee  
3 possibly for coming in. You know, \$25 witness fee or, you know, maybe parking. I  
4 don't know; whatever. If there's a record of that then certainly they should provide  
5 that to you.

6 Secondly, like I said, there used to be a fund that could be used for  
7 counseling and other things. If this victim has availed herself or her family has  
8 availed herself of any funds through the auspices of the district attorney then I  
9 believe you're certainly entitled to those things and anything else. So even if there  
10 hasn't been anything illegal done or bribery or anything like that, certainly legitimate  
11 payments Mr. Jackson's allowed to inquire as to those. Mr. Jackson's allowed to  
12 receive a record of those. That was kind of the issue I think in the case before  
13 Judge Cadish. Those records were destroyed. So certainly -- you know, even if  
14 there's no TV sets, which again, I think is highly unlikely, you still, Mr. Jackson,  
15 should get a record of if it's a \$25 witness fee, or parking, or the mother was paid to  
16 bring her in also \$25, whatever may have occurred, Mr. Jackson, you ought to get a  
17 record of that. I agree with you there. Okay?

18 MS. BEVERLY: And, Your Honor, for the record, attached to my sur-reply I  
19 did attach the two payments -- vouchers that the victim was paid for coming to testify  
20 at the grand jury. So that --

21 THE COURT: And that's it?

22 MS. BEVERLY: -- has been provided.

23 MR. JACKSON: I have not received --

24 THE COURT: And it's the State's --

25 MR. JACKSON: -- a reply.

1 THE COURT: -- position that's it. There were no other fees for other  
2 conferences with the District Attorney's Office, or parking reimbursement or anything  
3 like that?

4 MS. BEVERLY: That is correct. I had my victim witness person look from the  
5 start of this case until today. Those were the only two vouchers that were paid, and  
6 those for -- for preparation of the grand jury, as well as testimony at the grand jury.

7 THE COURT: Okay.

8 MR. JACKSON: I'd like to get a copy of her reply. I've been out of the office  
9 for two days. There's been a death in my family. But if counsel would be graciously  
10 -- provide me a copy of that reply.

11 MS. BEVERLY: It's on Odyssey.

12 MR. JACKSON: I will get it.

13 MS. BEVERLY: It's on Odyssey.

14 THE COURT: Okay. Anything else? Anything else relating to the motion we  
15 have today?

16 MS. BEVERLY: Yes. Absolutely, Your Honor.

17 In terms of the actual motion itself asking for a psychological  
18 examination, this is not a sex assault case. He has to meet -- even if this were a  
19 sex assault case, which it isn't, but if it were, he has to meet the requirements of the  
20 -- what the case law says is required before you can order a psychological  
21 examination. He hasn't met any of those requirements. We're not calling an expert.  
22 This is a child pornography case. It's on video. The only thing she's going to be  
23 testifying to is that's me in the video and -- or that's my brother in the video. So he  
24 hasn't met any of those requirements. But before we even get to that, it's not a sex  
25 assault case. So with that, Your Honor, I will submit --



1 THE COURT: Yeah.

2 MS. BEVERLY: -- on the rest of my opposition.

3 THE COURT: I don't see really at this point, Mr. Jackson, a basis -- as you  
4 know, it's the exception where these psychiatric examinations are ordered. It's not  
5 customary by any means. Certainly this is not the type of case, in my view, that  
6 calls out for one because her testimony really is relating to the pictures, which speak  
7 for them -- in my view, speak for themselves. And so, you know, some cases where  
8 it's just the testimony of a child, you know, uncorroborated, I think those cases might  
9 call out for it in certain circumstances where there's other information far more than  
10 in a case like this. So for that reason the motion is denied.

11 MR. JACKSON: Can I respond just briefly to that for the record?

12 THE COURT: Sure.

13 MR. JACKSON: Number one, I have a fundamental Sixth Amendment Right  
14 to confrontation. Number two, she's 17 years old, not four years old or five years  
15 old, so she can answer questions. The prosecutor may just want to get her in and  
16 off the stand and say are these -- this you? That's fine. I may have some questions  
17 going to my theory of the case, which I don't know if the Court wants me to reveal  
18 now.

19 THE COURT: Well, not right now, but certainly --

20 MR. JACKSON: But I do have questions for her regarding how the pictures  
21 were taken, where they were taken, who took them --

22 THE COURT: And that's all fair --

23 MR. JACKSON: -- and -- and --

24 THE COURT: -- game, Mr. Jackson. I mean --

25 MR. JACKSON: If she's -- if she's lying, or if she makes up things, or if she is

1 not telling the truth that is relevant. And if she has psychological --

2 THE COURT: Well, that's relevant in every single case whether it's a sex  
3 case, or a robbery case, or whatever it is. I mean, and you can always have a  
4 -- I mean, let's face it, a lot of the witnesses have psychiatric problems, and drugs  
5 problems, and emotional problems, and cognitive problems, and recall problems  
6 and other things regardless of the type of crime because that's the nature I think of  
7 people who often witness criminal activity or are involved in people who are  
8 committing criminal activity. We don't psych them all. Have them all have -- submit  
9 to psychiatric examinations because they may not be truthful because they may  
10 have cognitive impairments because they may have, you know, memory lapses and  
11 other things.

12 Certainly -- I mean, there's two issues here. There's your right of  
13 confrontation that nobody is trying to limit in any way. You can confront her. You  
14 can cross-examine her. You can ask her about these things, but that doesn't mean  
15 that we're going to subject her to an examination at this point. I simply don't see  
16 that there's enough here that warrants it in this case. That's what I'm saying. Now  
17 you can complete your record to the extent it's not -- it's already not a part of the  
18 papers that you have filed in this matter. If it's part of the paperwork then obviously,  
19 as we all know, it's the record. It is the record.

20 But if you need to say anything else -- I mean, don't try to change my  
21 mind because at this point that's my ruling. Now if something else comes up in the  
22 future and you want to renew your motion, as I said, you're welcome to file whatever  
23 motion you deem appropriate if there's new information, but at this point in time I just  
24 don't see a justification. That's my opinion.

25 MR. JACKSON: Would it be appropriate to resolve this matter now than

1 before trial and bring up all these issues in front of a jury. We're going to have to  
2 litigate this again. We have this 17 year old, her psychological issues, I think it  
3 should be resolved.

4 THE COURT: Resolved how?

5 MR. JACKSON: Well --

6 THE COURT: I mean, even if you get an opinion --

7 MR. JACKSON: Are you going to advise me I can't --

8 THE COURT: -- that shows that she has some emotional issues, which  
9 frankly, wouldn't be surprising. What, you're then going to ask me that she not be  
10 allowed to testify. Either way, I mean, they're then going to have an opinion that she  
11 is competent to testify. So she's still probably going to be testifying, you know,  
12 unless she's -- you know, and no one's suggesting that she's delusional to the point  
13 where she can't give -- she's not competent to testify.

14 MR. JACKSON: Well, we don't know that.

15 THE COURT: What you're talking about is her credibility, as I understand it,  
16 not her competency as a witness. So even if you find something that, you know,  
17 suggests that she's not that credible she still is going to be able to testify, so we still  
18 would be crossing this bridge in front of the jury. Ultimately it's still going to be the  
19 jury's call.

20 MR. JACKSON: We don't know that she's not delusional. I'd like to show the  
21 Court pictures of what a cutter does to herself.

22 THE COURT: Have you shown the State?

23 MS. BEVERLY: This is not --

24 MR. JACKSON: I'm showing the State's now.

25 MS. BEVERLY: This is not even a picture --

1 THE COURT: I mean, that should've been --  
2 MS. BEVERLY: -- of the victim.  
3 MR. JACKSON: I just got these --  
4 MS. BEVERLY: It's not even a picture of our victim.  
5 MR. JACKSON: -- I got these yesterday. This is what -- this is not your  
6 victim, but this --  
7 THE COURT: Was she a cut --  
8 MS. BEVERLY: She's not our victim.  
9 MR. JACKSON: I haven't been able to get pictures --  
10 THE COURT: Oh, I'm sorry.  
11 MR. JACKSON: -- because they haven't given me the medical records.  
12 MS. BEVERLY: What medical --  
13 MR. JACKSON: But this what a cutter does.  
14 MS. BEVERLY: -- what medical records?  
15 THE COURT: Who are these pictures of?  
16 MR. JACKSON: They're a picture of a cutter and this is what they do to  
17 themselves.  
18 THE COURT: I'm -- okay. I know what a cutter does. I've -- you know,  
19 familiar with --  
20 MR. JACKSON: Okay. Well, that's why we need a psych of this girl.  
21 THE COURT: Okay. Mr. Jackson --  
22 MR. JACKSON: I'd like to get the medical records. I'd like -- they're not --  
23 they're stonewalling me and not giving me anything.  
24 THE COURT: Okay. Mr. Jackson, there are three different issues here. Your  
25 right of confrontation. No one's trying to minimize that. You can cross-examine her,

1 you know, just like you would any other witness. The psychiatric examination. Your  
2 request is denied at this point in time. Discovery issues. I've told you already, file  
3 your motion. I've told you what you're entitled to; any payments. If there are other  
4 discovery issues then you need to raise that by way of a motion. This is on calendar  
5 for a single motion.

6 MR. JACKSON: Okay.

7 THE COURT: We're not going to this morning -- without the Court having the  
8 benefit of reviewing any written pleadings relating to these other matters, we're not  
9 going to address every conceivable issue that may come up in the trial at this point  
10 in time.

11 This was calendared for a single motion. We've addressed the motion;  
12 we've addressed some discovery issues. You know -- I mean, basically, State, you  
13 know, if you paid her something, if you paid the family something, anybody relating  
14 to her Mr. Jackson needs to know about it and you need to provide the proof, the  
15 voucher, whatever you might have in your records; okay. That's the ruling.

16 Now, if Mr. Jackson says I want something showing the payment of a  
17 TV set and nobody bought her a TV set, then I expect an affidavit from somebody or  
18 from the custodian of records to say we've reviewed our records and there's no  
19 payment of a TV set. That should address that issue, you know, there and then. I  
20 mean -- like I said, I don't believe it occurred but, you know, it's very simple. They  
21 can note the absence of a voucher in their records as well as the presence of a  
22 voucher. So that's what I expect for the State.

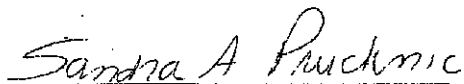
23 So I think we've addressed everything that's before the State this  
24 morning. And as I said, Mr. Jackson, if they're ongoing discovery issues, these  
25 other matters, please file your motion and we'll deal with it at that time.

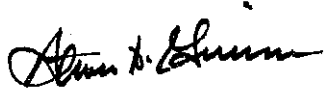
1 MR. JACKSON: Your Honor, could I have a transcript of today's hearing --  
2 THE COURT: You can have a transcript --  
3 MR. JACKSON: -- prepared at State expense.  
4 THE COURT: -- of any hearing.  
5 MR. JACKSON: My client is basically indigent and he hasn't -- I'm going to be  
6 making other motions concerning that.  
7 THE COURT: Okay. Mr. Jackson, you need to submit an affidavit --  
8 MR. JACKSON: I will.  
9 THE COURT: -- and a request to chambers for transcripts at State's  
10 expense; okay.  
11 MR. JACKSON: Thank you.  
12 THE COURT: And then if I think it's justified I'll sign it. Obviously, other than  
13 at State expense, you're entitled to transcripts of any hearing, if you want to pay for  
14 them, that occurs in this open courtroom.  
15 MR. JACKSON: I understand. Thank you.  
16 MS. BEVERLY: Thank you.

17 [Proceedings concluded at 9:48 a.m.]

18 \* \* \* \* \*

19  
20  
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio/video proceedings in the above-entitled case to the best of my ability.

23   
24 SANDRA PRUCHNIC  
25 Court Transcriber

  
CLERK OF THE COURT

1 RTRAN  
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JOSHUA C. SHUE, aka  
12 JOSHUA CALEB SHUE

13 Defendant.

CASE#: C288172

DEPT. XXI

14 BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE  
15 TUESDAY, DECEMBER 17, 2013

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**  
17 **DEFENDANT'S MOTION FOR DISCOVERY**

18 APPEARANCES:

19 For the State:

LEAH C. BEVERLY, ESQ.  
Deputy District Attorney

20  
21 For the Defendant:

TERRENCE M. JACKSON, ESQ.

22  
23  
24  
25 RECORDED BY: JANIE OLSEN, COURT RECORDER

1 TUESDAY, DECEMBER 17, 2013 AT 9:29 A.M.

2  
3 THE COURT: State --

4 MS. LAVELL: Your Honor, if we could -- I believe that Leah Beverly is going  
5 to come down for this.

6 THE COURT: All right. I'm sorry, Mr. Jackson, we have to trail this for Ms.  
7 Beverly.

8 MR. JACKSON: All right. I'm ready whenever she is. I'll hang around.

9 THE COURT: Okay.

10 MR. JACKSON: I'll watch the proceedings with happiness.

11 THE COURT: Well, enjoy yourself.

12 MR. JACKSON: All right.

13 [Proceedings trailed at 9:30 a.m.]

14 [Proceedings resumed at 9:32 a.m.]

15 THE COURT: State versus Joshua Shue.

16 And are you asking that we waive Mr. Shue's --

17 MR. JACKSON: Yeah.

18 THE COURT: -- presence for today? That's fine.

19 All right. This is your discovery motion. And do you want me to just go  
20 through everything or, Mr. Jackson, do you want to highlight the ones --

21 MR. JACKSON: Well --

22 THE COURT: -- where you feel there still is some kind of dispute and you  
23 need --

24 MR. JACKSON: It's kind of like I didn't --

25 THE COURT: -- the Court's intervention?



1 MR. JACKSON: I didn't discover much with my discovery motion in that the  
2 State claims that there wasn't much to be discovered. And all the things I asked for  
3 they claimed I either already had them -- and some of the things I don't believe I  
4 have and -- or they say they don't exist, which is convenient, but --

5 THE COURT: Well, it may -- it may be convenient or it may be true.

6 MR. JACKSON: Well, --

7 THE COURT: Or it may --

8 MR. JACKSON: -- it may be true.

9 THE COURT: -- be both.

10 MR. JACKSON: The -- I have some contrary information on some of the  
11 things and I just point out the things I have contrary information on --

12 THE COURT: Okay.

13 MR. JACKSON: -- just to make a record.

14 THE COURT: All right. Go ahead.

15 MR. JACKSON: And if I'm wrong then later if somewhere down the road it  
16 might come out that I was right, or at least I was partially right, and it can be  
17 resolved later sometime down the road.

18 THE COURT: All right.

19 MR. JACKSON: What I have information on is that the victim, you know, has  
20 been getting some funds from the District Attorney's Office. And I got that from her  
21 mother. That's what --

22 THE COURT: Isn't that the same thing we --

23 MR. JACKSON: -- her mother believes.

24 THE COURT: I'm sorry. I didn't mean to interrupt you. Isn't that the same  
25 thing we talked about last time where allegedly Ms. Beverly gotten her a TV set or

1 something like that?

2 MR. JACKSON: Right.

3 THE COURT: Aren't we kind of back to --

4 MR. JACKSON: All I want is the records that they have. And they -- and  
5 they're saying well they got no records. Now -- you know, if they got records, they  
6 got records. I went to subpoena them; they said well I -- not following procedures. I  
7 think they should have some procedures. They say they -- you know, what brought  
8 this up -- why I decided to file the writ of motion is Mr. Figler had the same issue in a  
9 case of his and it turned out that lo and behold the same unit of the Clark County  
10 District Attorney's Office had not complied completely and --

11 THE COURT: Are you talking about the case in front of Judge Cadish that  
12 was ultimately dismissed?

13 MR. JACKSON: He actually got an acquittal on many counts because Judge  
14 Cadish --

15 THE COURT: Oh, she gave an instruction.

16 MR. JACKSON: -- gave an instruction.

17 THE COURT: That's correct.

18 MR. JACKSON: And I just want --

19 THE COURT: She gave an instruction --

20 MR. JACKSON: -- to make sure --

21 THE COURT: -- to the jury and that -- as I -- I know what I read in the paper.

22 MR. JACKSON: It was a --

23 THE COURT: Okay. So I haven't studied --

24 MR. JACKSON: -- spoliation instruction.

25 THE COURT: Right. But it pertained to the witness fees and that there was

1 no record, correct, of the witness fees that had been paid by the State. I don't recall  
2 from what I read, and I certainly haven't reviewed the Court's file, so I don't know  
3 anything about a TV set or gifts or anything like that. I thought it just concerned that  
4 they hadn't kept records of the witness fees that had been paid.

5 MR. JACKSON: Well, I -- I'm always -- now, I -- there is also an issue that  
6 came up in this case whether or not a certain detective, Mr. Jaeger, has undue  
7 influence on one of the witnesses. And that is other information I have received  
8 from investigation that he may have either through threats or through excessive  
9 persuasion maybe. And, you know, maybe that's just his interpretation --

10 THE COURT: All right. Let's back --

11 MR. JACKSON: -- of his job.

12 THE COURT: -- let's back up here for a minute. First of all, what you're  
13 saying to me is, well, somebody told you this that somebody got that. I mean, if you  
14 want this to be made part of the record then I think you need some kind of an  
15 affidavit --

16 MR. JACKSON: All right.

17 THE COURT: -- or something from this mother saying I believe my child was  
18 given a TV set. And the reason I believe that is because one day Investigator Bob  
19 from the DA's Office showed up carrying a TV set or whatever information she may  
20 have. Because right now all you're telling me --

21 MR. JACKSON: Right.

22 THE COURT: -- is this mother has told you something and -- I mean, how do  
23 they give you -- if there's no record -- if they didn't buy the TV set, which, as I said  
24 last time, in my view would be highly unusual. If they didn't buy the TV set what  
25 record are they going to have? A record that says we didn't buy this person a TV

1 set. We never buy a TV set. There is no record. There's not going to be a record.  
2 So -- I mean, if it's true -- and like I said, it would seem very unlikely to me that all of  
3 a sudden they're in the business of giving expensive electronic gifts --

4 MR. JACKSON: My understanding --

5 THE COURT: -- to witnesses.

6 MR. JACKSON: -- is what they're doing is supporting the individual with cash  
7 payments so she could move out. And this is -- you know, whether they have a  
8 cash fund for this or providing support --

9 THE COURT: Okay. Here's -- we're back --

10 MR. JACKSON: -- so she could move away from her mother.

11 THE COURT: -- we keep -- Mr. Jackson, I don't mean to keep interrupting  
12 you, but we keep going back to square one, which is where we were at our last  
13 hearing and I said, basically you telling me what somebody told you is not credible  
14 evidence before this Court. If you want to make a better record then you need to  
15 come up with an affidavit or something from this victim's mother or family members  
16 and why they believe that the District Attorney's Office has given money to the  
17 victim, or a TV set to the victim, or any other gifts to the victim beyond the ordinary  
18 victim witness fee of the \$25 --

19 MR. JACKSON: Right.

20 THE COURT: -- or whatever it is nowadays.

21 MR. JACKSON: I'll do that.

22 THE COURT: It used to be \$25. And then if I think, or they think, that there's  
23 reason, Ms. -- not Ms. Beverly who's not -- she can do her own affidavit saying she's  
24 not responsible, she didn't give any gifts, she didn't authorize the payment of any  
25 gifts. And then if need be the financial person for the District Attorney's Office can

1 do an affidavit saying that the District Attorney's Office has not made any payments  
2 over and beyond the witness fees. That's how we put credible -- or evidence to be  
3 considered before the Court; not you saying somebody told you and therefore it  
4 must be true.

5 MR. JACKSON: I didn't say it must be true.

6 THE COURT: Well --

7 MR. JACKSON: I said that --

8 THE COURT: I mean, you're making inquiry --

9 MR. JACKSON: -- I said that there was --

10 THE COURT: -- and Ms. Beverly has already said that that didn't happen in  
11 this case. So I don't really know where you want to go from here. What are you  
12 asking the Court to do at this point?

13 MR. JACKSON: I'm asking for the -- the State has responded. They have a  
14 duty under *Kyles versus Whitley*, under *Giglio* to provide me with exculpatory  
15 evidence. They're saying --

16 THE COURT: But if it doesn't exist --

17 MR. JACKSON: -- they don't have it.

18 THE COURT: -- what are they going to provide you with.

19 MR. JACKSON: Okay.

20 THE COURT: They can't provide you with a record that doesn't exist. I  
21 mean, you're -- there would be --

22 MR. JACKSON: All right.

23 THE COURT: -- no record.

24 MR. JACKSON: Now, if I present -- you're saying if I present affidavits  
25 contrary to what they say that you -- will you order an evidentiary hearing under

1 those circumstances?

2 THE COURT: Not necessarily. But Ms. Beverly certainly can do an affidavit,  
3 as well as the financial people at the District Attorney's Office who would be  
4 responsible for making such a payment.

5 MR. JACKSON: Now the one thing I did ask for, which I believe I should be  
6 entitled to, is the criminal records and the -- of the victim and her -- and I used to be  
7 able to get this as a public defender; as private counsel I can't get them. They cited  
8 federal statutes. I'm not sure why I wouldn't be entitled to that. It would allow me to  
9 impeach them.

10 THE COURT: Okay. Basically, I'll tell you my blanket rule on this is this.  
11 They can't -- they're not allowed to turn over NCIC -- the actual printouts. If they --  
12 the victim, any other witness. If they uncover information that there's a conviction  
13 that can be used for impeachment purposes they must disclose that to you. They  
14 must disclose the nature of the offense, the date of the conviction, the jurisdiction in  
15 which the person was convicted, and then you can obtain a certified judgment of  
16 conviction. That's what I require. So if there is such information then Ms. Beverly  
17 must turn that over. But, no, they don't give you NCIC and, you know, any minor  
18 ticketing or, you know, anything like that that couldn't be used for impeachment.  
19 That's basically the blanket rule that I have. And that will be the order in this case  
20 as well, as it is in every other case, when defense counsel asks for that information.  
21 So I don't know where to go from there.

22 MR. JACKSON: Will they give me the disciplinary records of the officers  
23 involved here, especially whether they have had any problems in the past regarding  
24 intimidation of witnesses or similar actions.

25 THE COURT: All right. Here's what the State has said. If -- they're going to

1 look and see if there's any disciplinary -- if there's ever been an incidence of  
2 discipline. They're going to disclose that to you. Then I may order an in-camera  
3 review of what the disciplinary history was. You know, let's just say it was speeding.  
4 I don't know that that's really --

5 MR. JACKSON: I'm not interested in that.

6 THE COURT: No, that's what I'm saying. Let's say they were disciplined for  
7 running a stoplight in a patrol car or for speeding in a patrol car. They may have  
8 been disciplined for something like that. That isn't relevant to this. So if that's what  
9 the discipline is I'm not going to make them disclose those records. We're going to  
10 see what they are if, in fact, there is a history of discipline. That's all I'm saying.  
11 And you right now have conceded that there are things conceivably law enforcement  
12 officers can be disciplined for, which should be wholly irrelevant to this case, so you  
13 don't get all that; if, in fact, there even is anything. I don't know.

14 So -- I mean, I think probably --

15 MR. JACKSON: Well --

16 THE COURT: -- on most of this going forward -- Ms. Beverly.

17 MS. BEVERLY: If I could just respond briefly, Your Honor.

18 In terms of the discipline, of course, if there is something I will disclose  
19 that. My concern is with this -- we keep going in circles with this affidavit. He  
20 already filed an affidavit saying that this is what the mother told him. I then already  
21 filed an affidavit saying that, you know, from --

22 THE COURT: Well, I don't want his affidavit, Ms. Beverly. What I'm saying is  
23 we're back to square one. You call it going in circles. I call it going back to square  
24 one, which is, I don't want his affidavit. I don't want him saying I was told this. If you  
25 think you have credible evidence from somebody who would know of improper

1 payments from the District Attorney's Office then you need to put that out there, Mr.  
2 Jackson. You just can't stand here saying, oh, somebody told me this and that and  
3 ask this Court to believe that the State is making improper payments. You need to  
4 come forward with something more. That's what I'm telling you.

5 MR. JACKSON: All right. I'd like an opp --

6 THE COURT: Your affidavit -- your hearsay affidavit isn't sufficient.

7 MR. JACKSON: I'd like --

8 THE COURT: I believe you that you were told this but, you know --

9 MR. JACKSON: One of the things I'd like is an opportunity to have my  
10 investigator talk to the alleged victim, but I think the pressure has been put on her by  
11 the State. I know she doesn't have to speak to us, but I think she could clear up a  
12 lot of things. And that's one of the things that I have concern -- and I may be filing a  
13 motion to dismiss because she has been pressured not to speak to my  
14 investigators.

15 THE COURT: Okay. Mr. Jackson, as you yourself have conceded just now,  
16 she doesn't have to speak to you.

17 MR. JACKSON: That's correct.

18 THE COURT: You haven't spoken to her, so we don't know if she's been  
19 pressured or not pressured. It sounds to me like you're conjecturing --

20 MR. JACKSON: Well --

21 THE COURT: -- she's been pressured, or maybe the mother told you she's  
22 been pressured --

23 MR. JACKSON: That's correct.

24 THE COURT: -- or whatever. You know, I'm sure Ms. Beverly's going to say  
25 no she wasn't pressured and, you know, I don't know what --



1 MR. JACKSON: Would Ms. Beverly give me her current address right now?

2 THE COURT: All right. I don't see -- first of all --

3 MR. JACKSON: She can send it to me by email. She doesn't have to give it  
4 in the courtroom.

5 THE COURT: She can disclose the address, but --

6 MR. JACKSON: Okay.

7 THE COURT: -- again, if the victim has indicated she doesn't want to speak  
8 with you or your investigator -- specifically your investigator --

9 MR. JACKSON: That's fine.

10 THE COURT: -- then she doesn't have to do that. And getting another  
11 address, if he's already gone out there and been told she doesn't want to speak to  
12 him, this does not invite him going out anew and bothering her. I mean, basically it's  
13 not unusual, as you well know, for a victim not to want to speak to the defense's  
14 investigator. The rules are she doesn't have to. I mean, I don't -- I don't know what  
15 you're asking me to do.

16 MR. JACKSON: Well, she could be asked whether anyone has put pressure  
17 on her not to. That's perfectly --

18 THE COURT: Well, no -- I mean --

19 MR. JACKSON: -- a proper question.

20 THE COURT: Basically, Mr. Jackson, we're not going to make this case any  
21 different from any other case where the victim doesn't want to speak with the  
22 defense attorney's investigator. I mean, the rule is they don't have to.

23 MR. JACKSON: They don't have to and that's correct, but if the government  
24 has told them that they should not then that is grounds to dismiss under due  
25 process, *United States versus Gregory*. And so I just want to determine if that's the

1 situation.

2 THE COURT: All right. Now we're going around in circles.

3 MR. JACKSON: No, we're going straight forward.

4 THE COURT: All right. Mr. Jackson, here's the deal. I'm not going to make a  
5 special order that -- essentially what you're asking me to do is to make a special  
6 order that compels the victim to answer a single question from your investigator,  
7 which is, has the District Attorney's Office told you not to speak or not to cooperate  
8 with the defense. That's essentially what you're asking for; correct?

9 MR. JACKSON: Well, that is one question --

10 THE COURT: Or you want me to --

11 MR. JACKSON: -- that I will have my investigator --

12 THE COURT: -- schedule a separate --

13 MR. JACKSON: -- try to find out.

14 THE COURT: -- evidentiary hearing and call her in and -- certainly, you know,  
15 if there are other third party witnesses he can talk to those people, but I'm not willing  
16 to make an exception here to say she has to answer a single question, or a series of  
17 questions, or come in for an evidentiary hearing and that seems to me what you're  
18 asking me to do.

19 MR. JACKSON: Well, I'll file appropriate paperwork and we'll -- you know, but  
20 the government, you know, cannot dictate the way they shield their witnesses in a  
21 case.

22 THE COURT: Okay.

23 MR. JACKSON: That's not the way --

24 THE COURT: Ms. Beverly, would you like to place on the record what, if  
25 anything, you told the victim, or if it's the victim's mother, the victim's guardian, the

1 victim doesn't have either, is older now, what exactly was stated regarding their  
2 obligations, if any, to speak with the defense?

3 MR. JACKSON: I'm not saying it was Ms. Beverly. I believe it was Detective  
4 Jaeger.

5 MS. BEVERLY: Yes, I would, Your Honor. Thank you.

6 And just for the record, this victim no longer lives at home. She is over  
7 the age of 18. She is no longer in foster care. She is no longer a ward of the State.  
8 She is living on her own at this point.

9 And for the record, I've had several conversations with the victim in this  
10 case. I have told her numerous times that she is allowed to speak to whoever she  
11 would like to speak to in this case. If she has any questions she is more than able  
12 to call me, but she is allowed to speak to anyone that she wishes in this case, and  
13 she's allowed not to speak to anyone in this case if she chooses not to. That's the  
14 only thing I've ever told her.

15 MR. JACKSON: And for the record, I've never suggested Leah Beverly told  
16 her not to speak to me or my representatives.

17 THE COURT: All right. Looking at your request for discovery, the only two  
18 sort of outstanding things where there may be information that hasn't been disclosed  
19 are number 7, the mental health records of Hazel Iral, and the disciplinary records of  
20 Detective Jaeger. Ms. Beverly has already stated if she becomes aware of any  
21 disciplinary records she will disclose that and then the Court will order an in-camera  
22 review to determine relevancy. Okay? That's where we are on number 8.

23 On number 7, the mental health records of Ms. Iral in the possession of  
24 CPS or the District Attorney's Office. Ms. Beverly has stated that the District  
25 Attorney's Office does not have any mental health records nor are you aware of any;

1 is that correct?

2 MS. BEVERLY: Correct. And I don't know what really he means by mental  
3 health records. I don't know if he means CPS records that exist or if he means  
4 like --

5 THE COURT: Counseling or --

6 MS. BEVERLY: I don't know what he means, but I don't have any.

7 THE COURT: Okay. Well, do you have anything that could be construed as  
8 a mental health record?

9 MS. BEVERLY: Not -- not that I -- nothing from any hospitals. If he wants  
10 CPS records then I would ask that the Court --

11 THE COURT: Right.

12 MS. BEVERLY: -- review those in-camera, but --

13 THE COURT: Here's what we're going to order on the CPS records. Go  
14 ahead and do an order. It will be -- come to me for in-camera review. If I see  
15 anything that may be relevant it will be disclosed to both sides. If not, the records  
16 become a Court exhibit for potential appellate review and are in a sealed condition  
17 with the clerk of the court. All right?

18 MS. BEVERLY: Thank you, Your Honor.

19 THE COURT: And so I don't know that we need to do anything else on what  
20 was scheduled for today. I mean, we could set it over for a status check on the  
21 issue of the CPS records and the issue of Detective Jaeger and the discipline.

22 Why don't we go out six weeks -- six to eight weeks.

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THE COURT CLERK: February 4<sup>th</sup> at 9:30.

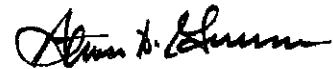
MS. BEVERLY: Thank you.

[Proceedings concluded at 9:50 a.m.]

\* \* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
SANDRA PRUCHNIC  
Court Transcriber

  
CLERK OF THE COURT

1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

CASE#: C288172

DEPT. XXI

11 JOSHUA C. SHUE, aka  
12 JOSHUA CALEB SHUE

13 Defendant.

14 BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE  
15 TUESDAY, FEBRUARY 4, 2014

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**  
17 **STATUS CHECK: CPS RECORDS**

18 APPEARANCES:

19 For the State:

LEAH C. BEVERLY, ESQ.  
Deputy District Attorney

20  
21 For the Defendant:

TERRENCE M. JACKSON, ESQ.

22  
23  
24  
25 RECORDED BY: JANIE OLSEN, COURT RECORDER

1 TUESDAY, FEBRUARY 4, 2014 AT 9:44 A.M.

2  
3 THE COURT: State versus Joshua Shue.

4 Where's Mr. Shue?

5 MR. JACKSON: He's present.

6 THE COURT: All right. He can stand next to Mr. Jackson.

7 This is on just for a status check regarding the CPS records. We have  
8 not received any CPS records.

9 MS. BEVERLY: Judge, I did provide them back on the 18<sup>th</sup> to your JEA, as  
10 well as the records for -- the discipline records for the police officers --

11 THE COURT: Okay. I apologize --

12 MS. BEVERLY: -- that Your Honor had asked me for.

13 THE COURT: -- because somehow they didn't make it back to me.

14 MS. BEVERLY: I can make another copy.

15 THE COURT: Okay.

16 MS. BEVERLY: I did want to make -- just while we're here and while the  
17 Defendant is here, I just did want to make a couple of -- a record on a couple of  
18 different issues.

19 THE COURT: Okay.

20 MS. BEVERLY: The first one being that when Mr. Jackson filed his discovery  
21 motion, in my reply I did ask for reciprocal discovery. It's my understanding that he's  
22 interviewed various people in this case. I've receive no discovery for him. I would  
23 like, based on the reciprocal discovery rules, any transcripts or audio of any  
24 witnesses he's interviewed in this case. And maybe we could set that also for a  
25 status check the same day as the status check for the CPS records so he can

1 provide me with whatever information he has or that he plans to use.

2 MR. JACKSON: I'm going to give her an affidavit today I have from one of the  
3 witnesses. That's Ms. Anita Iral, which I received from her last night.

4 THE COURT: Okay.

5 MR. JACKSON: It's a short affidavit. I have some investigative reports which  
6 I think are probably work product, but I will review them and give those parts of them  
7 that I think are discoverable to her. I'm waiting, of course, for the CPS records.  
8 Once the Court has the chance to redact them or review them --

9 THE COURT: And I apologize for that confusion.

10 MR. JACKSON: Yeah, I understand. We're -- you know, I'm going off to  
11 California in a few days to the Ninth Circuit; I won't be back till the middle of next  
12 week. When I get back I have a whole bunch of things waiting for me, but this is  
13 one of the cases I will be focusing on along with some others. And I will contact Ms.  
14 Beverly and I'll contact the Court about getting discovery that's available after the  
15 Court has -- had her JEA review what is appropriate to release me --

16 THE COURT: Well, I'll be reviewing it.

17 MR. JACKSON: -- from CPS.

18 THE COURT: I don't know what the --

19 MR. JACKSON: I understand.

20 THE COURT: -- between me and the JEA where it went. I will say this.  
21 Basically, if I review it and determine that it's discoverable then we'll just make the  
22 copies and contact --

23 MR. JACKSON: Okay.

24 THE COURT: -- both counsel and give you that, and then the original  
25 becomes a Court's exhibit for appellate purposes so it's clear what's been turned



1 over. Okay?

2 MR. JACKSON: And if it's not, you know I'll -- you know I'll accept the Court's  
3 ruling at least until appellate time and we'll go from there.

4 THE COURT: All right. So, Mr. Jackson, going forward you're going to turn  
5 over that affidavit to Ms. Beverly today.

6 MR. JACKSON: Yes.

7 THE COURT: You're going to agree to go through whatever investigative  
8 reports have been generated in connection with your investigation and turn over any  
9 information that's discoverable. Is that correct?

10 MR. JACKSON: Yeah.

11 THE COURT: Okay.

12 MS. BEVERLY: Judge, I also wanted to make a couple other motions. Well, I  
13 also wanted to say that I have turned over everything other than the CPS records  
14 that we're talking about. But otherwise --

15 THE COURT: Okay.

16 MS. BEVERLY: -- I have turned over all of -- all other discovery. I do not  
17 anticipate any other discovery coming in, and with that we would be ready for trial in  
18 June -- our June 3<sup>rd</sup> date.

19 Also, I wanted to make a record that while there were some preliminary  
20 discussions between Mr. Jackson and I, I've never made an offer in this case.  
21 There's not an offer in this case. We're just simply, based on our discussions, way  
22 too far apart for me to even make an offer. So I did want to make a record of that  
23 based on that Supreme Court case.

24 And I'm a little concerned because when -- this case has been going on  
25 for a while and the Defendant is out of custody, and I have received some possible

1 information that he might still be visiting the home with the two boys and where the  
2 mom lives. I just wanted to remind him that he has a very strict stay-away order  
3 from that apartment where the mother lives, as well as where the two boys live, and  
4 I just want to make sure there's no issues with him visiting or anything like that.

5 THE COURT: I'm assuming, Mr. Shue, you're going to deny that you visited  
6 the apartment.

7 THE DEFENDANT: I don't go to the apartment.

8 THE COURT: Unless -- let me just give you sort of some advice.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Unless you live in that apartment complex there's really no  
11 reason for you to even be there.

12 THE DEFENDANT: Yeah.

13 THE COURT: So I would just stay -- you know, I'm not saying you were  
14 there, but stay away from that whole complex. I don't know how big it is or  
15 whatever, but that way nobody can say they saw you there or anything like that, and  
16 you'll be able to stay out of trouble and you'll be able to, you know, stay at liberty  
17 until we go forward with your trial. So that would just be my advice to you.

18 THE DEFENDANT: Yes, ma'am.

19 MS. BEVERLY: Thank you, Judge.

20 THE COURT: All right. So, basically, do we need to set this for another  
21 status check then or do we just want to, you know, have the Court disseminate  
22 anything, you know, it finds discoverable?

23 Mr. Jackson, you will give Ms. Beverly what you have. And then if  
24 there's a problem we can put it on calendar.

25 MS. BEVERLY: Sure. And I'll make -- recopy that again today and bring

1 them up to chambers.

2 THE COURT: Okay. Thank you, Ms. Beverly.

3 MS. BEVERLY: Thank you.

4 THE COURT: Is that acceptable with you, Mr. Jackson?

5 MR. JACKSON: Yeah. I'd like -- once I -- once I see -- if there's something --  
6 once I get from CPS, if there's something else I need I'll file appropriate motions.

7 THE COURT: Okay. All right. Thank you.

8 MS. BEVERLY: Thank you.

9 [Proceedings concluded at 9:49 a.m.]

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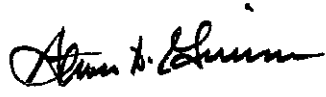
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio/video proceedings in the above-entitled case to the best of my ability.

23

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25

Sandra A Pruchnic  
SANDRA PRUCHNIC  
Court Transcriber

  
CLERK OF THE COURT

1 RTRAN

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3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JOSHUA C. SHUE, aka  
12 JOSHUA CALEB SHUE

13 Defendant.

CASE#: C288172

DEPT. XXI

14 BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE  
15 THURSDAY, FEBRUARY 20, 2014

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**  
17 **STATUS CHECK: CPS RECORDS**

18 APPEARANCES:

19 For the State:

OFELIA MONJE, ESQ.  
Deputy District Attorney

21 For the Defendant:

No Appearance

22  
23  
24  
25 RECORDED BY: PATRICIA SLATTERY, COURT RECORDER

1 THURSDAY, FEBRUARY 20, 2014 AT 10:59 A.M.

2  
3 THE COURT: Mr. Jackson never showed up and Ms. Beverly never showed  
4 up.

5 MS. MONJE: Your Honor, I have the file from Ms. Beverly.

6 THE COURT: Okay. Here's the deal on State versus Joshua Shue. We  
7 were going to release the CPS records and Metro discipline record because it goes  
8 to veracity. So what we're going to do is photocopy that and when it's ready call  
9 both sides to pick it up from the box or chambers. Okay?

10 MS. MONJE: Yes, Your Honor.

11 THE COURT: So I don't really need Mr. Jackson for that.

12 [Proceedings concluded at 10:59 a.m.]

13 \* \* \* \* \*

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio/video proceedings in the above-entitled case to the best of my ability.

23 Sandra A Pruchnic  
24 SANDRA PRUCHNIC  
25 Court Transcriber

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3 JOSHUA C. SHUE,

No. 67428

4                                   Appellant,

5                                   v.

6  
7 THE STATE OF NEVADA,

8                                   Respondent.

9  
10                                   **APPELLANT'S APPENDIX VOLUME II PAGES 241-456**

11 PHILIP J. KOHN  
12 Clark County Public Defender  
13 309 South Third Street  
14 Las Vegas, Nevada 89155-2610

STEVE WOLFSON  
Clark County District Attorney  
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Las Vegas, Nevada 89155

Attorney for Appellant

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Attorney General  
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Counsel for Respondent

17                                   **CERTIFICATE OF SERVICE**

18                                   I hereby certify that this document was filed electronically with the Nevada  
19 Supreme Court on the 20<sup>th</sup> day of July, 2015. Electronic Service of the  
20 foregoing document shall be made in accordance with the Master Service List as follows:

21 CATHERINE CORTEZ MASTO  
22 STEVEN S. OWENS

HOWARD S. BROOKS  
WILL WATERS

23                                   I further certify that I served a copy of this document by mailing a true and  
24 correct copy thereof, postage pre-paid, addressed to:

25 JOSHUA C. SHUE  
26 NDOC # 1133873  
27 c/o HIGH DESERT STATE PRISON  
28 PO Box 650  
Indian Springs, NV 89070

BY 

Employee, Clark County Public Defender's Office