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Respondent.

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APPELLANT'S APPENDIX VOLUME VIII PAGES 1349-1521

Counsel for Respondent

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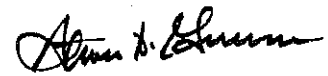
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

JOSHUA C. SHUE,

Defendant.

CASE NO. C288172-1
DEPT NO. XXI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

FRIDAY, AUGUST 29, 2014

APPEARANCES:

For the State:

LEAH C. BEVERLY, ESQ.
MARIA LAVELL, ESQ.
Chief Deputy District Attorneys

For the Defendant:

TERRENCE M. JACKSON, ESQ.

RECORDED BY: JANIE OLSEN, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

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I N D E X

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1 LAS VEGAS, CLARK COUNTY, NEVADA, AUGUST 29, 2014, 9:02 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: All right. I received a proposed packet
5 from the State. Let's start with their proposed packet.

6 MR. JACKSON: You'll be happy to know I have no
7 objections to any of the State's proposed instructions.

8 THE COURT: Okay. All right.

9 MR. JACKSON: So that'll go fast.

10 THE COURT: All right. What about the verdict form,
11 do you have any objections to the verdict form?

12 MR. JACKSON: You know, I looked -- I just scanned
13 it. I don't believe I have any objection to the verdict form
14 as long as they haven't checked guilty on any of them.

15 MS. BEVERLY: Not yet.

16 THE COURT: Guilty isn't in bold letters or anything
17 like that.

18 MR. JACKSON: You know, I just skimmed it this
19 morning when I was in my office. So I don't believe I have any
20 objection.

21 THE COURT: Okay. Before we get to your proposed
22 instructions, because of the length, 41 counts of the
23 indictment, does anyone have any objection if instead of
24 reading all 41 counts of the jury I say, Okay, and then
25 beginning with Count 1 you have the 41 counts of the

1 indictment, which Ms. Husted read to you at the beginning of
2 the case, and that's all here for you to go over?

3 MS. LAVELL: Thank you.

4 MS. BEVERLY: Thank you.

5 THE COURT: Does anyone have any --

6 MR. JACKSON: I'll waive a rereading of the whole
7 indictment because I think, frankly, it bores the jury.

8 MS. BEVERLY: I do, too. Please.

9 MR. JACKSON: And it will speed things up.

10 MS. BEVERLY: Yes.

11 THE COURT: All right. So I'll do it that way --

12 MS. BEVERLY: Thank you.

13 THE COURT: -- with the stipulation of both sides.

14 And then turning to -- I've got your proposed
15 instructions here in your trial brief.

16 MR. JACKSON: I'm withdrawing one of them because I
17 think the Court has already ruled on one, and I agree that it
18 shouldn't come in, and that's the one dealing with the mental
19 health of the -- of the victim, the one dealing with her
20 suicide. We've agreed -- I've agreed that I don't -- I don't
21 want to -- I'm not even going to ask for that because I -- you
22 know, I agree with the Court. You know, I'm not going to
23 pursue that --

24 THE COURT: Okay.

25 MR. JACKSON: -- either on appeal or anything else.

1 So I'll withdraw that.

2 THE COURT: Okay. The other one that I think should
3 be withdrawn is, There is evidence that a principal witness for
4 the State has received cash payments from the State, because
5 there was no testimony about a witness fee or anything. Nobody
6 asked it.

7 MR. JACKSON: All right. Well, there is no -- I'd
8 like the record to reflect that I would've gone into that if
9 the Court had allowed me. So I simply want that marked as a
10 proposed instruction that I would've presented if the Court had
11 allowed me -- and I'm just making a record on this -- to go
12 into the fact that she was getting cash payments from the
13 agency that was a -- at least a quasi-state agency, rental
14 payments, and the Court ruled I couldn't get into that, and I
15 accept the Court's ruling.

16 THE COURT: Okay. I would just --

17 MR. JACKSON: So --

18 THE COURT: I'm sorry. I would just say, in terms of
19 the \$25 witness fee, you could've asked about that. Nobody
20 chose to ask about that. So there's no --

21 MR. JACKSON: Oh, I was more concerned about the rent
22 payments she was getting over a number of months.

23 THE COURT: Right.

24 MR. JACKSON: And it didn't come -- it came out at
25 the evidentiary hearing she wasn't getting it from the DA's

1 office, but she was given it from a quasi-government agency,
2 and I think that that may have biased her testimony. The Court
3 ruled otherwise, and I prepared this -- these instructions, you
4 know, several months ago. If I had been allowed to get into
5 that on cross-examination -- and I think the Court restricted
6 me on that, and I abided by the Court's restriction -- I would
7 have submitted that instruction. So I simply want it marked as
8 an instruction I would've given if I had been allowed to get
9 into that. I respected the Court's ruling and didn't ask
10 questions about that.

11 THE COURT: Okay. All right. Turning to then the
12 remainder of your proposed instructions. Let's start with the
13 first one, and the first one is -- okay. The first one is mere
14 nudity, and that instruction apparently comes from a federal
15 case -- what's -- and I apologize. I didn't pull this case.
16 What circuit is this?

17 MR. JACKSON: I believe it's the Third Circuit. Let
18 me pull the file. I've got a whole file on this. Let me pull
19 my case law file. I apologize. I rushed over here. I had to
20 walk over here because my legal assistant wasn't here. Let me
21 see if I can find it. Maybe it's in my trial brief. Let me
22 just go to my trial brief and see if it's there.

23 THE COURT: I mean, I'm okay -- first, I mean it's
24 not the Ninth Circuit, but I would be okay giving a nudity
25 instruction if we had something from Nevada law because I think

1 it's basically true that mere nudity isn't pornography, but --

2 MS. BEVERLY: Yes, but I object to this, Judge,
3 because the statutes relating to this -- these particular
4 charges give the definitions of what is considered pornography,
5 and they say it's either sexual conduct, or it's a sexual
6 portrayal. Sexual portrayal and sexual conduct are both
7 defined by statute, and there's the case -- I cite to the case
8 of State V Wilson, which I believe I provided in a packet this
9 morning to Your Honor. If not, I have an extra copy of it.

10 And in State V Wilson, the charges were the exact
11 same charges as were here, which is the use of minor in
12 production and then possession of visual depictions depicting
13 sexual conduct of a minor, and this is sort of a leading case
14 on these issues, and the statutes are clear as to what the
15 definition in Nevada is of pornography. So anything varying
16 from that statutory definition the State objects to because
17 it's not -- it's not a federal case. Nevada law has already
18 spoke on this issue.

19 THE COURT: Yes. I mean, truthfully, Mr. Jackson, if
20 we had, you know, a definition of this from a Nevada case, I
21 would be inclined to give it, but I'm not inclined to give
22 something from a Federal Circuit decision.

23 MR. JACKSON: Well, you know, the problem is the
24 Nevada law is vague. You know, what is -- what is -- and --
25 and if you look at that --

1 THE COURT: We know it when we see it.

2 MR. JACKSON: Yes. And, you know, I -- you know,
3 there is pornography and then there is pornography. Now, you
4 cannot under the First Amendment restrict certain things.
5 That's the United States Constitution. You cannot tell someone
6 something is pornography unless there is a definition of it,
7 and if you look at the Nevada statute, it says things like if
8 it's lewd or obscene or if it's -- has some kind of sexual
9 content to it. A picture of someone standing naked in a
10 shower, well --

11 THE COURT: Well, they have to prove that it was
12 appealing to his prurient interest in sex. So that's an
13 element that they have to prove, that he wasn't doing it for,
14 you know, kicks. He wasn't doing it as a practical joke. I
15 mean, let's just say theoretically, you know, some guy is in a
16 locker room, maybe somebody hides a camera and films another
17 guy and shows it at the bachelor party. Okay. Maybe you could
18 argue then, well, that was just, you know, a practical joke or
19 something like that. So they have to prove that it was for a
20 sexual purpose, that it wasn't just artistic. It wasn't, you
21 know, in good family fun.

22 So, you know, I would just say that, again, this
23 definition, I think it's correct, but it comes from the Third
24 Circuit, and I think we already have a definition here in
25 Nevada.

1 MR. JACKSON: Well, again I think it goes to a
2 federal constitutional issue. You have to have a -- and a due
3 process issue because you have to have notice.

4 THE COURT: Well, it was quoting from Justice -- I
5 can never remember which Justice said --

6 MR. JACKSON: Justice Potter. I know it when I see
7 it.

8 THE COURT: Justice Potter. You know it when you see
9 it.

10 MR. JACKSON: Well, if I can argue that, if I can
11 argue the jury has to look at this and determine whether it's
12 pornography under all reasonable statutes based on, you know,
13 what -- you know --

14 THE COURT: Well, of course you can argue to the
15 jury --

16 MR. JACKSON: They determine it's pornography. It's
17 based on the instruction given to them. This instruction
18 points -- it's not an unreasonable instruction. I proposed it.
19 It came out of a federal circuit. Is says, Does it really
20 focus on the genitalia? Is it posed? Are the pictures, like,
21 where, you know, the girl was posing. So she's trying to, you
22 know, show off her nudity. It doesn't -- does it --

23 THE COURT: Well, she's not posing because --

24 MR. JACKSON: Well, no, of course because these
25 weren't -- these weren't production of pornography. If

1 anything, they may have been accidental pictures. They weren't
2 designed, and that's my argument to the jury, and I think the
3 jury should be instructed -- there's five factors that does
4 Amiral [phonetic] case lays out. Maybe two of them favor the
5 State, three of them favor me; or maybe two and a half favor
6 me, two and a half favor the State. It's a balanced
7 instruction. The State could argue it just as well.

8 And I don't object to the one the State's giving,
9 which gives the Nevada statutory instruction, but Nevada
10 statutory instruction is incomplete. This more focuses it. It
11 gives the jury something to hang their hat on so they can try
12 to figure out, you know, what does it mean. What is
13 pornography?

14 MS. BEVERLY: And, Judge, we --

15 MR. JACKSON: How do we evaluate these pictures?

16 THE COURT: Well, you can always -- okay. First of
17 all, you have a common sense instruction, as you know, and you
18 can certainly, you know, argue to the jury, look, these are
19 innocent. There's no sexual touching here. It's not focused
20 on any particular part of the body. You can argue all those
21 things. You don't need that instruction. I mean, you can
22 appeal to their common sense and tell them, you know, they're
23 not doing anything sexual, blah, blah, blah. It's not
24 pornography, and --

25 MR. JACKSON: Okay.

1 MS. BEVERLY: And, Judge --

2 THE COURT: -- and that's certainly, you know, fine.
3 I mean, it is. You know -- and it's the collective judgment.
4 I mean, that's why we have a cross section of the community.
5 It's the collective judgment of the jurors if collectively the
6 12 of them think, well, this is done for a sexual purpose. If
7 they don't think that, if they think, okay, these are innocent
8 shower pictures, then that collective judgment, a cross section
9 of our community, says it's not pornography. You need all 12
10 of them to say that in their judgment this is a sexual
11 portrayal.

12 MS. BEVERLY: Right.

13 THE COURT: So I think that, you know, you're
14 certainly free to argue all of these things, that it's not
15 sexually suggestive.

16 MR. JACKSON: Well, you know --

17 MS. BEVERLY: And, Judge, if I can -- if I can, you
18 know, first of all, when Nevada has spoken to this particular
19 issue -- and in fact the statute says, Sexual portrayal,
20 whether or not the subject is aware that they're -- they're in
21 a performance. So whether they're posing or not is irrelevant
22 because it's still under the statute considered pornography,
23 even if the child is unaware that they are in a performance.

24 This particular instruction, we don't even know what
25 federal statute the federal pornography statute is and if it's

1 different from Nevada's instruction. So that -- the law in
2 Nevada has already spoken to this issue. It's already given us
3 very clear definitions as to what is considered pornography,
4 and he can make whatever objections -- I mean -- excuse me --
5 arguments that he wants to, and we'll make whatever arguments
6 we need to make, but the law is extremely clear on this issue.

7 THE COURT: Okay. I'm not inclined to give it.

8 MR. JACKSON: All right.

9 THE COURT: But it's part of the record, and as I
10 said, you certainly can argue these factors. You can appeal --
11 I mean, basically, again, it's a judgment of them collectively
12 as members of the community. Is this stuff pornographic or is
13 it not? So you're free to argue that.

14 Lesser-included offense, the issue is whether or not
15 capturing the private image of another is a lesser-included
16 offense of use of a child in production.

17 MR. JACKSON: Well, we have facts here that show that
18 if in fact the defendant captured the image of another without
19 her consent -- and that's exactly what Hazel says. These
20 images were taken without her consent. They were found on the
21 defendant's computer. So let us assume that the jury believes
22 that these images are not pornography. Let's make that
23 assumption, but they believe that he took the image of Hazel
24 without her consent. That is a crime, which is capturing the
25 image of another without their consent. It is a gross

1 misdemeanor.

2 And the interesting thing about this case is
3 Detective Jaeger when he wrote his report, he wrote, Capturing
4 the image of another. That's what he originally wrote on the
5 report right there. Now, for them to say it's not a
6 lesser-included offense, it denies what our -- it simply
7 assumes that it is pornography, and he did produce it.

8 THE COURT: Well, if you look --

9 MR. JACKSON: Now --

10 MS. BEVERLY: I cite to --

11 MR. JACKSON: Well, let me finish. Let me finish my
12 argument. There are substantial case law that even if a
13 defendant denies any involvement or whatever he's still
14 entitled to lesser-included offenses of the main charge, and
15 this is clearly a lesser-included offense of the -- of the
16 charge.

17 THE COURT: Well, I think what they're looking at is
18 whether the elements -- you know, there are additional
19 different elements --

20 MS. BEVERLY: Right, Judge, and I do --

21 THE COURT: -- because pornography, it doesn't
22 involve consent.

23 MS. BEVERLY: Right.

24 MR. JACKSON: Well --

25 THE COURT: I mean, you can have pornography where

1 the -- where the victim is consenting and posing and doing all
2 of those things. So this adds the elements of consent and
3 takes away the element. So you're taking away an element, and
4 you're adding an element, as opposed to having just taking away
5 an element, which would be a lesser-included offense. This
6 would be more like a lesser-related offense than a
7 lesser-included offense because of the addition of the element
8 of consent, which isn't an element.

9 I mean, they covered it in their questioning, but --
10 well, actually they didn't even call -- I mean, here's your
11 other problem. They didn't even call Kurt as a witness, and I
12 think it did come out on cross.

13 MR. JACKSON: I called Kurt as a witness.

14 THE COURT: I know. I'm saying, but you're adding a
15 new element, the element of consent, which isn't an element for
16 pornography.

17 MS. BEVERLY: Right. And, Judge, I do cite to the
18 case again, Wilson V -- State V Wilson -- excuse me -- which is
19 again the leading case on this. In Wilson, which is 121 Nevada
20 345, they cite to the Blockbuster test, which we use in the
21 State of Nevada. That test says, If the elements of one
22 offense are entirely included in the elements of a second
23 offense, the first offense is a lesser included. The test
24 ultimately revolves -- excuse me -- itself on whether the
25 provisions of each of the different statutes require the proof

1 of a fact that the other does not.

2 In Wilson -- and this is the second jury
3 instruction --

4 THE COURT: I just said that.

5 MS. BEVERLY: Yes.

6 THE COURT: It's the additional element of consent,
7 which isn't an element for pornography.

8 MS. BEVERLY: Right.

9 MR. JACKSON: Well, I'd just like marked the police
10 officer's report, where in the beginning of the report in
11 writing what the crime was, he wrote, Capturing the image of
12 another.

13 MS. BEVERLY: And at that time he had -- the search
14 of the computer had not been done.

15 MR. JACKSON: Well, but initially --

16 THE COURT: I'm happy to have that --

17 MR. JACKSON: -- so I believe it's a lesser-included
18 offense because --

19 THE COURT: I don't -- it's a -- I don't think it's a
20 lesser related --

21 MR. JACKSON: Well --

22 THE COURT: -- a lesser included -- I misspoke --
23 number one. Number two, since when are we governed by the
24 decision that's been made by a nonlawyer police officer in
25 determining what the law is, and finally -- I may have said

1 this -- I don't -- you know, you can mark it as an exhibit. I
2 don't have a problem with that in the police report and marking
3 that as the court's exhibit. I'm fine with that if you'd like
4 to make that part of the record.

5 I'm just saying we are not bound by what the
6 decision -- I mean, how often does a police officer charge
7 kidnapping, and then the Court kicks it out or in screening
8 they kick it out. Well, we don't say, Oh, well, it must be a
9 kidnapping because the police officer thought it was a
10 kidnapping. So it works both ways, but I'm happy to make that
11 a court's exhibit, and Ms. Husted is going to mark it for us.

12 MR. JACKSON: I just want, you know, the first page
13 of the voluntary statement that was prepared by Detective
14 Jaeger.

15 MS. BEVERLY: Actually, we'll mark the whole one
16 because we were supposed to be marking the whole -- defendant's
17 whole statement anyway. So that's fine.

18 MR. JACKSON: Yes, that's fine.

19 THE COURT: Okay.

20 MS. BEVERLY: We can mark the whole thing.

21 THE COURT: That's fine. Okay. So that should be in
22 there already --

23 MS. BEVERLY: No --

24 MR. JACKSON: I've only got the first 16 pages.

25 THE COURT: That should actually be in there already,

1 or if it's not, then we wanted that.

2 MR. JACKSON: All right. Well, if it's already in
3 there, that's fine.

4 THE COURT: It's not, Ms. Husted said. So let's mark
5 the statement. I wanted that as a court's exhibit anyway.

6 MR. JACKSON: All right.

7 THE COURT: All right. Let's move on to the next
8 one, A person who knowingly and willingly and wilfully has in
9 his possession, and this has the lesser charge of visual
10 presentation depicting sexual conduct of a child.

11 MR. JACKSON: Well, if it's not -- if he didn't
12 produce the child pornography, if he isn't the one that
13 produced it, you know, when they find it on his computer, he's
14 just in possession of it. That's clearly a lesser, and so I
15 think all the --

16 THE COURT: Yes, I think that's fine as a lesser.

17 MS. BEVERLY: Judge, however, Wilson V State has
18 addressed this exact issue, and they say it's, quote,
19 Possession of visual presentation depicting sexual conduct of a
20 person under the age of 16, i.e., possession of pornography,
21 was not a lesser-included offense of use of minor in producing
22 pornography or a subject of sexual portrayal in a performance.
23 This is from 2005, Wilson V State, 121 Nevada 345.

24 MR. JACKSON: Well, in this case the defendant has
25 denied he produced it, and so we got evidence to --

1 THE COURT: Yes, I'm not sure how that cannot be a
2 lesser included.

3 MR. JACKSON: He's at least got a right to his theory
4 of the case.

5 THE COURT: I'm not -- I'm not familiar off the top
6 of my head with the facts of the Wilson case.

7 MS. BEVERLY: If I can approach -- if I can approach,
8 Your Honor, but basically what it was in Wilson was there were
9 five photographs of a child who the defendant had taken nude
10 photos of, and so the State charged four counts of use of child
11 in production and four counts of possession of child
12 pornography. Now, the main issue in Wilson was whether one --

13 THE COURT: Subsumed the other?

14 MS. BEVERLY: Well, the main issue was whether if
15 four photos are taken in one sitting, whether that's one count
16 or four counts, and the Nevada Supreme Court said that's one
17 count.

18 THE COURT: One count.

19 MS. BEVERLY: But they also -- the defendant also
20 raised the issue of whether possession of child pornography was
21 a lesser included of use of child in production, and the Nevada
22 Supreme Court said, no, because the act of taking the photos is
23 the production count. Then continuing to possess them after
24 producing them is second. They also used a Blockbuster --
25 excuse me -- test again and talked about how the elements of

1 each charge are different, and in that case they held those two
2 charges are not lesser included.

3 THE COURT: Here's where I'm --

4 MR. JACKSON: Well, she's confusing the law.

5 THE COURT: Here's where I'm going with this though.
6 On this particular case, you know, the jury could think, Well,
7 we don't know who put the camera there, but they were found on
8 his computer. So I'm kind of inclined to give the possession
9 charge and, you know -- as like --

10 MR. JACKSON: The jury can believe him or not, but
11 I -- it's certainly our theory of the case.

12 MS. BEVERLY: I'm just saying what the Supreme Court
13 has said.

14 THE COURT: No, I know. I mean, I'm --

15 MR. JACKSON: They can find both, he possessed it,
16 and he produced it --

17 MS. BEVERLY: Right.

18 MR. JACKSON: -- but they can also find he didn't
19 produce it and just possessed it. So I have a right to the
20 lesser-included offense --

21 MS. BEVERLY: I'm just saying what the Supreme
22 Court --

23 MR. JACKSON: -- there is plenty of case law on
24 that --

25 MS. BEVERLY: -- what the Supreme Court has said.

1 MR. JACKSON: That isn't what the Supreme Court said.

2 MS. BEVERLY: They did.

3 THE MARSHAL: Counsel, one at a time. Stop talking
4 over each other, please.

5 THE COURT: Well, it does seem that -- what they're
6 trying to do in this case is have him convicted of both
7 charges. I mean, that's -- I mean, they do say it's not a
8 lesser included. All right. Let me think about that one.

9 MS. BEVERLY: Okay. Thank you.

10 THE COURT: Because, like I said, I mean, a jury
11 could reasonably think, Well, we don't know who put the camera
12 there, but he did know they were on his computer. So --

13 MS. BEVERLY: And then we'll just lose those counts,
14 you know, of the use -- of the production, but to say that it's
15 a lesser included -- I mean, if they don't believe that he took
16 the videos, then we lose all the use counts in general.

17 THE COURT: Right.

18 MS. BEVERLY: And so we also lose -- I mean, if he
19 didn't make the videos, in theory we would also -- because the
20 possession is based on him --

21 THE COURT: Well, like I said, they could think -- I
22 mean, I don't know. They could think Hazel made the video, but
23 he knew it was on his computer and saved it on his computer or
24 something like that, I guess, because, you know, you have
25 concrete proof it's on his computer and then inference that

1 he's the one that made it, theoretically.

2 MS. BEVERLY: So can we just come back to that one?

3 MR. JACKSON: That's exactly what the jury will do if
4 they follow the defense theory of the case, and that's why
5 we're entitled for that instruction.

6 THE COURT: Well, the defense theory of the case is
7 he didn't --

8 MR. JACKSON: Just because they might lose the
9 counts, that's -- that's exactly the reason we proposed the
10 instruction.

11 THE COURT: Well, wait a minute, Mr. Jackson. The
12 defense theory of the case is that Hazel masterminded this
13 whole thing, and she saved them on his computer, and he didn't
14 know they were on his computer, and he didn't know the camera
15 was there, because she's jealous of his relationship with the
16 mother. That seems to me to be the defense theory of the case.

17 MR. JACKSON: And our trial brief also points out
18 that you can both deny it, and you can also ask for
19 lesser-included offenses.

20 THE COURT: No, I know. I know you can have
21 alternatives.

22 MR. JACKSON: And the Supreme Court of Nevada has
23 made clear that in the cases I've cited. You have an absolute
24 right to lesser-included offenses, which is what we're asking
25 for, and this is clearly a lesser-included offense.

1 MS. BEVERLY: If it's deemed to be a lesser --

2 THE COURT: We've already talked about capturing the
3 private image of another person. So that instruction is
4 denied.

5 Lack of knowledge is a complete defense to the crime
6 of possession of child pornography.

7 MS. BEVERLY: Well, Judge --

8 THE COURT: That's true.

9 MS. BEVERLY: That's -- that's true. I mean, I think
10 that's covered in the definition of the crime.

11 THE COURT: Yes. You know what, I don't like to give
12 the inverse instructions myself, but I've started giving them
13 because that seems to be the tide. So I'm going to give it out
14 of an abundance of caution. I don't think it's necessary. I
15 think it's clear, but I'm going to give it anyway.

16 Possession of child pornography.

17 MS. BEVERLY: Well, Judge, this is just simply an
18 inaccurate statement of the law -- I mean, the -- the
19 instruction.

20 THE COURT: It doesn't have to be sexually explicit
21 conduct.

22 MS. BEVERLY: Right.

23 THE COURT: So that's wrong.

24 MS. BEVERLY: I mean, the statute is very clear.

25 MR. JACKSON: Which part of it is wrong, that it

1 doesn't have to be sexually explicit?

2 MS. BEVERLY: Well, the entire instruction is wrong.

3 THE COURT: Well, it says, Sexually explicit conduct.
4 It doesn't have to be. The child doesn't have to be doing
5 something sexually explicit. That's not the definition of
6 pornography. So, I mean, you're placing the onus on the child
7 to do something basically, and that's not the statute. So I'm
8 not going to give Proposed Instruction I.

9 The next one --

10 MR. JACKSON: All right. I'd just like it marked as
11 defense --

12 THE COURT: Yes, these are all part of the record,
13 Mr. Jackson.

14 Credibility of a witness, law enforcement officer.

15 MS. BEVERLY: I think to single out a witness
16 separately when we already have a general instruction that
17 credibility of a witness is to be determined, I mean, that's
18 singling -- I mean, I could say the defendant should be -- you
19 know, the credibility of the defendant should be judged. If
20 we're going to single out every single witness, then I'd like
21 an instruction on every single witness, and we already have a
22 general instruction that we use for all witnesses, and in jury
23 selection, we say police officers should be treated the same as
24 any other witness.

25 MR. JACKSON: I didn't have the cite on this, but it

1 comes out of a manual for jury instructions from the Ninth
2 Circuit. We don't have a similar manual in Nevada of jury
3 instructions, but in this particular case, they had three
4 police officers testify, and their credibility is an issue, and
5 juries sometimes give greater weight to police officers than
6 they should. This simply reminds them to treat them like
7 anybody else; and for that reason we think this instruction is
8 important. It's not singling out police officers or anything.
9 It's a neutral unbiased instruction given by Courts.

10 I'm not saying that police officers are liars and
11 totally unworthy of belief. The instruction is neutral, and it
12 advises that -- the jury that they should be given no greater
13 or lesser weight than any other witness. Now, that's not an
14 instruction that they should be afraid of if they are confident
15 in their police officer's testimony.

16 MS. BEVERLY: I mean, this is not the standard that
17 we -- whether the jury should be afraid --

18 THE COURT: All right. Well --

19 MR. JACKSON: Well --

20 MS. BEVERLY: -- it's whether --

21 THE COURT: All right. I don't know that we need to
22 single out his -- the testimony of a police officer. We've
23 already told them that.

24 Certainly, Mr. Jackson, without the instruction,
25 you're free to argue, look, you were told in voir dire that you

1 can't consider their testimony differently just because they're
2 police officers, and you need to keep an open mind, and, blah,
3 blah, blah, whatever you want to say. So I don't think you
4 need the instruction.

5 The only -- I am going to give lack of knowledge
6 instruction. So my secretary will clean this up so we can have
7 it in the same format as the other instruction.

8 MS. BEVERLY: Thank you.

9 THE COURT: And then I'm going to consider further
10 this -- I'm going to consider this Wilson. I don't know. I'm
11 going to read this because --

12 MS. BEVERLY: Thank you.

13 THE COURT: -- the additional element is the
14 possession, I guess, is what they're saying.

15 MS. BEVERLY: Because you can make it, and then you
16 could delete it right then.

17 THE COURT: Right.

18 MS. BEVERLY: Or give it to somebody else.

19 MR. JACKSON: But that's not the facts that we have
20 here. What -- the jury will have to determine what the facts
21 are, and I think --

22 MS. BEVERLY: It's not about our facts --

23 MR. JACKSON: -- I think we have --

24 THE MARSHAL: One at a time, Counsel.

25 MR. JACKSON: I'm sorry. I thought --

1 THE COURT: Well, if we do it that way, then
2 obviously we'd have to go through and change the verdict
3 form --

4 MS. BEVERLY: Right.

5 THE COURT: -- as to all of those, and have guilty of
6 abuse of a child and then guilty of possession.

7 MR. JACKSON: That's simpler than having it reversed
8 on appeal because we didn't get a proper instruction.

9 MS. BEVERLY: Well, Judge, and then another thing
10 about it --

11 I'm sorry.

12 -- just to make this clear, there is also the element
13 of the age of 16 versus being a minor. In use of child in
14 production, it's a minor. In possession, you have to be 16.
15 So that's another element that is added to possession, and
16 that's why Hazel is not charged in any of the possession
17 counts.

18 THE COURT: Right.

19 MR. JACKSON: And that's exactly why we want that
20 instruction because it will be very important to the defendant
21 that the jury is so instructed because that will definitely
22 impact the verdict on a number of the counts because she was 16
23 or over on many of the counts, and if they get that
24 lesser-included offense, they may not be able to find him
25 guilty on some of those counts, and I may ask for a directed

1 verdict on some of those counts.

2 THE COURT: Well, honestly --

3 MS. BEVERLY: But that's why I kind of want to say --

4 THE COURT: I mean, to me, this is an either-or case.

5 Either the jury believes that it's Mr. Shue who planted the
6 camera and -- to film Hazel and the brother, or they don't
7 believe that. They believe that it was Hazel or some other
8 family member that did it and put all those films on his
9 computer, and he didn't know about it. So it's kind of an
10 either-or to me. It's either one or the other.

11 MR. JACKSON: There is one other possibility. They
12 could believe --

13 THE COURT: I guess they could think -- yes.

14 MR. JACKSON: -- he planted the camera, or he took
15 some pictures but that they don't believe these particular
16 pictures are pornography, and they could believe that he is
17 guilty of some lesser offense, or they could believe that he --
18 that someone else took the pictures and put them on his
19 computer, and then the question will be if he kept them in his
20 possession knowingly. Then he is guilty of the lesser offense
21 of having possession of these pictures if they think they are
22 pornography, on his -- on his machine.

23 THE COURT: I just have a question, a factual
24 question that I was curious about.

25 MS. BEVERLY: Sure.

1 THE COURT: It has nothing to do with jury
2 instructions.

3 MS. BEVERLY: Sure.

4 THE COURT: We can go off the record, or, I mean, I
5 can ask it on the record.

6 Why aren't there any pictures of the other kid, the
7 brother Franzkie.

8 MS. BEVERLY: Judge, we don't know. They are --
9 maybe he wasn't interested in that boy. I don't -- we don't
10 know.

11 THE COURT: Because he was what -- what age was he?

12 MS. BEVERLY: He was -- between the time period, he
13 would've been like 10. Maybe he was too young for the
14 defendant. I'm not sure, but there --

15 THE COURT: I just thought that was curious.

16 MR. JACKSON: I move to strike all the prosecutor's
17 answers because it's irrelevant.

18 THE COURT: Well, I just asked the question. It was
19 curious to me as I sat here through the trial. Why didn't we
20 have any pictures of this other boy?

21 MR. JACKSON: Maybe because he's -- the defendant
22 didn't do anything wrong, and he didn't take any pictures of
23 him, too, which that's also a possibility.

24 THE COURT: I just thought that was curious. If they
25 were all using the bathroom, why are only two people and the

1 mother caught on the images and the defendant and not this boy?

2 MS. BEVERLY: And maybe --

3 THE COURT: I just thought that was curious.

4 MS. BEVERLY: He might've showered at a different
5 time than the other kids. He might've been on a different
6 school schedule.

7 THE COURT: Yes, I just want to make sure there
8 weren't images of the other kid that weren't included in the
9 case that you had because as I'm sitting -- it's just -- it has
10 nothing to do with jury instructions. It's just a question. I
11 was curious why we didn't have any pictures of this other kid.

12 MS. BEVERLY: And right --

13 THE COURT: You could have pursued that as a theory
14 maybe.

15 You know, I just thought that was odd because the
16 boys -- I guess all the images of the boys -- if you believe
17 that it was the defendant, the kind of pornography from the
18 Internet -- are barely postpubescent. They don't even look
19 postpubescent to me. So --

20 MS. BEVERLY: And again, he could've been using -- I
21 mean, I think --

22 THE COURT: Yes. So you don't really know?

23 MS. BEVERLY: We don't, and I did go through all
24 hundred and forty videos --

25 THE COURT: Okay. That's really where I was going --

1 MS. BEVERLY: -- and it's just.

2 THE COURT: -- not to speculate, but --

3 MS. BEVERLY: Yes, I know. I've gone through all of
4 the videos.

5 THE COURT: -- he looked -- maybe he used another
6 bathroom, or -- okay. So --

7 MS. BEVERLY: He could've used another bathroom.

8 THE COURT: -- I thought that was curious.

9 MS. BEVERLY: He could've been deleted. We don't
10 know.

11 But just to be clear though, when we're talking about
12 lesser included, it's -- we're talking about elements of a
13 crime and whether those elements are different under the
14 Blockbuster test. So I know Mr. Jackson wants to keep talking
15 about the facts, but we are talking about -- the case law is
16 very clear under Wilson. That is an elements-based test, and
17 if the elements are different, then it is not a lesser
18 included.

19 THE COURT: Let me ask this.

20 Here's Mr. Shue.

21 Ms. Lavell, you said you only had a couple more
22 minutes?

23 MS. LAVELL: I'm going to --

24 THE COURT: Pass?

25 MS. LAVELL: Pass.

1 THE COURT: So how much redirect do you have?

2 MR. JACKSON: I need to talk to my client for a
3 minute now that he's here, but it may be just a few minutes.

4 THE COURT: And then so we might have a little --
5 some juror questions --

6 MS. BEVERLY: An hour.

7 THE COURT: -- and then we can go into the
8 instructions. So --

9 MS. LAVELL: Your Honor, I would object to him
10 talking to his client --

11 MR. JACKSON: What?

12 MS. LAVELL: Can I finish my objection, Mr. Jackson,
13 please.

14 He's -- he has redirect. It's improper for him to
15 speak to his client before he gets back up on the stand for
16 redirect, in the same way it would be -- that the State is not
17 allowed to talk to their witnesses when -- when they're
18 being --

19 THE COURT: In the middle of testimony --

20 MS. LAVELL: -- in the middle of testimony.

21 THE COURT: -- that's their objection.

22 MS. LAVELL: So I would object to Mr. Jackson having
23 any conversation with his client until after he finishes --

24 THE COURT: Well, he can talk to his client
25 obviously.

1 MR. JACKSON: I've never heard that rule before, that
2 I can't talk to my client about the questions I'm going to ask
3 him. I don't understand that.

4 THE COURT: Well, typically when you're in the middle
5 of a witness, before you're finished with the witness, you
6 don't --

7 MR. JACKSON: Can she cite me some --

8 THE COURT: -- talk --

9 MR. JACKSON: -- some case or some ethical standard.
10 I can't talk to my client about --

11 THE COURT: Typically --

12 MR. JACKSON: He's -- he's the defendant. He's not
13 another witness.

14 THE COURT: I know. Typically with the State's
15 witnesses and other witnesses, civil witnesses, whatever, if
16 we're in the middle of the testimony, we tell them, don't talk
17 to anybody about your testimony because -- until you're
18 finished so that there can't be comments on, Well, you answered
19 it this way. Maybe you need to do this or that.

20 MS. LAVELL: Exactly.

21 THE COURT: That's the point of that. So I'm not
22 sure what the rule is or the, you know, ethical rule, I mean,
23 other than the general ethical rules, and I'm not going to
24 insult you by going over those with you.

25 MS. LAVELL: I would say that the fact that it's the

1 defendant has no bearing on the fact that he's a witness, and
2 in the same fashion that the State --

3 THE COURT: Well, it kind of does. I mean, you know.
4 I'm not sure where that comes from, frankly. I mean, it's just
5 kind of a general rule because you don't want coaching to occur
6 in the middle of the testimony according to what's already been
7 answered. That's the point. I mean, it's kind of based I
8 guess on common sense. I don't know where that rule comes
9 from, but that's the point of it. So --

10 MS. LAVELL: Well, and the same thing as if he
11 couldn't ask to take a break after my cross of his client to
12 talk about what his next series of questions are going to be.
13 It's just highly inappropriate. So -- and he just indicated
14 that he -- he should be able to talk to his client about the
15 questions he's going to ask. No, his client needs to be able
16 to answer the questions on the stand as they're asked and not
17 prepare for them.

18 MR. JACKSON: Well, my clients prepare for
19 questioning all the time. I talk to them before we go into
20 court. I say, you know, we're going to discuss these issues --

21 THE COURT: Well, obviously you prepare for --

22 MR. JACKSON: -- issues at A, B, C and D. That's --
23 that's what you -- that's what an attorney does. If I didn't
24 do that, that would be ineffective assistance of counsel.

25 THE COURT: Obviously, the point that Ms. Lavell is

1 trying to make is that you talk to your client and prepare him,
2 and you say these are probably going to be the questions on
3 cross or whatever you do. The point is, she doesn't want you
4 coaching him based on what's already been asked or to direct
5 his answers in any way, which would be inappropriate anyway,
6 and I know you wouldn't do that because it would be unethical
7 for you to tell him what to answer.

8 MR. JACKSON: Well, I can ask him what his response
9 would be if I asked him this, and if he says, this, I can
10 decide not to ask him that question.

11 THE COURT: You can decide not to ask him, but you
12 can't coach him, to say, No, no, say this.

13 MR. JACKSON: Right. No, I don't coach --

14 THE COURT: Of course not. I'm just --

15 MR. JACKSON: -- but if I ask him a question and then
16 I decide, you know, I would rather not put you on the stand and
17 ask that question, I certainly have a right to ask him how he
18 would respond.

19 THE COURT: All right. I think we've set the
20 parameters for what is ethically allowable. So --

21 MR. JACKSON: Because, you know, he might respond in
22 some way that will damage his case. So I have a right to ask
23 him if -- I will ask you this question, and what would your
24 response be? And he says, ask --

25 THE COURT: If that's all -- of course, if that's all

1 you're going to do, then that's -- then that's fine.

2 MR. JACKSON: Yes, and that's what attorneys do.
3 Otherwise I'd be ineffective.

4 THE COURT: All right.

5 MR. JACKSON: Now, I don't tell him, Well, you better
6 change your answer this way because the prosecution or the jury
7 won't like it or whatever.

8 THE COURT: Right.

9 MR. JACKSON: No, I don't do that.

10 THE COURT: Obviously, that would be unethical for
11 you to do that. You can't coach --

12 MR. JACKSON: And for the prosecutor to insinuate I'd
13 do that --

14 THE COURT: I don't think --

15 MR. JACKSON: -- I think it's --

16 THE COURT: -- she's insinuating that.

17 MR. JACKSON: Well --

18 THE COURT: What the prosecutor is suggesting is
19 every other witness, you know, you just -- because we've had
20 breaks and things like that -- to not kind of get a benefit for
21 one side or the other, to maybe go over testimony that they
22 didn't foresee or something like that because of the
23 questioning on cross. That's the point of that --

24 MR. JACKSON: I want to put something else on the
25 record right now.

1 THE COURT: -- so that was what Ms. Lavell's point
2 was. I don't think Ms. Lavell was trying to accuse you of any
3 kind of misconduct or anything like that.

4 Was that your point, Ms. Lavell?

5 MS. LAVELL: Yes, Your Honor. We don't get to take
6 breaks and talk to our witnesses. It's just a flow, and
7 because this stopped last night and we weren't able to finish,
8 had this not stopped last night, he wouldn't have been afforded
9 the opportunity to speak to his client before he recrossed --
10 or redirected him. That's my issue.

11 THE COURT: Okay. We've dealt with that. Next.

12 MR. JACKSON: While we're on the record, I'm going to
13 put something else on the record that greatly offends me. I've
14 been informed that one of my witnesses was intimidated by one
15 of the DA's officers to try to get them not to testify, and
16 that disturbs me greatly. That's actually grounds for
17 dismissal, and we can have a hearing on that.

18 MS. LAVELL: Who's the witness?

19 MS. BEVERLY: Who was the witness?

20 MR. JACKSON: The witness was Frances Carreon.

21 MS. LAVELL: We didn't even know about her.

22 MR. JACKSON: Well --

23 MS. BEVERLY: Because my investigator went back and
24 talked to her because I didn't --

25 MR. JACKSON: Attempted to get her not to testify.

1 MS. BEVERLY: The Judge allowed her to testify.

2 THE MARSHAL: Counsel, one at a time.

3 THE COURT: Okay. Well, here's the deal. We're not
4 going to deal with this right now. You can make your record.
5 I'm going to go -- I want to read this case, okay.

6 MS. BEVERLY: Thank you.

7 THE COURT: And we're going to number the jury
8 instructions, and then we're going to make a record because,
9 you know, you can't -- we can't just leave the record with
10 unsubstantiated allegations --

11 MR. JACKSON: All right.

12 MS. BEVERLY: Thank you.

13 THE COURT: -- which, you know, on postconviction or
14 an appeal then, you know, five years from now somebody's going
15 to want to know about, and hopefully I'll be retired by then.

16 And so, you know, here's the thing. Mr. Jackson, I
17 want you to make your record of what happened, and the State
18 can make their record, and they can bring their investigator in
19 to make their record of what was said.

20 I would just point out my own recollection was that
21 they weren't aware until Friday or whenever that Ms. Carreon
22 was going to be a witness. They hadn't talked to her. I said
23 she could still testify over the State's objection, and I think
24 she was in the vestibule, and I said, Look, if she is willing
25 to talk with the investigator, then the investigator can talk

1 to her, and they can get a little heads up, just like they
2 would have had they had the witness notice 10 days ahead of
3 time or whatever. If she doesn't want to talk to the
4 investigator, she doesn't talk to the investigator. So I said
5 that.

6 I did create the opportunity. They didn't have a lot
7 of time. It was like 10 minutes --

8 MS. BEVERLY: Right.

9 THE COURT: -- because I wanted you to be able to
10 call that witness, and you were able to call the witness.

11 MR. JACKSON: Yes, and that's not why I wasn't making
12 a big deal about it, but when she's accusing me of ethical
13 violations --

14 MS. BEVERLY: That is not true.

15 MR. JACKSON: No.

16 THE COURT: I don't think Ms. Lavell was accusing you
17 of ethical violations.

18 MR. JACKSON: When she's telling me I can't talk to
19 my client before I put him on the witness stand to, you know,
20 ask him what the answers to certain questions will be, that's
21 wrong.

22 THE COURT: Okay. Well, I think we're taking away
23 from the time we could all be preparing for the next phase. So
24 let's everybody go do what they're going to do, and I'll be
25 back in like five or 10 minutes, and we'll number these.

1 Sherry will retype the ones we're going to give from the
2 defense's packet --

3 MS. BEVERLY: Thank you.

4 THE COURT: -- so that they fit in nicely with the
5 State's font, and then we can get started, and then we'll make
6 a more thorough record of this alleged witness intimidation.

7 MS. LAVELL: And I would just ask on the record, if
8 we're going to have some sort of hearing, the State would
9 object to counsel speaking as to what the investigator
10 allegedly did, but he would need to get his witness back here
11 so she can be sworn in and actually state what the investigator
12 did, and we'll bring our investigator as well.

13 MR. JACKSON: I don't know if I can get ahold of her
14 while I'm in the middle of trial because I don't have my legal
15 assistant available now. It may take me -- but I'd much
16 rather -- if the Court orders it, I can take a recess from the
17 trial, but I'd much rather prepare a closing argument.

18 THE COURT: No. No. We're going to finish it.
19 We're going to finish the trial.

20 MS. BEVERLY: Thank you.

21 THE COURT: And then we'll deal with this other
22 issue.

23 MS. BEVERLY: Thank you.

24 MS. LAVELL: Thank you, Your Honor.

25 (Proceedings recessed 9:43 a.m. to 9:55 a.m.)

1 THE COURT: -- case. It does not appear that that is
2 a lesser-included offense, according to the Supreme Court, of
3 production. So I'm not going to give it as a lesser included.

4 As I said, I am going to give your negative
5 instruction. You'll see right there in front of you, my JEA
6 has retyped that so that the font matches the font --

7 MR. JACKSON: Thank you.

8 THE COURT: -- of the other instructions. Then we're
9 going to insert that into our packet as we go through and
10 number.

11 MR. JACKSON: All right. Thank you, Your Honor. And
12 I just -- I'd just like it marked. Maybe I can change the
13 Supreme Court's mind if I need to later.

14 THE COURT: I hope you don't -- well, I don't care.

15 MR. JACKSON: You hope I don't -- oh.

16 THE COURT: I mean, it makes sense to me, your
17 argument, but I'm relying on, you know, the case law.

18 MR. JACKSON: You have to rely on the law as given.

19 Now, I have -- I want to correct the record on one
20 thing. I had information that I thought Frances Carreon was
21 intimidated. I did speak to her just on the phone just now.
22 She said that she felt somewhat pressured, but I don't believe
23 she was intimidated after speaking to her. I misspoke. I had
24 information from another witness that she felt Frances was
25 intimidated by this witness. I misspoke, partially out of

1 anger because of what the district attorney was implying about
2 my ethics.

3 I apologize to the district attorney or their staff.
4 I don't believe that's an issue because -- after speaking
5 directly to Frances Carreon, which is what I wished to do. I
6 wasn't even going to raise it because I -- I don't want -- I
7 want this trial to go forward, but I wanted to find out exactly
8 from Frances Carreon what was said. I spoke to her. It's not
9 an issue.

10 THE COURT: All right. Let's go ahead and number the
11 instructions. I'm keeping them in the order the State
12 presented them to me, and we'll figure out where to insert the
13 negative instruction --

14 MR. JACKSON: Can I -- hang on. Let me get my --

15 THE COURT: -- that Mr. Jackson offered.

16 MR. JACKSON: Okay. I'm ready, Your Honor. Thank
17 you.

18 THE COURT: All right. Instruction No. 1, It is now
19 my duty as Judge.

20 2, If in these instructions.

21 The next one that should be 3 is, An indictment is
22 but. So we'll make that -- so we'll make that 3.

23 Oh, you know what, this is missing the stock language
24 of, You are to consider each charge separately and the evidence
25 relating to it. There is a stock that goes at the end of the

1 indictment that's missing. Do you know what I mean?

2 MR. JACKSON: So maybe we'll make that No. 4?

3 THE COURT: Each charge should be considered

4 separately and the evidence pertaining to it --

5 MS. BEVERLY: Okay.

6 THE COURT: -- or something like that goes at the end

7 of all of the indictment -- or the information, the charges.

8 Do you know what I'm talking about?

9 MR. JACKSON: Yes.

10 MS. BEVERLY: Yes.

11 MS. LAVELL: Yes.

12 THE COURT: Okay. That's not here.

13 MS. BEVERLY: Okay. Can we just add that in?

14 THE COURT: We'll add that in, but I don't know what

15 it is off the top of my -- I don't have that memorized.

16 Can you have Sherry pull the instructions from the

17 last case, last criminal case that we did.

18 MS. BEVERLY: Thank you.

19 MS. LAVELL: But that will be 3.

20 THE COURT: All right. 4 should be, The evidence

21 which you are to consider in this case.

22 Then let's make 5, To constitute the crime charged.

23 MR. JACKSON: Wait. I'm --

24 THE COURT: I pulled 5 out. It was in the position

25 of No. 3, and now it's 5 because it didn't make sense where it

1 was.

2 MR. JACKSON: Okay. 5. Now, so where are we going
3 to put in the stock one, after --

4 THE COURT: Well, it normally comes in right after
5 the --

6 MR. JACKSON: So we can make it 4, right after 3?

7 THE COURT: No, it will be part of 3. I'm just going
8 to write it in, and then --

9 MR. JACKSON: Oh, you're going to write it in as part
10 of 3. All right.

11 MS. BEVERLY: At the end of the indictment.

12 THE COURT: Yes. Because it always comes at the end
13 of the indictment, the language, but they missed it.

14 MR. JACKSON: All right.

15 THE COURT: So I'm just going to write it in, and
16 then we'll have Sherry type it while we're --

17 MR. JACKSON: All right. That's fine.

18 THE COURT: Okay?

19 MS. BEVERLY: Okay.

20 THE COURT: So then 5 is, To constitute the crime
21 charged.

22 MS. BEVERLY: Okay.

23 THE COURT: 6, a person who wilfully.

24 7 --

25 MR. JACKSON: Wait. I'm --

1 MS. BEVERLY: It's the child abuse instruction.

2 THE COURT: Now, we're getting to the instructions on
3 the elements and stuff.

4 MR. JACKSON: I see that -- the next one I see is,
5 The evidence which you are to consider.

6 MS. BEVERLY: That's No. 4.

7 THE COURT: I made that No. 4.

8 Do you want me to just number them and then give you
9 the packet?

10 MR. JACKSON: That might make it easier for me
11 because I am -- I'm --

12 THE COURT: All right. So I just put -- stay with me
13 in case I miss something. I don't want to be -- you know, I
14 don't want everybody depending on me in case I make a mistake.
15 Then it's on me. If we're all following and I make a mistake,
16 then it's on you guys.

17 MS. BEVERLY: Okay.

18 THE COURT: So 5 is going to be, To constitute the
19 crime charged.

20 6 is going to be, A person who wilfully causes a
21 child who is less than 18.

22 7 is, Abuse or neglect.

23 8, Sexual abuse includes.

24 9, Sexual exploitation includes.

25 10, Mental injury means.

1 11, The word wilfully.
2 12, A person who.
3 13, Minor means.
4 14, Performance means.
5 15, Sexual portrayal means.
6 16, A person who.
7 MS. BEVERLY: I think -- I'm sorry. After -- I think
8 after this one is where you should put in Mr. Jackson's --
9 THE COURT: Well, I was going to do consent of a
10 minor.
11 MS. BEVERLY: Oh, okay.
12 THE COURT: And then, In order to be found guilty.
13 MS. BEVERLY: Okay.
14 THE COURT: So I was going to do -- 17 is, Consent of
15 a minor.
16 And then, Mr. Jackson, I'm going to make --
17 MR. JACKSON: 17 is, Consent of a minor? I don't see
18 that one.
19 THE COURT: It's before, Any person who commits.
20 MR. JACKSON: 17, Consent of a minor. What about, A
21 person who wilfully or knowingly?
22 THE COURT: Well, that's next, but I was going to put
23 it --
24 MR. JACKSON: Oh, you're going to make that 18?
25 THE COURT: Well, I was going to make 18 your

1 instruction, In order to be found guilty of possession of child
2 pornography.

3 MR. JACKSON: Okay. So, In order to be found guilty
4 will be 18?

5 THE COURT: Right.

6 And then 19, Any person who commits.

7 20, In your deliberation.

8 21, The credibility or believability.

9 22, The defendant is presumed innocent.

10 Okay. One thing we didn't talk about, and I just
11 realized it, is when there was a mention of the right to
12 counsel. I offered to give an instructions similar to -- I
13 think it's the Fifth Amendment instruction, and we talked about
14 that.

15 And, Mr. Jackson, you said maybe you wanted that. Do
16 you want that or not?

17 MR. JACKSON: I'm going to draft my own instruction
18 on that as soon as we're done with the --

19 THE COURT: Wait a minute. We're numbering right
20 now. So we need --

21 MR. JACKSON: All right. I want an instruction to
22 the effect that a defendant can cut off questioning at any
23 time, and the jury cannot draw an adverse inference from the
24 fact that he cut off questioning.

25 THE COURT: Okay. Is Sherry pulling that last

1 packet?

2 THE CLERK: Yes. Well, she was on the phone --

3 THE COURT: Okay. Tell her to pull it. Get off the
4 phone because --

5 THE CLERK: She is off the phone.

6 THE COURT: All right.

7 MS. BEVERLY: Do you know where you're going to want
8 to put it so I can --

9 THE COURT: Well, I was going to put that one in at,
10 like, after 22 because normally after the reasonable doubt
11 instruction I put in the Fifth Amendment instruction.

12 MS. BEVERLY: Okay.

13 THE COURT: So I'm just going to put that in and make
14 that 23.

15 MS. BEVERLY: Okay.

16 MR. JACKSON: 22 is reasonable doubt.

17 THE COURT: Sherry, can you pull the Fifth Amendment
18 instruction if it's not in this packet. I can't remember if it
19 is or not.

20 Oh, it is. Okay. Great.

21 We pulled a packet from another case. So --

22 MS. BEVERLY: I'm sorry. I just want to also be
23 clear for the record that when Mr. Shue was testifying,
24 Mr. Jackson asked him, Didn't you invoke your right to an
25 attorney?

1 THE COURT: Oh, that's true. So --

2 MS. BEVERLY: He did ask him that. So --

3 THE COURT: You did highlight it. So I don't know --
4 I mean, I'm fine with giving some kind of an instruction.

5 MS. BEVERLY: I have no objection. I'm just pointing
6 that out that he highlighted that.

7 MS. LAVELL: Yes, a couple of times he actually said
8 it. So.

9 MR. JACKSON: Yes, midway through the questioning, he
10 did. That's what the record shows.

11 THE COURT: How about this? I'm looking at the --
12 how about something like, It is a constitutional right of a
13 defendant during questioning that he may invoke his right to
14 counsel?

15 MR. JACKSON: That's fine.

16 THE COURT: Okay. Wait a minute.

17 MR. JACKSON: And the jury can draw no adverse
18 inference from that, would be fine with me.

19 THE COURT: And then the next sentence will be, You
20 must not draw any inference of guilt from the -- you must not
21 draw any inference of guilt from this -- from this. Let's just
22 make it, This -- nor should this fact be discussed by you or
23 enter into your deliberations in any way.

24 MS. BEVERLY: No problem.

25 MR. JACKSON: That's fine.

1 THE COURT: Okay. So I'm going to read it to
2 everybody so everybody is in agreement.

3 It is a constitutional right of a defendant during
4 questioning that he may invoke his right to counsel. You must
5 not draw any inference of guilt from this, nor should this fact
6 be discussed by you or enter into your deliberations in any
7 way?

8 MS. BEVERLY: That's -- no objection by the State.

9 MR. JACKSON: No objection.

10 THE COURT: Mr. Jackson, are you requesting that I
11 give that instruction?

12 MR. JACKSON: Yes. Yes.

13 THE COURT: All right. And you're fine with the way
14 the Court has modified the Fifth Amendment instruction?

15 MR. JACKSON: Yes.

16 THE COURT: Okay. So that will be Instruction No.
17 23.

18 Then 24, Although you are to consider.

19 25, When you retire.

20 26 is the playback, If during your deliberations.

21 And then 27, Now you will listen to the arguments of
22 counsel.

23 All right. And then we're turning to No. 3, and I'm
24 going to add the correct language to the bottom of No. 3, which
25 is -- not here in the last -- oh, no. Okay. It is here. The

1 language -- the stock language is, It is the duty of the jury
2 to apply the rules of law contained in these instruction to the
3 facts of the case and determine whether or not the defendant is
4 guilty of one or more of the offenses charged.

5 MS. BEVERLY: Yes, no problem.

6 THE COURT: That's the stock language, and I'm going
7 to add that on the bottom of Instruction 3.

8 And then after I read these, I'm going to have Sherry
9 make the corrections, and then -- and then we'll make copies
10 for both sides.

11 MS. BEVERLY: Thank you, Judge.

12 MR. JACKSON: Okay. Great.

13 THE COURT: Any problem with that, Mr. Jackson?

14 MR. JACKSON: No, just the ones that I proposed be
15 marked as defense exhibits, that were refused, and I am happy.

16 THE COURT: They're actually already part of the
17 record as your trial brief.

18 MR. JACKSON: Yes.

19 THE COURT: Do you want them also made separate
20 court's exhibits?

21 MR. JACKSON: Yes, it makes it simpler on the record
22 that I submitted them, and they were denied.

23 THE COURT: Yes. I mean, they're part of the record
24 because they're in Odyssey right now.

25 MR. JACKSON: Okay.

1 THE COURT: So I don't know if -- I think that's
2 sufficient --

3 MR. JACKSON: Sometimes pulling them up --

4 THE COURT: -- but if you want something else we can
5 also make them a court's exhibit.

6 MR. JACKSON: Make them a court's exhibit.

7 THE COURT: Okay. So one of the proposed was given,
8 and then I'll get with Ms. Husted later to make sure she has
9 that from Odyssey.

10 MS. BEVERLY: Judge, in this --

11 THE COURT: Okay.

12 MS. BEVERLY: I'm sorry. In this department, do the
13 jurors get their own set of the jury instructions? Do they get
14 one copy to take back with them, or --

15 THE COURT: No. No. They don't get instructions
16 during the arguments and while I'm reading them. We make about
17 six or seven copies. So they have a bunch of copies with them
18 to look at.

19 MS. BEVERLY: Okay. Great. Thank you.

20 THE COURT: Yes, because we don't expect 12 people to
21 all read around one little piece of paper.

22 MS. BEVERLY: Okay.

23 THE COURT: But I don't like them to have it during
24 argument because then maybe they're reading, and they're not
25 listening. So I don't give it to them during the arguments. I

1 know some departments do, but my own feeling is it invites
2 distraction.

3 MS. BEVERLY: Thank you.

4 THE COURT: So I don't like to do it.

5 All right. So I've numbered those, and other than
6 the objections that have been placed on the record -- or not
7 really objections, the offered instructions, does anyone have
8 anything they need to add to the jury instructions?

9 MS. BEVERLY: No, not from the State.

10 THE COURT: Anything, Mr. Jackson, you need to add?

11 MR. JACKSON: No, Your Honor.

12 THE COURT: Okay. All right. Kenny, are the jurors
13 all here?

14 THE MARSHAL: We are missing two.

15 THE COURT: Okay. We're missing two jurors. Glad we
16 rushed.

17 He's going to check on that.

18 And then, Mr. Jackson, did you determine whether or
19 not you have any redirect examination for your client?

20 MR. JACKSON: I've determined that I am not going to
21 call any redirect, and the defense is going to rest.

22 THE COURT: Okay. What about juror questions? They
23 didn't hand Kenny anything.

24 MS. BEVERLY: Maybe we didn't -- I'm sure they don't
25 know that we are going to not ask anymore questions. So maybe

1 we could just ask them when they first come in. Mr. Jackson
2 can say I have no -- well, Ms. Lavell --

3 MS. LAVELL: Well, I have to first --

4 MS. BEVERLY: -- I have no further --

5 MS. LAVELL: -- pass the witness.

6 THE COURT: No. No.

7 MS. BEVERLY: Then he can pass the witness then --

8 THE MARSHAL: We are still missing one.

9 THE COURT: Hopefully we don't have any.

10 MS. BEVERLY: This has been the craziest trial. I've
11 never -- they've asked, like, over a hundred questions.

12 THE COURT: For most -- our record -- some trials we
13 have no questions. Our record was a wrongful death civil case.

14 Remember that, with Don Campbell?

15 THE CLERK: Yes.

16 THE COURT: And we had like 250 juror questions. It
17 was the all-time record. I don't think it's the record for the
18 Eighth Judicial. It's our record though.

19 MS. BEVERLY: I think they're good questions.

20 THE COURT: Oh, yes. Jurors always have good
21 questions, but there were tons of questions in that case.

22 (Pause in the proceedings.)

23 (Jury entering 10:18 a.m.)

24 THE COURT: All right. Court is now back in session.
25 The record should reflect the presence of the State through the

1 deputy district attorneys, the presence of the defendant
2 Mr. Shue with his counsel, the officers of the Court, and the
3 ladies and gentlemen of the jury.

4 When we concluded yesterday, Ms. Lavell, you were
5 cross-examining the defendant. Did you have any additional
6 questions for the defendant?

7 MS. LAVELL: I do not, Your Honor.

8 THE COURT: All right. Thank you.

9 Mr. Jackson, did you have any redirect examination
10 for the defendant?

11 MR. JACKSON: No, Your Honor.

12 THE COURT: All right. Did we have any juror
13 questions for the defendant?

14 All right. Mr. Shue, I need you to come back up to
15 the witness stand, please, sir, and have a seat.

16 And I'll see counsel up here at the bench.

17 (Conference at the bench not recorded.)

18 THE COURT: All right. I have a number of juror
19 questions up here, and I'm going to ask them in no particular
20 order.

21 THE WITNESS: Okay.

22 THE COURT: All right. A juror wants to know, seeing
23 the camera of yours in the bath time -- I'm sorry -- in the
24 bathroom multiple times, wouldn't you remove it so that one of
25 the kids couldn't knock it in the sink or ruin it while using

1 the sink?

2 THE WITNESS: We always removed it when we were done.

3 THE COURT: Okay. Your statement was that the camera
4 was put away after each use. Why was it not put away each time
5 you saw it in the restroom?

6 THE WITNESS: Sometimes Hazel would be using it, and
7 I wouldn't know what she was using it for. So it really didn't
8 matter.

9 THE COURT: In the restroom?

10 THE WITNESS: She -- anywhere, restroom, bathroom,
11 she carried laptops and stuff in there, too. So I was used to
12 seeing electronics in there.

13 THE COURT: Okay. Can everybody hear the witness?

14 (No response.)

15 THE COURT: Okay. Why was the camera issue of
16 finding it in the restroom not addressed with the kids or Hazel
17 if you didn't put it there?

18 THE WITNESS: Like I said, Hazel had a habit of
19 bringing electronics in there on a regular basis. So it just
20 became commonplace, and if you told her not to, she'd just
21 ignore it anyway.

22 THE COURT: Okay. The pictures show you in just a
23 towel. Did you not feel this was inappropriate to run around
24 the house, you know, just in a towel?

25 THE WITNESS: The only time I was just in a towel was

1 going from the bathroom to the bedroom, which was right across
2 the hall. The kids were supposed to have their own bathroom.
3 So it shouldn't have been an issue, but occasionally it was.

4 THE COURT: Okay. How many times have you been drunk
5 around the children while watching them?

6 THE WITNESS: It's pretty rare. I usually only drink
7 maybe once a week, if that, and that's only if I've had a hard
8 week at work.

9 THE COURT: Okay. Have you been drunk when alone
10 with Hazel?

11 THE WITNESS: No, not with just Hazel. No.

12 THE COURT: Okay. Do you know how to hide files on a
13 computer?

14 THE WITNESS: No.

15 THE COURT: Do you know how to use parental controls
16 on a computer?

17 THE WITNESS: No.

18 THE COURT: Okay. Did your laptop get transported to
19 and from the two locations, your home and the apartment, or did
20 it mainly stay at the apartment?

21 THE WITNESS: No, it traveled wherever I was going to
22 be staying for the few days. So if I was staying at Annie's
23 house for a few days, it would stay there. If I was staying at
24 my place for a few days, it would stay there. So it traveled
25 constantly.

1 THE COURT: Okay. Who reloaded Windows 7 onto the
2 laptop?

3 THE WITNESS: I --

4 THE COURT: Who loaded Windows 7, if you know, onto
5 the laptop?

6 THE WITNESS: I --

7 THE COURT: The detective stated it was recently
8 done. Did you, like, update the software or --

9 THE WITNESS: It updates by itself. So I don't know
10 when or how it got updated.

11 THE COURT: Okay. Did you kiss the boys frequently,
12 like you did Hazel, when you sent them to bed?

13 THE WITNESS: No.

14 THE COURT: Okay. When was the last time Hazel used
15 your laptop?

16 THE WITNESS: She had -- she'd used it that -- the --
17 the same day -- the day before I got arrested because I went
18 over there that day after work. So I just -- she had used it,
19 and I went home and got changed and left it there, and then I
20 went back. So she had used it the day before I got arrested.

21 THE COURT: Okay. How do you explain yourself in the
22 beginning of the videos when it looks like you're shaking the
23 camera, setting it down, turning the light off and even picking
24 it up at the end?

25 THE WITNESS: Those videos had to have been taken

1 from the videos of me and Annie because I wouldn't have left it
2 in there any other time. So they must've been cut or taken
3 from other videos that I had made.

4 THE COURT: Okay. What video editing software is on
5 your computer?

6 THE WITNESS: The one that I mainly use came with --
7 I know we call it Photoshop, but it's not called Photoshop. It
8 was like PC Movie Maker or something like that. It actually
9 came with the computer. So -- and Hazel was the one that was
10 trying -- she tried to teach me how to move it -- use it a
11 little bit because we were going to make a -- like, a collage
12 of the family for one of the events. So I know it was on
13 there, but I don't remember exactly what it was called. It was
14 something like Movie Maker or Movie Magic or something like
15 that.

16 THE COURT: Okay. And it's the thing -- the software
17 that comes with the computer when you buy it?

18 THE WITNESS: Yeah, it came with the computer. Yeah.

19 THE COURT: Okay. Why were the videos of Hazel and
20 Kurt hidden on your laptop?

21 THE WITNESS: I don't know.

22 THE COURT: Do you know why the folders with the
23 videos of Hazel and Kurt were named Yummm and Hmmm on your
24 laptop?

25 THE WITNESS: I have no idea.

1 THE COURT: Did you have an immediate romantic
2 attraction with Hazel?

3 THE WITNESS: No.

4 THE COURT: Okay. Did you videotape your sexual
5 encounters with other female companions, you know, girlfriends
6 before and Anita, girlfriends after Anita?

7 THE WITNESS: I have, yes.

8 THE COURT: Okay. Can you -- you mentioned that you
9 were -- had problems or issues with Hazel. Can you tell us
10 what those were.

11 THE WITNESS: Specifically?

12 THE COURT: Yes.

13 THE WITNESS: It might --

14 THE COURT: Well, I mean, you have some problems in
15 your relationship with Hazel?

16 THE WITNESS: Yeah, we had lots of problems.

17 THE COURT: Okay. Was it things about her behavior?

18 THE WITNESS: She had some --

19 MS. BEVERLY: Judge, can we approach?

20 THE COURT: No, that's not -- all right.

21 (Conference at the bench not recorded.)

22 THE COURT: Why would you leave the videos on your
23 computer where a child could easily have access to the file the
24 videos are located in since the children in the home could
25 possibly access it?

1 THE WITNESS: They were put in my profile, and they
2 were told not to go there, and they were -- you know, Hazel
3 specifically, since she used my computer. I told her before.
4 I said, There's naked pictures of me and your mommy. So unless
5 you want to see that, don't go there, and I believed that that
6 should've been enough. I don't think that was something that
7 she would want to view.

8 THE COURT: Okay. The file you put in the video
9 pictures of you and Anita, was it password protected?

10 THE WITNESS: No.

11 THE COURT: And why not?

12 THE WITNESS: I actually didn't really know how to do
13 that.

14 THE COURT: Okay. In prior testimony, we heard that
15 the files you had the videos on of Hmmm and Yummm were hidden
16 on your computer, and the ordinary person would have trouble
17 finding them. Do you -- do you know how Hazel would know how
18 to find them or hide them?

19 THE WITNESS: Hazel is more familiar with computers
20 than I am. I would guess she might be able to, or she could
21 probably figure out how to, but I don't know for sure.

22 THE COURT: Okay. You said Hazel has problems you're
23 uncomfortable dealing with. What were some of the issues that
24 you and Hazel had, just in your relationship?

25 THE WITNESS: Just in our relationship specifically?

1 THE COURT: Right.

2 THE WITNESS: She was a -- pretty rebellious and
3 disobedient. Mother didn't let me take too much of a hand in
4 disciplining her, but when I did, she would just outright
5 ignore it, like -- like, we'd catch her ditching from school
6 quite often, and so we talked to her about it. We talked to
7 the school about it, and then she'd just continue doing it,
8 things of that nature. She just would intentionally do the
9 opposite a lot of times of what she would told when it came to
10 discipline issues.

11 THE COURT: Okay. When you -- when you videoed
12 yourself and Anita in the bathroom, where was the video camera
13 placed?

14 THE WITNESS: Usually right next to the sink.

15 THE COURT: Okay. You said -- was it just there in
16 plain view on the sink, or did you like put a towel over it?

17 THE WITNESS: No, it was in plain view.

18 THE COURT: Okay. You said sometimes she would ask
19 you -- you said sometimes Hazel would ask you to kiss her good
20 night. Do you think this is appropriate for a young attractive
21 woman? That's -- I guess a --

22 THE WITNESS: In hindsight, probably not. At the
23 time, I thought, well, okay, that's being cute. I thought she
24 was warming up to me as a parent figure, but looking back on it
25 now, that was probably pretty stupid.

1 THE COURT: Do you agree that when someone is
2 drinking they will do things that they normally would not do if
3 they had not been drinking?

4 THE WITNESS: Yes.

5 THE COURT: Did Hazel send you a request to be her
6 Facebook friend?

7 THE WITNESS: Yes.

8 THE COURT: When was the Burning Man festival that
9 you talked about before?

10 THE WITNESS: It was the year prior to I met her. It
11 goes on the same week of every year. It's actually going on
12 right now. So it was the August of the year before, so like
13 August -- the last week of August, first week of September in
14 2009.

15 THE COURT: Okay. And that was the festival you
16 attended and had the pictures from?

17 THE WITNESS: Yes. Yes.

18 THE COURT: Okay. Were you jealous of Hazel's
19 boyfriends?

20 THE WITNESS: No.

21 THE COURT: Why did you tell the detective you were
22 attracted to Hazel? Did you feel pressured from the detective?

23 THE WITNESS: The detective made himself very
24 intimidating, but ultimately, Hazel is an attractive woman. So
25 I didn't feel that admitting that was inappropriate.

1 THE COURT: Okay. Did you let your roommates use
2 your laptop?

3 THE WITNESS: It was in my room, and it was unlocked.
4 They could have, but, you know -- and I wouldn't have
5 complained if they had, but they had never asked or mentioned
6 that they had used it.

7 THE COURT: Okay. When you were willing -- oh. When
8 you were willing to have Detective Jaeger look at your laptop,
9 you implied to the detective that you had some inappropriate
10 files on it. Why didn't you delete them if you weren't the one
11 who downloaded them to your laptop?

12 THE WITNESS: The inappropriate files I was talking
13 about referred to Burning Man, and there was no reason to
14 delete them because I wasn't even sure that they were illegal,
15 but they may be viewed as inappropriate because the festival --
16 the festival is a drunken hippie drug festival. So there's
17 things on there that I wasn't sure it was legal to actually
18 have on there, but there was no reason to erase them because
19 they were just from a party I went to basically.

20 THE COURT: Okay. If you knew Hazel was sneaky,
21 dishonest, good with editing videos and had snubbed you, why
22 did you give her free reign to use your laptop?

23 THE WITNESS: Well, for the most part, she knew more
24 about the laptop than I did, and even if I would try to put a
25 password on it -- because the one we bought for Franzkie, he

1 did put a password on it, and she knew how to just take it off
2 again. She just looked up online, and I guess there is a way
3 just to reset it and took it away. So that would've been
4 pointless, and on top of that, her mother felt that there was
5 no reason to really babysit her on the computer because we
6 really thought it was just for homework and Facebook and things
7 of that nature.

8 THE COURT: Okay. Why do you believe Hazel felt
9 uncomfortable around you?

10 THE WITNESS: She never expressed discomfort around
11 me in that manner.

12 THE COURT: In the videos where it showed you
13 adjusting the video camera in the bathroom, were you
14 intentionally trying to hide the video camera?

15 THE WITNESS: The camera I own would've been
16 impossible to intentionally hide. It's about this big. I
17 mean, even if you throw a towel over it, it's going to be
18 blatantly obvious that it's there.

19 THE COURT: Okay. And by this big, can you --

20 THE WITNESS: It's like a -- the one I had was a blue
21 gray, like a -- what it's called? Snapshot I think is the name
22 of it or something like that, and it's just, like --

23 THE COURT: So you're indicating 6 inches by 2 and a
24 half inches, something like that?

25 THE WITNESS: Probably like -- probably, like, 6 by 4

1 or something like that, somewhere around there. I don't know
2 the exact measurements. Sorry.

3 THE COURT: Okay. Well, I was just trying to guess
4 off your hand.

5 THE WITNESS: Yeah.

6 THE COURT: Okay. I'm not very good at that.

7 Oh. If you only intended to take videos of you and
8 Anita, why didn't you put the camera in the bathroom that you
9 and Anita used often?

10 THE WITNESS: It was in the bathroom that we used
11 often.

12 THE COURT: Okay. So the bathroom that the videos
13 are in just -- I think we covered some of this before -- that's
14 the hallway bathroom?

15 THE WITNESS: Yeah, that's the hallway bathroom.

16 THE COURT: And that's the bathroom that you and
17 Anita normally used?

18 THE WITNESS: Yes, that was our primary bathroom.

19 THE COURT: Okay. And the master bathroom is a
20 different bathroom?

21 THE WITNESS: Correct.

22 THE COURT: And that was the children's bathroom?

23 THE WITNESS: Yes, it was supposed to be.

24 THE COURT: Okay. What happened to the videos of you
25 and Anita? Did you -- were those on the laptop that the police

1 seized?

2 THE WITNESS: Yes.

3 THE COURT: Okay. So they should still be there --

4 THE WITNESS: Yes.

5 THE COURT: -- as far as you know -- okay.

6 When Hazel walked around the house inappropriately,

7 did you ever address that?

8 THE WITNESS: I would tell her mother.

9 THE COURT: And did you ever address it with Hazel?

10 THE WITNESS: I left the discipline to her mother

11 because she was pretty adamant about that.

12 THE COURT: The mother was adamant about it?

13 THE WITNESS: About discipline was her responsibility

14 since they weren't actually my children, and at that point we'd

15 only been dating, you know, a year or so. It was still her

16 domain to form discipline, especially on Hazel because Hazel

17 was so much older.

18 THE COURT: How did Hazel walk around the house

19 inappropriately? Describe for us what you witnessed.

20 THE WITNESS: The worst of it was one time she

21 actually came out of the restroom completely nude, and her

22 mother came unglued. So that would be extremely inappropriate.

23 That would be the worst that she had done.

24 THE COURT: And that was the hallway bathroom or --

25 THE WITNESS: The hallway bathroom.

1 THE COURT: -- the master bathroom?

2 THE WITNESS: It was the hallway bathroom. That's

3 why they were assigned the master bedroom so that that would

4 not happen again.

5 THE COURT: Okay. If Hazel did plot and strategize

6 this to blackmail you, in your opinion is Hazel -- I guess -- a

7 15 or 16 year old able to plot and execute this plan over a

8 period of months or years?

9 THE WITNESS: She had actually become more skilled at

10 figuring out how to plant evidence. One time, when she called

11 the police that her mother --

12 MS. LAVELL: I'm going to object --

13 MS. BEVERLY: I'm going to object --

14 THE WITNESS: Okay.

15 MS. LAVELL: It's nonresponsive to the question.

16 THE COURT: I'll see counsel up here.

17 THE WITNESS: Okay.

18 (Conference at the bench not recorded.)

19 THE COURT: -- answer.

20 THE WITNESS: I forgot where I was at.

21 THE COURT: About Hazel called the police.

22 THE WITNESS: Oh. She had learned from the first

23 time that she called the police and they told her that, you

24 know, You had no marks on you, that you couldn't get in

25 trouble. So then she waited for another time when she had a

1 tooth infection, and her face swelled up. So then she wanted
2 to stay with her boyfriend. So she called the cops again and
3 said that they did that. So the cops had to wait and call the
4 dentist and say, Okay, is this swelling really from her
5 infected tooth, and the dentist was, like, yes. So she
6 progressed in her ability to do this.

7 THE COURT: Okay. That concludes all of the juror
8 questions that I've got up here.

9 MR. JACKSON, I'm going to let you follow up first, if
10 you'd like, and I hear tearing. So why don't we let you follow
11 up.

12 And maybe Mr. Jackson will ask some of the questions,
13 and if not, we'll have some more.

14 MR. JACKSON: I have no questions at this time.

15 THE COURT: All right. Ms. Beverly, did you have any
16 follow-up --

17 MS. LAVELL: It's actually me, Your Honor.

18 THE COURT: Oh, I'm sorry.

19 MS. LAVELL: That's okay.

20 THE COURT: I keep calling on Ms. Beverly because
21 she's sitting closer to me.

22 FOLLOW-UP EXAMINATION

23 BY MS. LAVELL:

24 Q Okay. So throughout this trial there have been an
25 awful lot of questions about Photoshop --

1 A Okay.

2 Q -- and you testified earlier that she is proficient
3 in Photoshop, correct?

4 A Yes.

5 Q And you heard her mother testify that she's
6 proficient in Photoshop, correct?

7 A Yes.

8 Q And then I asked you, Are you aware that Photoshop is
9 specific to the manipulation of photos --

10 A Yes.

11 Q -- and you indicated you learned that today?

12 A Yes.

13 Q So now what you're saying is, Well, we've been
14 calling it Photoshop, but it's actually Movie Maker; is that
15 correct?

16 A Yes.

17 Q Okay. Why would you tell a 16-year-old child that
18 you have sexual pictures of her and -- your mom, period?

19 A So that she wouldn't go looking for them.

20 Q Why would she go looking for something she doesn't
21 know it exists?

22 A No, she would browse through everything. She was
23 nosy.

24 Q So if you know that a 6 year old -- a 16 year old is
25 nosy --

1 A Uh-huh.

2 Q -- why would you put them on a computer that is not
3 password protected, that you allowed her to use?

4 A Because I don't believe that she would want to look
5 at those.

6 Q That wasn't my question. You said -- you just said
7 she's --

8 A That is why I would put them on there, because I had
9 faith that she would not want to look at those files.

10 Q You just said --

11 A Uh-huh.

12 Q -- that she was nosy?

13 A Yes.

14 Q All right. And so if in fact she's nosy --

15 A Uh-huh.

16 Q -- and you tell her that you have naked photos of
17 both you -- or sexual photos of you and her mother --

18 A Right.

19 Q -- and you know she's nosy --

20 A Correct.

21 Q -- did you think simply saying then, Don't look at
22 them, would cause her not to look at them?

23 A Yes, that's the kind of thing that -- I don't think
24 she would want to look at.

25 Q Okay. And you have no proof she ever did look at

1 them, do you?

2 A No.

3 Q So you have no proof that she ever saw these videos
4 on your computer?

5 A No.

6 Q So you have no proof that she ever used those videos
7 to somehow manipulate videos that she took to suggest that you
8 took them by placing you in the picture?

9 A Correct.

10 Q You said that the reason you didn't password protect
11 it is because you didn't know how to do that, correct?

12 A I didn't really know how to do it. The kids knew how
13 to, but like I said, Hazel was able to overcome that when --
14 one time Franzkie did it.

15 Q Okay. And if I ask you a yes or no question, can you
16 do me a favor and just answer yes or no?

17 A Sure.

18 Q Thanks. You indicated that you didn't password
19 protect your computer because you didn't know how to do it,
20 correct?

21 A Yes.

22 Q But you had asked, at least the boys and on occasion
23 Hazel, how to help you with various elements of the computer,
24 correct?

25 A Yes.

1 Q Is there a reason why you just didn't ask the boys to
2 show you how to password protect the computer?

3 A I didn't feel it was necessary.

4 Q Okay. You said that the reason that you would give
5 Hazel kisses good night was because you believed it was kind of
6 cute that she was kind of looking at you as a father figure,
7 correct?

8 A Yes.

9 Q Okay. Do you think most fathers take pictures of
10 their teenage daughters up their skirt?

11 A No.

12 Q Do you think most daughters -- most fathers tell
13 their 16-year-old children that they're only with their mother
14 because they are romantically attracted to that child?

15 A As I explained before --

16 Q That's a yes or no.

17 A -- that was taken out of context.

18 Q That's a yes or no question.

19 A It's not a simple yes or no question.

20 MR. JACKSON: I'm going to object. He --

21 THE COURT: Yes, that's sustained.

22 MR. JACKSON: It's argumentative. Thank you.

23 THE COURT: It is argument. That's sustained.

24 BY MS. LAVELL:

25 Q Okay. Did you not say -- okay. And we went over the

1 fact that you said it before under my first cross, that it was
2 taken out of context, and do you recall me coming up there
3 with -- coming up there with the preliminary -- I mean -- I'm
4 sorry -- with the -- your transcript of the statement?

5 A The statement, yes, ma'am.

6 MR. JACKSON: Excuse me. I'm going to object. The
7 line of questioning is outside the scope of any --

8 THE WITNESS: Juror questions.

9 MR. JACKSON: -- redirect. We've already gone over
10 this.

11 THE COURT: Yes, I think we need to focus our
12 questioning on the juror questions and maybe questions that
13 came up as a result of the juror questions.

14 MS. LAVELL: Well, he did answer that he felt like he
15 was being perceived as a father figure. So I'm just -- by
16 Hazel as a result of one of those questions, and I'm --

17 THE COURT: I don't recall that, but --

18 MS. LAVELL: Yes. I'm querying that.

19 THE COURT: Okay. And, ladies and gentlemen, just to
20 remind folks on the jury, from time to time, we'll have
21 conversation, what was said, and the State may remember it one
22 way. The defense may remember it another way. I may not
23 remember it at all, or I may remember incorrectly. It doesn't
24 matter what any of us say the testimony was. It's your
25 collective recollection as to the testimony that controls your

1 deliberation.

2 So even if I say, Oh, I didn't hear that, or I don't
3 remember that, you know, if that's different from your
4 recollection, it's your recollection that's important, not what
5 any of us say because that's just all talk. The only thing
6 that matters is the sworn testimony and the exhibits.

7 MS. LAVELL: And just --

8 MR. JACKSON: Can I just make an objection. I
9 believe -- and I may be wrong in my recollection, but I believe
10 what he said was he wasn't involved in the discipline, and
11 because what -- and Anita took it, and so the district attorney
12 is taking out of context his answer.

13 THE COURT: Yes, that was my recollection, that he
14 wasn't involved in the discipline based on the request of Anita
15 who felt she should do the discipline.

16 MS. LAVELL: I didn't --

17 THE COURT: So go on.

18 THE WITNESS: Correct.

19 THE COURT: Just ask your question.

20 And again, ladies and gentlemen, we all remember it
21 differently. It's collectively what you folks remember that's
22 important.

23 MS. LAVELL: And just for the record, I'm not asking
24 about discipline, and he indicated that he did --

25 THE COURT: Ms. Lavell, state your question.

1 BY MS. LAVELL:

2 Q All right. And in response to one of the juror
3 questions specifically about your telling the detective that
4 you were romantically interested in Hazel, your answer was,
5 Yes, Hazel is an attractive woman?

6 A Correct.

7 Q Okay. She was 16 at this time, correct?

8 A Correct.

9 Q Do you consider 16 to be a woman?

10 A Yes.

11 Q In regards to the photos -- the videos in the
12 bathroom that you were able to observe here in court --

13 A Okay.

14 Q -- did it appear to you that Kurt was aware that he
15 was being videotaped?

16 A No.

17 Q Okay. So you indicated previously that there was
18 nowhere to hide that camera, correct?

19 A Correct.

20 Q Can you -- do you have any specific knowledge then if
21 there is no way to hide the camera and Kurt appears to be
22 within feet of that camera how he wouldn't have seen it?

23 A I believe he may have seen the camera but not thought
24 that it was running.

25 Q Okay. But you just testified that it didn't appear

1 that he saw the camera, did you not?

2 A Yes.

3 Q And you testified that the kids weren't supposed to
4 be using that bathroom. They were supposed to be using the
5 master bathroom?

6 A Hazel specifically, yes.

7 Q Hazel specifically. Everything seems to be very
8 specific to Hazel, correct?

9 A Not always.

10 Q You heard Kurt testify that when you came into the
11 picture they were removed from the master bedroom, and they
12 were put in the other bedroom --

13 A Correct.

14 Q -- and the three of them were told to use the
15 bathroom in the hallway. Did you hear that testimony?

16 A Yes.

17 MS. LAVELL: I have nothing further.

18 THE COURT: Anything else, Mr. Jackson?

19 MR. JACKSON: No questions.

20 THE COURT: Did we have any additional juror
21 questions, other than the ones I have already? If anybody has
22 them, please give them at this time.

23 Counsel, approach.

24 (Conference at the bench not recorded.)

25 THE COURT: All right. We have a few juror questions

1 up here, and as I told you, ladies and gentlemen of the jury,
2 the questions from the jurors are governed by the same rules of
3 evidence that control what the lawyers ask. So some of your
4 questions may not be asked.

5 You stated that you told Hazel about the videos and
6 instructed her not to go there. Did you really believe that a
7 teenager would not be curious and want to look at them?

8 THE WITNESS: Her own mother, yes.

9 THE COURT: Okay. How many drinks had you had on the
10 night you took the pictures of Hazel under her skirt?

11 THE WITNESS: Probably two or three.

12 THE COURT: Would you generally lock your room at the
13 home you shared with the other roommates?

14 THE WITNESS: No.

15 THE COURT: In the video of you in the towel, you
16 said you go straight to the bedroom when just wearing the
17 towel, but you left the video camera on even though you said
18 you were finished in the restroom. Why would you leave it on
19 if you were finished?

20 THE WITNESS: If it was one of the videos of me and
21 Annie, it was because I was going to get her.

22 THE COURT: How many times have you seen Hazel nude?

23 THE WITNESS: I've only seen her fully nude once.

24 THE COURT: And that's the time you talked about?

25 THE WITNESS: She came out of the bathroom, yeah.

1 THE COURT: Okay.
2 THE WITNESS: Yes.
3 THE COURT: Have you ever seen Kurt nude?
4 THE WITNESS: No.
5 THE COURT: Have you ever seen Franzkie nude?
6 THE WITNESS: No.
7 THE COURT: Oh, Franzkie. I'm sorry.
8 THE WITNESS: Franzkie.
9 THE COURT: Franzkie.
10 THE WITNESS: Sorry.
11 THE COURT: How often did you ever -- ever edit
12 videos?
13 THE WITNESS: Me, I don't know how to edit videos.
14 THE COURT: What do you think the benefit would be to
15 Hazel for blackmailing you?
16 THE WITNESS: She probably wanted something, like she
17 usually did, stay with her boyfriends, new camera, something
18 along those lines.
19 THE COURT: Okay. Did you install the gaming
20 software on your -- you know, the games you talked about on
21 your laptop yourself?
22 THE WITNESS: Yeah, you just plug in the CD, and it's
23 all automated.
24 THE COURT: Okay. Where did you buy your computer?
25 THE WITNESS: Best Buy.

1 THE COURT: And how much did you pay for it?

2 THE WITNESS: They were both different. One I think
3 was about a grand, and then the other one I bought for the boys
4 I think was like three hundred.

5 THE COURT: Okay. And then this juror does not
6 believe movie-edit software normally is part of the basic
7 computer software package, but it was part of your package?

8 THE WITNESS: Yeah, with the one I got, it was more
9 expensive. It had a bunch of different things on there.

10 THE COURT: Okay. And then if you -- you mentioned
11 that you'd added some games to your computer. Did you add any
12 additional software after the purchase of your computer?

13 THE WITNESS: No, just video games.

14 THE COURT: Okay. Why did you leave the army after
15 three years?

16 THE WITNESS: My time was served.

17 THE COURT: Okay. Why would you think it's
18 appropriate to tell Hazel that there were naked videos of you
19 and her mom on the computer?

20 THE WITNESS: So that she wouldn't accidentally find
21 them.

22 THE COURT: All right. Mr. Jackson, do you have any
23 follow-up to those last juror questions?

24 MR. JACKSON: Just one or two.

25 THE COURT: Okay.

1 FOLLOW-UP EXAMINATION

2 BY MR. JACKSON:

3 Q The main reason you had for -- the reason you got a
4 computer was for gaming; is that correct?

5 A Yes.

6 Q And you like to play video games; is that right?

7 A Yes.

8 MR. JACKSON: I have no further questions.

9 THE COURT: Ms. Lavell, any follow-up to those last
10 juror questions or Mr. Jackson's last question?

11 MS. LAVELL: Yes, follow-up for the jury questions,
12 thank you, just a few.

13 FOLLOW-UP EXAMINATION

14 BY MS. LAVELL:

15 Q You said that you on the night before Hazel went to
16 the police you'd had two to three drinks?

17 A Yes.

18 Q Do two to three drinks generally get you drunk?

19 A It gets me pretty tipsy, yeah.

20 Q Because you previously testified that you were in
21 fact drunk?

22 A Yes.

23 Q You said that you believe Hazel would have
24 manipulated these videos -- taken the videos and then
25 manipulated them in such a way so that she could blackmail you

1 in order that she might stay with a boyfriend or ask for games,
2 correct?

3 A I said like cameras and stuff like that. I didn't
4 say games.

5 Q Okay. Cameras and stuff like that.

6 A She's not a gamer.

7 Q Okay. Did she ever show you the videos and then ask
8 for a camera?

9 A No.

10 Q Did she ever show you the videos and then ask to stay
11 with her boyfriend?

12 A No.

13 Q Was it generally you who would give her permission?
14 You indicated that her mom --

15 A If her mother wasn't there, she would ask me, and I
16 generally categorically said no.

17 Q But she didn't use these videos that you think that
18 she created for blackmail purposes to actually blackmail you at
19 any point?

20 A She didn't show them to me, no.

21 Q So she never came to you and tried to obtain these
22 various items --

23 A No.

24 Q -- using -- okay. You indicated that the computer
25 you purchased was relatively expensive, and it kind of came

1 with all the different bells and whistles?

2 A Yes.

3 Q Okay. To include this video software?

4 A Yes.

5 Q How long did you have the computer before it was
6 seized by law enforcement?

7 A I actually don't recall.

8 Q Presumably -- is it fair to say that you paid extra
9 so that you could actually utilize the bells and whistles that
10 came with this computer?

11 A No, I bought it because I had -- it was supposed to
12 be the fastest -- it was supposed to be fast, the -- what do
13 you call it? Not memory chip -- the processor. It had like a
14 really fast processor --

15 Q For games?

16 A -- so I paid extra for that. Yeah --

17 Q For games?

18 A -- for games.

19 Q And there wasn't a computer out there maybe that was
20 less expensive that had an equally fast processor that didn't
21 have all these extras that you never would use?

22 A I don't know. That was the one I saw that I liked.

23 MS. LAVELL: Okay. Nothing further.

24 MR. JACKSON: No questions.

25 THE COURT: Any additional questions from the jury?

1 (Conference at the bench not recorded.)

2 THE COURT: You stated that you knew everyone was
3 referencing Photoshop. Then you stated that actually you
4 mainly used was more Movie Maker and described the program.
5 You never -- but you just stated you never used it. Can you
6 clarify.

7 THE WITNESS: Yeah, I saw Hazel using it to make --
8 to help me make the collage. I didn't actually use it. She
9 helped me figure out how to put the videos and the pictures
10 together to make a -- I guess a collage. I guess that's maybe
11 not the right term but, you know, a bunch of family stuff
12 together for a video for one of the birthdays.

13 THE COURT: Okay. So did you have both Photoshop and
14 Movie Maker?

15 THE WITNESS: I don't know if Photoshop was actually
16 on there or not.

17 THE COURT: Okay. Did you ever see anyone viewing
18 inappropriate things on your laptop?

19 THE WITNESS: No.

20 THE COURT: If -- when -- was there a light or
21 indicator to show that the video was recording? Your video
22 camera, would there, like, be a green light or a red light or
23 something that would go on when it was in the record mode?

24 THE WITNESS: I don't remember.

25 THE COURT: Okay. We heard in previous testimony

1 that Hazel's father had purchased her a camera. Did you ever
2 purchase a camera for Hazel?

3 THE WITNESS: No.

4 THE COURT: Okay. You said you loaded a few games on
5 your laptop. What, if you remember, are the names of the games
6 that you loaded onto your laptop?

7 THE WITNESS: I think the only two I really played
8 was -- shoot. What's it called now? Fallout. It was, like, a
9 game. It was the old one. Now, they have a newer one for
10 console, and then World of Warcraft. I played that a lot.

11 THE COURT: World of Warcraft?

12 THE WITNESS: Yeah, it's a online video game where
13 you just kill stuff.

14 THE COURT: Okay. And is that one, like -- I know,
15 like, Bejeweled, you just get online. Is that one you have to
16 buy the disc and download, or is that one you just kind of find
17 online and play?

18 THE WITNESS: No. No. No, you have to buy a disc.

19 THE COURT: Okay.

20 THE WITNESS: Then you put it in, and --

21 THE COURT: Okay. And then you download it, and then
22 you can play with other people?

23 THE WITNESS: Yeah, then you -- then you -- yeah, it
24 prompts you to make an account, and then you hop online and
25 play.

1 THE COURT: Okay. Mr. Jackson, any follow-up to that
2 last series of questions?

3 MR. JACKSON: Your Honor, I don't know how to play
4 video games. So I have no questions.

5 THE COURT: Do you know how to turn on a computer?

6 MR. JACKSON: Just barely.

7 THE COURT: All right.

8 MS. LAVELL: No questions.

9 THE COURT: Ms. Lavell, any other questions -- all
10 right.

11 I don't see any other -- we didn't see any other
12 questions from the jury.

13 Mr. Shue, you may return to counsel table, next to
14 Mr. Jackson.

15 THE WITNESS: Thank you.

16 THE COURT: And, Mr. Jackson.

17 MR. JACKSON: At this time the defense rests.

18 THE COURT: All right. Do we have any rebuttal
19 evidence from the State?

20 MS. BEVERLY: No, we'll rest, too.

21 THE COURT: All right. Ladies and gentlemen, that
22 concludes the presentation of evidence in this case. As I told
23 you at the outset, that's followed by the instructions on the
24 law, which I shall read to you shortly, and then the attorneys
25 will make their closing arguments. Because the State has the

1 burden of proof in this case, the State both opens and closes
2 the closing arguments.

3 Before we move into the instructions on the law,
4 we're going to take a quick 10-minute break until 11:25, and
5 then we're going to go straight through with maybe one break
6 for the arguments. Lunch will be provided for you today. So
7 we're going to finish up with the arguments, and then we'll
8 provide lunch for the jury.

9 So before I excuse you for the brief recess I must
10 remind you that you're not to discuss the case or anything
11 relating to the case with each other or with anyone else.
12 You're not to read, watch or listen to any reports of or
13 commentaries on the case, any person or subject matter relating
14 to the case. Don't do any independent research by way of the
15 Internet or any other medium. Please don't form or express an
16 opinion on the trial.

17 Notepads in your chairs. Follow the bailiff through
18 the double doors.

19 (Proceedings recessed 11:16 a.m. to 11:30 a.m.)

20 (Outside the presence of the jury.)

21 THE COURT: -- present, and you have indicated you
22 would like to make a motion out of the presence of the jury.

23 MR. JACKSON: Yes, I'd make a motion for directed
24 verdict. I think under Jackson versus Virginia, the State
25 cannot meet its burden of proof on any of the counts. Now, I

1 can take them one by one, but the State has the burden of
2 proving beyond a reasonable doubt the charges in this
3 indictment. The burden requires more than just probable cause.
4 It requires proof beyond a reasonable doubt.

5 The Court I think has a duty to take this case from
6 the jury because they haven't met the burden. They have to
7 establish the elements of the offense of child pornography or
8 the production of child pornography in the counts that it is
9 alleged because, number one, the exhibits they presented aren't
10 child pornography. Number two, they haven't established that
11 the matters found on Mr. Shue's computer were put there by him.
12 He has denied it. They haven't had any credible evidence that
13 he put them on his computer.

14 The Exhibits 3 through 11, we had testimony from
15 Officer Ramirez that Mr. Shue was not involved in that
16 investigation. Those counts in particular --

17 THE COURT: Well, that's not what he said. You kept
18 saying that, and they never objected, and I probably would've
19 sustained an objection. It was that he was involved in the
20 investigation of who took the picture, but he was -- the
21 investigation was he had the picture, but they didn't charge
22 him with taking the picture. So you kind of twisted it in the
23 way you asked your questions. They didn't object. So I didn't
24 say anything, that the testimony was the investigation of who
25 took the picture.

1 As you know, it's illegal to possess child
2 pornography if you know about it, and so it doesn't matter if
3 he took the picture or not for that count. That's what that
4 testimony was.

5 MR. JACKSON: Right. But they've got no evidence
6 that he possessed it knowingly. That's -- and the Court gave
7 that instruction. They have no evidence whatever. What they
8 have is they did a -- executed a search warrant, and they found
9 evidence on the computer. Now, that's insufficient as a matter
10 of law I would submit for those charges.

11 Now, as far as the charges of child abuse and
12 neglect, I'd like to address those specifically. The charges
13 of child abuse and neglect involve injury, mentally or
14 physically to the child. All of the children said that, number
15 one, they didn't even know about any of this so-called
16 pornography or these pictures. There isn't -- isn't any
17 evidence that they were hurt or in any way injured by this. So
18 I -- how can there be any child abuse or neglect?

19 This is a manufactured charge. Oh, well, they
20 must've been hurt because this happened. It doesn't meet the
21 statue. It's a charge that's added on by the district
22 attorney, and, Your Honor, should at this time based on the
23 evidence presented tell the jury that there is insufficient
24 evidence. This charge is taken from you.

25 Now, the charge of open or gross lewdness, the

1 so-called kiss, she herself said she doesn't even remember
2 whether it was a -- more than a simple kiss on the lips. She
3 didn't say she was harmed by it. Open or gross, if you look at
4 the instruction, this doesn't amount to anything that's
5 criminal.

6 A man kissing a 16 year old on the lips is not
7 necessarily a crime. In fact, in Nevada -- in fact, I think
8 she was 17 years of age on August 23rd of 2012. A man kissing
9 a 17 year old is not necessarily guilty of open or gross
10 lewdness, especially with the testimony we have from this
11 alleged victim. That doesn't amount to any criminal offense
12 whatsoever. The Court should remove this charge from the jury.
13 I think it's prejudicial.

14 The State hasn't met its burden by -- certainly not
15 by any reasonable doubt. The testimony of the State's own
16 witness establishes they didn't meet this charge. Under
17 Jackson versus Virginia, they can't prove it, and it shouldn't
18 go to the jury. The only reason for having it I think is to
19 either gain some kind of sympathy for the jury or to argue that
20 the defendant is a bad man.

21 THE COURT: Well, obviously they can't argue that.

22 MR. JACKSON: Well, but it shouldn't go to the jury
23 because they -- it's not a crime. The age of consent of
24 actually having sexual intercourse with a 16 year old in this
25 state is 16 years of age. A mere kiss isn't a crime. She

1 didn't -- she didn't say -- you know, simply kissing someone on
2 the lips the way she described it didn't suggest there was any
3 gross actions involved, and based on that, based on her
4 testimony, they haven't met their burden in this case that
5 there was any kind of gross lewdness or anything else involved
6 here, and I'll submit that that charge certainly should be
7 dismissed.

8 I don't think that they've met any of their charges
9 by the standards of the United States Supreme Court as laid out
10 in Jackson versus Virginia.

11 THE COURT: All right. Well, first of all, they
12 don't have -- I mean, they can make an inference that he knew.
13 It was his computer. They don't have to eliminate any other
14 potential suspects in order for it to go to the jury. Any time
15 there's a case, you know, involving possession, drugs, you
16 know, meth lab, whatever, there is always a defense it could've
17 been somebody else. Somebody else maybe lived there, had
18 access, whatever. They don't have to eliminate any other
19 potential suspect in order for the -- you know, for there to be
20 enough evidence to give it to the jury. So, you know, that's
21 what we have here.

22 Like I said, you know, pretty much every case where,
23 you know, either the charge or the evidence is based on
24 possession, there's always other people who could have had
25 access to the -- I mean, drugs is the obvious example. So I

1 don't really find that argument very compelling.

2 Ms. Beverly --

3 You know, looking at the definition of open and gross
4 lewdness, I think that's their weakest count. You know, it
5 could've been offensive to her, especially the timing of the
6 kiss. You know, whether it's vulgar -- I think it was vulgar,
7 obscene -- I don't remember the other word. I think that's a
8 weaker count certainly than some of these others, given the
9 testimony. It was a peck, or she couldn't remember if it was a
10 peck.

11 Ms. Beverly, do you want to be heard on that?

12 MS. BEVERLY: Sure. On the open and gross lewdness
13 charge, certainly that timing is absolutely important, but
14 first and foremost, the defendant is the mom of her mother's
15 boyfriend. He is a grown --

16 THE COURT: Daughter.

17 MS. BEVERLY: Daughter. I'm sorry.

18 THE COURT: The daughter is -- the defendant is the
19 boyfriend --

20 MS. BEVERLY: -- the boyfriend of the victim's mother
21 Anita, just for clarity sake. The fact that he's -- he's not
22 her father. He's not a family member. He's the mother's
23 boyfriend. So the fact that he would be kissing in any way a
24 17 year old on the lips after he took a picture up her skirt is
25 certainly -- we should be able to argue that's open and gross

1 lewdness and that that was offensive. She said it made her
2 uncomfortable. She didn't want him to kiss her on her lips, no
3 matter what kind of kiss it was. So I think that's -- you
4 know, whether the jury finds that to be the case, then so be
5 it, but that's certainly something we should be able to argue
6 to the jury.

7 THE COURT: I think it's a question for the jury. So
8 I'm going to, you know, give it to the jury, and they can
9 determine what the evidence means. I think there is enough
10 evidence. You know, if you draw the inferences in the light
11 most favorable to the State, there's certainly enough evidence
12 for the jury to convict this defendant, and it's up to them.

13 So, you know, it's up to them what inferences to
14 draw, not up to me, as long as they're reasonable. I think
15 they can make reasonable inferences in the State's favor on
16 these counts. So for that reason your motion is denied.

17 Kenny, bring them all in.

18 (Jury entering 11:40 a.m.)

19 THE COURT: Court is now back in session. The record
20 should reflect the presence of the State through the deputy
21 district attorneys, the defendant and his counsel, the officers
22 of the court and the ladies and gentlemen of the jury.

23 Ladies and gentlemen, as I told you before our break,
24 the next phase of the trial involves the -- me reading to you
25 the instructions on the law. You will have a number of copies

1 of these written instructions back in the jury deliberation
2 room with you should you wish to refer to them in your
3 deliberation. You also have all of the items that were
4 admitted into evidence in this case.

5 It is important that I read these instructions
6 exactly as they are written. I am precluded from trying to
7 expound upon them or clarify them in my own words in any way.
8 Each instruction has been numbered for your convenience and
9 ease of reference.

10 (Reading of instructions not transcribed.)

11 THE COURT: Ladies and gentlemen, that concludes the
12 instructions on the law.

13 Is the State ready to proceed with their closing
14 argument?

15 MS. BEVERLY: Yes, I am, Judge.

16 THE COURT: All right. Thank you.

17 (Closing argument for the State.)

18 MS. BEVERLY: It's a sad day in our community when
19 the people who are supposed to be protected the most are the
20 people who are being exploited, and it's a sad day in our
21 community when someone's own mother doesn't want to protect
22 them from people like Joshua Shue.

23 You heard Hazel testify that she told her mom about
24 inappropriate things that Joshua was doing, and then you heard
25 Anita come on the stand and say, My daughter is a liar. I

1 didn't do anything. Joshua didn't do anything. Hazel is
2 making this whole thing up. I would let my kids see him again
3 today if he's not convicted. I would talk to him again because
4 he's done so much for me and my family. And that's a sad day.

5 And we've been sitting through this trial for the
6 last week. It's been a difficult trial. We've had to sit
7 through this trial because Joshua Shue chose to put a video
8 camera in that bathroom, and it's his actions and his behavior
9 and his conduct why he's charged with 41 counts in this case
10 and why he's guilty of all 41 counts in this case.

11 Now, in every criminal trial, the State must always
12 prove two things, that a crime was committed and that the
13 defendant is the person who committed that crime. Now, in this
14 case, we read the indictment at the beginning of this trial,
15 but you'll have a copy of it to go back with you so you can
16 refer to it.

17 A total of 41 counts, one count of child abuse, 29
18 counts of use of child in production, 10 counts of possession
19 of child pornography and one count of open and gross lewdness.
20 So again you'll have the indictment to go back and refresh your
21 recollection. We tried to go through each video and relate it
22 to the counts, but you'll have it to take back with you.

23 Now, to refresh your recollection, a little
24 background, these are the victims in this case. We have Hazel.
25 We have Kurt. We have these two other unidentified male

1 juveniles, and you've seen those pictures throughout the trial.

2 Now, a little bit of background, we know that the
3 defendant Mr. Shue was in a relationship with a Anita Iral
4 between 2010 and 2012, and we know that Anita had three
5 children -- well, she actually had five children, but she had
6 three children that were living with her here in Las Vegas at
7 the Kolendo apartment during that time frame, and that was
8 Hazel, Kurt and Franzkie.

9 And we know that between summer of 2010 and
10 August 23rd of 2012, the defendant would stay at the Kolendo
11 apartment, he said about four nights a week. We heard it was
12 very frequently although he also had this address that he was
13 renting a room from at the Palm Wash address in Henderson.

14 So we know that on August 23rd of 2012, Hazel filed a
15 police report talking about the picture up her skirt and
16 talking about the kiss that the defendant had given her the
17 night before. Hazel was interviewed by Detective Jaeger. So
18 was the defendant. We then know that search warrants were
19 served on those two addresses, the Kolendo and the Palm Wash
20 address, and we know that Detective Ramirez conducted a
21 forensic analysis on both the blue camera and the Sony VAIO
22 laptop computer.

23 A couple of other things to note, the VAIO laptop was
24 found in the defendant's room. Hazel identified the computer
25 as the defendant's. The defendant also identified the computer

1 as his own. The computer was registered to Mr. Shue. It was
2 found on a desk in close proximity to those items in the drawer
3 that we saw many times throughout this trial.

4 And we know the video files at question in this case
5 were found in folders called Yummm and Hmmm on Mr. Shue's
6 computer, and they were hidden, and Detective Ramirez testified
7 that they were -- that those folders were created in 2011.
8 Again, photo of the Sony VAIO laptop computer next to that
9 drawer containing all of those items, and again you'll have
10 these photos to take back with you.

11 So let's get into the actual charges and the elements
12 of those charges and how the facts lead to those elements of
13 the charges, and as the Judge said, you'll have a copy of the
14 jury instructions to take back with you. So use of child in
15 production, a person -- I apologize. It's a little cut off,
16 but you can see it for the most part hopefully -- A person who
17 knowingly uses, encourages, entices, coerces or permits a minor
18 to be the subject of a sexual portrayal in a performance is
19 guilty of this crime, regardless of whether the minor knew they
20 were involved in this performance.

21 A couple of definitions, minor means a person under
22 the age of 18. Performance is any play, film, visual
23 presentation. In this case it's videos, but anything that
24 amounts to a visual presentation is considered a performance.
25 Sexual portrayal, one of the most important parts of this

1 definition, means the depiction of a person in a manner which
2 appeals to the prurient interest in sex and which does not have
3 serious literary, artistic, political or scientific value.

4 Now, sometimes we come into a trial with preconceived
5 notions about what constitutes child pornography, but this is
6 the law. Child pornography can be sexual conduct. It can also
7 be the sexual portrayal of minors in a particular way. So this
8 is what the law says is child pornography.

9 A couple of things to note about the law regarding
10 child pornography, a couple of things the State does not have
11 to prove. There is no requirement anywhere in the instructions
12 that the defendant must watch these videos over and over again,
13 or he must look at these photos over and over again or at all.
14 The crime is making the video and the presentation. It's not
15 whether he watched it a bunch of times afterwards. So you
16 can't go back to the jury room and say, Well, we don't know if
17 he watched these videos. So he must not be guilty. Because
18 the State doesn't have to prove that. It's not an element of
19 the crime.

20 Additionally, consent is not a defense, and that goes
21 to some of the photographs of the other younger boy. It looks
22 like he's kind of posing in some of the photos, and he might be
23 smiling. It doesn't matter. Even if you were to believe that
24 Hazel and Kurt or any of the other kids knew that they were
25 being filmed or photographed, it doesn't matter. It's not a

1 defense to say, Oh, well, these kids knew about it. So my
2 conduct is okay.

3 Additionally, it doesn't matter what camera the
4 defendant used. You saw a camera in that drawer. You also
5 heard testimony about another Snapshot camera that the
6 defendant used. It doesn't matter what camera it was. We know
7 that it was a video camera because we have video files. So the
8 State doesn't have to prove which camera was used as long as a
9 camera was used, and we know that for a fact because we have
10 these video files.

11 Okay. Now, again because there are so many counts on
12 this case, I just want to make sure that we know which videos
13 apply to which counts. I know I saw all of you taking very
14 copious notes during this kind of long part of the testimony
15 with Hazel, but it was important that we go through and match
16 up each video to the particular counts.

17 So when we're talking about the charges of use of
18 child in production. First of all, we have Count 1, and that's
19 the photo up the skirt, and then we have the following video
20 files, which relate to the different counts, and you can see
21 that the ones listed have both Hazel and Kurt, and then Counts
22 26 through 38 are all the other video files, which just
23 involved Hazel. So again you're going to have these videos to
24 take back with you and can match them up to the counts, but I
25 just wanted to make sure that we got that clear.

1 Finally -- well, actually -- additionally, in terms
2 of what the videos overall portray, they're all very similar in
3 nature. We have the defendant setting up the camera. We have
4 Hazel, Kurt or both children entering the restroom. They then
5 shower, use the restroom, do other bathroom activities. The
6 children then leave the bathroom. The camera cuts off, and we
7 know that each video is a different day because remember the
8 testimony of Hazel, who said, My hair was different. I wore
9 different -- I had different clothes on. I didn't take more
10 than one shower a day during that time period. So we know each
11 video was a different day.

12 So the elements, knowingly uses or permits a minor to
13 be the subject of a sexual portrayal. Okay. Knowingly, that
14 means he did it on purpose. Okay. How do we know Mr. Shue
15 purposely took these videos? Well, here he is right here
16 setting up the camera. Here he is in another video setting up
17 the camera, another video with his hand adjusting the angle of
18 the camera, another video with his face in the camera, another
19 video with him fixing the camera and walking out of the
20 bathroom. Over and over again it's Mr. Shue who's setting up
21 the camera. It's Mr. Shue who is changing the angle of the
22 camera. So we know that he did it on purpose.

23 We also know from his testimony, from his interview
24 with the police, that he told Detective Jaeger, I'm going to
25 have some things on my computer that are not on the up-and-up.

1 Well, he got on the stand and said, Oh, well, I was talking
2 about some other adult conduct, except that Detective Jaeger
3 wasn't asking him about adult conduct. He was asking him about
4 pictures of children. So we know that it was Mr. Shue who took
5 these videos.

6 A minor, both Hazel and Kurt were under the age of
7 18. We know that because there was testimony about their
8 birthdays. There was also testimony that the police didn't
9 even become involved until after -- until before Hazel had even
10 turned 18. So we know that both children were under the age of
11 18 at the time these videos were being made.

12 Uses or permits. Okay. What do we know in this
13 case? We know that the defendant set up this video camera in a
14 place where he knew the children would be naked. He didn't set
15 it up in the living room or the kitchen or some other bedroom.
16 People become naked in the bathroom, and we saw Hazel coming in
17 there fully clothed, and we saw her then getting naked, same
18 thing with Kurt. So he put the camera in a place that he knew
19 the kids would be nude.

20 We also know that the camera was positioned in many
21 of the videos towards the shower. Again, in order to get in
22 the shower, you have to become naked. So the camera is
23 positioned towards the shower. It also changed positions, but
24 a lot of the videos are towards the shower where he knew they
25 would be naked. Why else are you placing a camera in the kids'

1 bathroom where you know they're going to be naked and facing it
2 towards the shower? It's because you're trying to capture the
3 kids nude. That's the only possible explanation.

4 And we know with the picture up the skirt, which is
5 again Count 1, it's -- a person who takes a picture up a skirt
6 knows that they're going to capture some person's genitals.
7 Why else are you taking a picture up someone's skirt? Mr. Shue
8 got up here and said, Oh, I was trying to teach her a lesson.
9 I'm not sure what lesson that would be. He could've just told
10 her don't bend over, but he took a picture up her skirt. That
11 doesn't make sense. So why else are you doing that? Because
12 you want to capture someone nude or their genital area. So we
13 know that he was specifically doing this to capture those kids.

14 Second -- last part of this definition, Appeals to
15 the prurient interest in sex. That's a sexual portrayal. That
16 means appeals to the lustful thoughts or lustful desires of a
17 person. Okay. How do we know that's why he was taking these
18 videos as opposed to him taking the videos as a joke or just to
19 be funny or be cute? Well, he admitted to the detective that
20 he had romantic feelings for Hazel and she was an attractive
21 girl. We also know that he's attracted to young boys based on
22 the other items that were found on the computer.

23 The computer happened to be found next to the desk
24 drawer containing all those other items, and you as the jury
25 can infer what he was doing with those items next to the

1 computer with a bunch of videos of his girlfriend's kids naked
2 on -- in folders called Yummm and Hmmm and hidden on the
3 computer. There is no other reason to put a camera in the
4 bathroom where kids are unless it's for your sexual
5 satisfaction. It's not funny. It's not a joke. It's not
6 something you play around with. There is only one reason.

7 And there's actually a jury instruction that says,
8 you know, use your -- you can use your common sense. You know,
9 we ask you to come in here as members of the community with
10 different walks of life. You can use your common sense, and
11 there's no way that someone puts a camera in the bathroom for
12 any other reason but for his own sexual gratification, and so
13 we know that those videos were made for that purpose.

14 And no artistic or literary value. You know,
15 sometimes you go to an art museum, and you might see
16 photographs or paintings of the human body in its nude form,
17 and it's for an artistic purpose, or you might go to a science
18 museum and see the parts of a human body for purposes of
19 science.

20 There is no artistic, scientific or literary value in
21 placing a camera and capturing your girlfriend's kids nude.
22 There is no value. So this is not a situation where it's --
23 where we're trying to show how beautiful the human body is.
24 These are kids showering, going about their own business, doing
25 very private bathroom things that Mr. Shue was -- is capturing,

1 no other purpose. So because of those -- how those facts fit
2 with the elements of the crimes, he's guilty of all 29 counts
3 of use of a child in production.

4 The next crime is possession of child pornography,
5 and there's a lengthy definition. Again, you'll have it to
6 take back with you, but it's essentially knowing -- knowingly
7 possessing a film, visual presentation of a child under 16 as
8 the subject of a sexual portrayal or engaging in sexual
9 conduct.

10 Now, one thing you might be wondering is why Hazel is
11 not charged in the possession of child pornography counts and
12 only Kurt is charged in those counts. Now, the reason for that
13 is because of -- we have the element of under the age of 16,
14 and when Hazel testified, she said, I was between 15, 16,
15 sometimes she wasn't sure. So she may not have been under the
16 age of 16, and so that's why she's not charged in those counts,
17 based on the elements of the statute.

18 Again, just to be clear, we have these counts
19 relating to the particular videos involving Kurt, for the
20 possession charges that you can take back and again look at,
21 and we have Count 40 and 41 for the photos of the other
22 juveniles not related to Kurt or Hazel. So I just wanted to
23 make sure we match up the video files with the correct counts.

24 Elements of possession of child pornography,
25 knowingly and wilfully had in his possession photo, visual

1 presentation, person under 16, sexual portrayal or engaging in
2 sexual conduct. Let's talk about the videos first and
3 foremost. We know the defendant made the videos. So he must
4 have known that he had them because he's the one that made
5 them. He put the videos on his computer. The computer was
6 found in his room. The computer belonged to him. So he knew
7 about these videos, and he knew and possessed them knowingly.

8 In terms of the photos of the other identified
9 children, those were found on the defendant's computer as well,
10 found in his room, computer registered to him, and we know he
11 has an interest in young boys. He's filming Kurt as well. The
12 question is, who else would have any reason to download files
13 of nude juveniles other than Mr. Shue? Unless it's a situation
14 where I guess Hazel is downloading photos of these boys or Kurt
15 or Franzkie is downloading these photos. Nobody has any reason
16 except Mr. Shue to download photos of young male children. So
17 we know that he knowingly possessed those items.

18 Digital presentation, again, videos and photos, those
19 are both visual presentations, and all the children were under
20 the age of 16. Detective Ramirez testified that the boys in
21 the photos, one was 12, the other one also looked to be under
22 the age of 16, and we know that Kurt was also under the age of
23 16 at the time based on his birthday and the fact that he's 16
24 now. So he couldn't possibly have been 16 or older at the time
25 that these videos were actually found.

1 Prurient interest in sex and sexual conduct. You
2 know, obviously there's sexual conduct in this video. We
3 talked about what prurient interest in sex means. We obviously
4 have little boys in showers posing. Why else would you
5 possibly have that other than your sexual gratification?

6 We also have Kurt in the shower. Why else do you
7 have Kurt in the shower unless it's for your sexual
8 gratification? And so it's kind of the same philosophy as why
9 you're producing the videos in terms of the purposes for making
10 those videos. Same reason you're possessing them, for your own
11 sexual gratification. So he's guilty of all 10 counts of the
12 possession of child pornography.

13 Count 39 is open and gross lewdness. Any person who
14 commits an act of open or gross lewdness is guilty of that
15 crime. Now, you kind of have some lengthy definitions of what
16 open and gross lewdness means, and you'll have that jury
17 instruction to take back with you, and essentially it's an act
18 done that's offensive, that is obscene and that is likely to --
19 it's a sexual act that's likely to offend the victim.

20 What do we have here? What's the act of open and
21 gross lewdness? It's kissing Hazel on the mouth. Hazel said
22 she wasn't sure if it was a pack or a longer kiss, but we know
23 it was a kiss on the mouth. Well, we also know that this kiss
24 came right after he took a picture up her skirt.

25 We also know that Mr. Shue was the boyfriend of

1 Hazel's mom. Why would Anita's boyfriend be kissing her
2 daughter on the mouth? That's offensive. That's indecent, and
3 that's sexual in nature. There is no reason for that. And you
4 actually heard Mr. Shue testify that he never kissed the boys
5 like that, but he's kissing Hazel like that. So she didn't
6 want him to kiss her. She didn't want him taking a picture up
7 her skirt. So that's the act of open and gross lewdness, and
8 he's guilty of that charge as well.

9 Finally, child abuse, this is the definition of child
10 abuse. Again, we come into -- into trial with our own
11 perception of what child abuse is, but this is the legal
12 definition of child abuse that we must follow. The child abuse
13 charged here is based on the allegations of taking a picture up
14 the skirt, kissing Hazel on the mouth and videotaping her, all
15 of which acts would cause someone mental suffering, knowing
16 that they have to sit here and be exposed in front of
17 strangers.

18 Abuse and neglect, this is the definition of that.
19 The main one we're focused on in this case is sexual abuse and
20 sexual exploitation. Sexual abuse, any act constituting -- for
21 purposes of this trial -- open or gross lewdness, which we just
22 talked about, and then sexual exploitation, the filming of
23 children and their genitals, which we know we have in this
24 case.

25 Mental injury, it means injury to the intellectual or

1 emotional capacity of a child causing them not to function
2 within their normal range of functioning, and what the statue
3 actually says is it either causes them mental suffering or
4 places them in a position where they might suffer mental
5 suffering. Either one, you're still guilty of child abuse.

6 Elements, wilfully causes child less than 18 suffer
7 mental -- excuse me -- suffer mental suffering or be placed in
8 a situation to suffer mental suffering and as a result of sex
9 abuse or sex exploitation. And what do we have here? We have
10 that the defendant wilfully took a picture up Hazel's skirt,
11 wilfully kissed her and wilfully filmed her. As of
12 August 23rd, we know that Hazel was under 18, and Hazel felt
13 uncomfortable by his actions. That's why she reported it to
14 the police.

15 Any person having to watch videos of themselves nude
16 in front of strangers is going to be placed in a situation
17 where they might suffer mental harm. It's embarrassing. It's
18 exploiting Hazel, and we know that she's exploited by the
19 defendant using her to create pornography. So he is guilty of
20 child abuse, which is again Count 1 of the indictment.

21 And it's the defendant's conduct, it's his actions,
22 it's his behavior that makes him guilty of all 41 counts in the
23 indictment, and at the end of these arguments the State is
24 going to ask that you find him guilty of each and every one of
25 those counts.

1 THE COURT: All right. Thank you, Ms. Beverly.
2 Mr. Jackson, are you ready to proceed with your
3 closing argument?

4 MR. JACKSON: Yes. Can I move this --

5 THE COURT: Of course. Sure.

6 MR. JACKSON: -- podium around. I don't have the
7 fancy -- oh, I broke it.

8 THE COURT: Kenny, can you help Mr. Jackson.

9 (Closing argument for the defense.)

10 MR. JACKSON: I don't have the fancy technology the
11 DA has with the Teleprompter and everything else, and if I
12 screw it up, I hope you will help me.

13 I thank you all for being here. This has been a
14 tough trial for everybody. This has been a difficult case.
15 One thing we've learned in this trial is you've got to be
16 careful who you kiss and when you kiss them. If you get drunk,
17 just be careful if you kiss somebody on the lips.

18 My client came into court and he admitted that he
19 kissed his girlfriend's daughter on the lips, and he realized
20 that was an indiscretion. He shouldn't have done it. You have
21 to decide whether it was a crime.

22 Back in the 1600s, there was a famous trial, the
23 Salem witch trials, and there were people that were basically
24 hanged for being witches. What we have here I think is a
25 prosecution that has gone a little bit overboard in looking at

1 evidence and making what is not a crime or shouldn't be
2 considered criminal acts, criminal acts.

3 You've seen the evidence. You've heard the Judge's
4 instructions. Now you have to decide first of all whether the
5 evidence presented is pornography, whether the pictures, the
6 pictures of Hazel Iral and her brother getting in and out of
7 the shower, getting in and out of the bathroom without their
8 clothes on and standing stark naked is pornography. Standing
9 naked, the way God brought you into the world, without any
10 clothes on, are those pictures for prurient interest? Are
11 those the kind of pictures that are going to make you want to
12 go out and get all excited?

13 The prosecution themselves admitted all these
14 pictures are about the same. They're all -- if you look at
15 each one of those exhibits -- and, you know, the prosecution,
16 they had those pictures up on that screen, and they liked to
17 leave them up there. If anybody wanted to appeal to the
18 prurient interest, it was the prosecutor.

19 MS. LAVELL: I'm going to object to that.

20 THE COURT: That's sustained.

21 MR. JACKSON: Well, we'll talk about what's prurient
22 interest. You have to decide. It's not the prosecutor who
23 decides what's prurient interest. The Judge has given you the
24 instructions, but you decide based on your common sense, based
25 on what you know about life. That's an instruction. I believe

1 it's No. 24.

2 There was also an instruction that tells you you're
3 to evaluate this evidence according to what you know. The
4 prosecutor talked about you don't -- you look at whether
5 there's any artistic or any other scientific reason for this.
6 She talked about whether something like this would be in
7 museums. If any of you have ever been to Paris, to the Louvre,
8 there's a whole floor in the Louvre. You may have seen this in
9 your common experience. Picasso, he has hundreds of drawings
10 of nude pictures of young women. Well, he's a great artist.
11 People come from all over the world to look at it, admire it.
12 It might be erotic art to some people, but people aren't
13 arrested for looking at it. Some people might even buy
14 reproductions of it and take it home and put it in their
15 bedroom.

16 Now, you have to decide whether these pictures amount
17 to pornography, or the famous Supreme Court Justice, Potter
18 Stewart, when asked what's the meaning of obscenity, or what's
19 the meaning of pornography, he said, I don't know how to define
20 it, but I know it when I see it. Well, you're going to have to
21 make a decision, first of all, whether what you've seen is
22 pornography.

23 Now, the Exhibits 3 through 11, the exhibits showing
24 oral sex between some young boys, which -- first we were told
25 were unidentified boys, and that's what it said in the

1 indictment. It wasn't until we did cross-examination of
2 Detective Ramirez that we found out that the prosecution really
3 knew who these boys were.

4 MS. BEVERLY: I'm going to object to that.

5 MR. JACKSON: Well --

6 MS. LAVELL: Your Honor, I'm objecting to that.

7 MR. JACKSON: Well, this is what the truth is.

8 THE COURT: All right. Well, that -- I think that's
9 sustained. I think it was -- my recollection was it wasn't the
10 oral-sex picture the detective was talking about, number one --

11 MR. JACKSON: All right. But the other pictures --

12 THE COURT: -- and again, ladies and gentlemen, it's
13 your recollection --

14 MR. JACKSON: Right.

15 Now, if you look at the indictment, it says unknown
16 individuals, and Officer Ramirez said clearly they did know.
17 This was part of an ongoing investigation, and he made clear
18 that Mr. Shue wasn't the suspect in this, and he didn't take
19 those pictures.

20 Mr. Shue got on the witness stand, sat in the witness
21 chair, and he said, No, I didn't take those pictures, and I
22 didn't put them on my computer, and you have to decide whether
23 he's telling the truth or not. If you think he took those
24 pictures, or if you think that he knowingly put those on his
25 computer, then find him guilty because those pictures I think

1 were -- maybe met the definition of pornography, but he said he
2 didn't put them on his computer, and he didn't know about them.
3 They sat in a police lab for -- or his computer sat in a police
4 lab for about three days. Other people used his computer, but
5 he didn't take those pictures according to Officer Ramirez. He
6 wasn't involved in that investigation.

7 And it's pretty clear that they're totally different,
8 both in quality and in the nature from the other pictures,
9 which are -- which are all related. The pictures of Kurt Iral
10 and Hazel Iral are very similar. They're all in the same
11 bathroom. They're all the same types of pictures. They all
12 basically are pictures of Hazel and Kurt coming in and out of
13 the bathroom. The others are different, and they really have
14 nothing to link Mr. Shue to them except that they were found on
15 his computer.

16 Now, the State tried to suggest to you that, well,
17 they're young boys, and since Kurt Iral was a young boy, you
18 must therefore think that they're linked to him. Well, that's
19 pretty -- pretty big a strain of logic.

20 Excuse me, Your Honor. May I have some water?

21 THE COURT: That's fine.

22 MR. JACKSON: That's a pretty big leap of logic.
23 They're pictures of young boys. So because Kurt Iral is a
24 young boy, the defendant has a picture of young boys on his
25 computer, they must be related. I don't think so.

1 We brought you witnesses, and it was difficult
2 because we didn't want to put witnesses on that would be
3 embarrassed and whatever about this, but we brought you
4 witnesses that knew Mr. Shue because we wanted everything to
5 come out.

6 We brought you the brothers of Hazel Iral, Kurt, the
7 older one, and Franzkie. What did they tell you? What did
8 Kurt and Franzkie tell you? They knew Josh. They liked him.
9 Now, whatever you think about Annie, if you think, Oh, Annie --
10 Annie is covering up for Josh because she loves him. She's --
11 she's the mother, and the State started right off in their
12 opening saying, Oh, Annie, what a terrible mother. What a sad
13 day that Annie is covering up for her boyfriend. Well, she
14 didn't say anything about the boys. She didn't mock the boys
15 and say the boys are coming in here and lying for Joshua.
16 Maybe she will in rebuttal.

17 But the boys came in and said, No, we like Josh. We
18 believe him. He never did anything bad to us. Josh never
19 tried to molest us. Josh wasn't a pervert with them. He never
20 showed them dirty pictures. He never tried to grab them or
21 touch them or do anything wrong to them.

22 Now, the State through the whole trial is trying to
23 get you to infer that Josh is some kind of bad evil pervert
24 because of what they found on his computer. You're to jump to
25 that conclusion, automatically presume he's guilty. Now, these

1 are tough cases. These are tough cases, but the standard of
2 reasonable doubt tells you that you must, you must consider
3 both sides. You're not to jump to the conclusion that Josh is
4 guilty.

5 We've had four people come in and say, No, Josh isn't
6 that kind of person. We've had his girlfriend Anita, who's
7 lived with him for three, four years. He met her in 2010. She
8 was with him until, you know, he was arrested in 2012. She's
9 the mother of three children. The prosecution thinks it's
10 terrible. She's still standing by him. The two boys are still
11 standing by him.

12 What did the boys say about Hazel? They said that
13 she lied. They said that she used the computer a lot. She
14 used it sometimes to make sexual images of herself. Well, are
15 they the only ones that said that? Are they the only ones that
16 talked about that? If they were, maybe, you know, Annie was
17 feeding them that. Maybe Annie was telling them, you know, say
18 that to help my good friend Josh out. They aren't the only
19 ones who said that.

20 Who else said that? The great aunt, Frances Carreon.
21 She took the witness stand, came in here. Did she look like a
22 liar to you? Did you watch her demeanor? Do you think she was
23 coming in testifying under oath, making up what she said about
24 Hazel? She said Hazel was a rebellious child. She said Hazel
25 came over to her house sometimes. She said she saw Hazel one

1 time using her computer, transferring sexual images or with
2 sexual images on her computer of herself. She was upset about
3 that. Rightly so.

4 Now, do you think that Frances Carreon would make
5 that up, come into court and testify under oath about that?
6 Now, if that's true, do you think there's even the slightest
7 possibility, enough for reasonable doubt, enough for reasonable
8 doubt that Hazel may have been fooling around on the computer
9 that Josh has? We've had testimony from the boys and from
10 Anita that Hazel used Josh's computer. Hazel herself admitted
11 that she used the computer. She had access to the computer.
12 She didn't deny it. She couldn't deny it because everybody
13 knew it. Now, is it such a stretch to believe that Hazel may
14 have been the one that made some of the videos, if not all of
15 them?

16 Hazel was somewhat vague in her testimony. I know
17 she was a little bit uncomfortable testifying on the witness
18 stand. I don't blame her. It's somewhat embarrassing to get
19 up there. Kurt was a little bit embarrassed to be up there.
20 Franzkie got up and testified, and he seemed comfortable as a
21 witness. He didn't seem to have any problems, and he testified
22 quite capably I believe, but that's my opinion. Your opinion
23 is what counts, and anything I say in recounting the evidence
24 to you doesn't matter. It's what you observe, and I'm very
25 confident that all of you were very engaged in watching the

1 witnesses and taking notes and then asking very intelligent
2 questions.

3 If you look at the video really closely, I think
4 you'll notice on it least one or two of the videos when Hazel
5 gets out of the shower she's, like, looking, like she's looking
6 at the camera, like she is aware the camera is there. Take a
7 look. Maybe you'll see that. That's something I may have
8 observed. Maybe it was just a -- something, an insignificant
9 thing, but if you see that, you should try to consider what
10 that meant, like if she actually knew she was being filmed or
11 whether she was aware someone was there.

12 Again, we're not arguing that she consented to be
13 filmed. We're not arguing that. We're arguing that she may
14 have done this herself, and she certainly, according to the
15 testimony, was aware of how to use a video camera. We've had
16 testimony from a number of witnesses that support that.

17 We don't have to establish why or how or when Hazel
18 may have done this. In fact, the State has not established any
19 dates on any of these charges. They've blurred a whole bunch
20 of counts together. They've charged 40-some counts, and
21 they're all basically the same thing except for the five or six
22 different ones involving the unknown individuals -- or the
23 actually known individuals that they originally said were
24 unknown. The others all involved Hazel and her brother doing
25 basically the same thing, and the State even admits that.

1 Joshua Shue did not have to present any evidence in
2 this case. He didn't have to take the witness stand and
3 subject himself to very vigorous cross-examination, subject
4 himself to very embarrassing kind of testimony about his
5 private life. I mean, he was -- was even asked if he
6 masturbated. I mean, what kind of -- I don't know, but he
7 answered each of these questions forthrightly, as best he could
8 despite the embarrassment and humiliation he was put in.

9 These -- this is a difficult case. You'll have to
10 make a difficult decision. I won't get a chance to respond to
11 what the prosecutor says in their rebuttal argument. There are
12 many things I've left unsaid. This is a complicated case, but
13 it really comes down to very simple things. Simple thing
14 number one is whether or not any of the evidence that the State
15 has presented is pornography, and the second thing is whether
16 the defendant was involved in it.

17 And the third is, you know, on the issue of child
18 abuse. The State is alleging there was child abuse, but then
19 they claim that neither of the witnesses knew about it. If you
20 read the instructions, it says, you know, you've got to do harm
21 to someone for there to be child abuse. Well, they're claiming
22 that Hazel and Kurt didn't even know they were being filmed.
23 It wasn't until after the police and everybody got involved
24 that there was any child abuse. It wasn't until the
25 prosecution had made a big stink about this case that any harm

1 was done to Hazel or her brother.

2 Now, they have a right to bring charges they think
3 are justified. You have the right as a jury to say, no, no
4 way. The defendant is not guilty. It's your duty, your solemn
5 duty to look at the charges and do what you believe is right.
6 The defendant is confident when you look at all the evidence
7 and look at the law that you'll do the right thing.

8 If I've done anything during the trial to offend
9 you -- and attorneys, when they're fighting for their client --
10 and that's the State, too -- do what they can. If we overstep
11 the bounds, the Judge here is -- will try to keep us in line,
12 but it's because we have a duty to do what we can to represent
13 our client zealously. If I've done anything wrong, I ask for
14 your forgiveness and hope you don't hold it against Mr. Shue.

15 But I ask you when you go back into that jury room to
16 do your best to be fair to both sides. I'm confident if you do
17 you will find my client not guilty.

18 Thank you.

19 THE COURT: All right. Thank you, Mr. Jackson.

20 Rebuttal.

21 MS. LAVELL: Thank you, Your Honor.

22 (Rebuttal argument for the State.)

23 MS. LAVELL: Before I get too far under way, ladies
24 and gentlemen, I just want to clear up the last comments that
25 counsel made in regards to the child abuse and neglect count.

1 Kurt is not named it that count, and he asked how could there
2 be child abuse and neglect when Kurt and Hazel didn't even know
3 about the videos. Well, when you go back, you'll take a look
4 at the counts, but as Ms. Beverly indicated to you, it's
5 specific to the defendant taking pictures up Hazel's skirt,
6 which she was aware of, kissing her on the mouth, which she was
7 bothered by.

8 And subsequent to her contacting the police in
9 relation to that, she has since learned about the fact that he
10 videotaped her. So the fact that she has only -- or learned
11 about that after the defendant's computer was seized does not
12 then make it less child abuse and neglect. There's not a
13 special time when she has to find out. It's the fact that she
14 found out.

15 And, you know, counsel indicated that it was really
16 difficult for the defendant to get up on the stand and talk
17 about certain things, and I asked him about masturbating.
18 Well, I want you to remember it was likely even more difficult
19 for Hazel to have to get up in front of a bunch of strangers
20 and look at video after video after video after video of
21 herself naked and her brother naked.

22 I just -- I just have to say, I'm not sure that any
23 of the images you saw on the video or the photographs can be
24 compared to a Picasso. So I would apologize to Picasso.
25 There's certainly a difference between Picasso's work, which

1 does have some artistic merit, very expensive artistic merit,
2 and the possession of the video and the pictures that the
3 defendant had. So apologies to Picasso.

4 So I'm just going to deal with a few things that
5 counsel said, and then I'm just going to kind of talk to you.
6 I think it's really, really important that if you believe that
7 the defendant committed these crimes Ms. Beverly has clearly
8 shown you the evidence that was obtained during this trial and
9 applied it to each and every element of each and every crime
10 that we had to prove.

11 Now, Mr. Jackson may not believe that the videotape
12 equates to pornography or sexual depiction. I asked you when
13 we were doing voir dire if any of you had a preconceived notion
14 of what pornography is, and my guess is --

15 Can I use the exhibits, please.

16 State's Exhibit 4, I guess -- guessing that when you
17 think of kiddie pornography -- and if you'll just look at the
18 screen -- that State's Exhibit No. 4 and State's Exhibit No. 3
19 are probably what most of you may have in your mind in terms of
20 child pornography, and counsel would have you believe that
21 Hazel and Kurt being videotaped naked in the bathroom doesn't
22 constitute child pornography. Ms. Beverly explained to you
23 very, very clearly how the videotapes fit the various charges
24 they're associated with.

25 So if you believe the defendant did it, I can sit

1 down right now -- I'm not asking you -- but I can sit down
2 right now, but I want to give you some further assurances or
3 some further information so that you can be comfortable that
4 the defendant did in fact do it.

5 He talked about witnesses that came up here and how
6 the State's kind of trying to defame Anita, Hazel's mom,
7 because Ms. Beverly said, What a shame. Well, you have a jury
8 instruction that says that you are to -- or you certainly are
9 encouraged to, and this is Jury Instruction No. 21 -- The
10 credibility or believability of a witness should be determined
11 by his or her manner upon the stand, his relationship to the
12 parties, his fears, motives, interests or feelings, his
13 opportunity to have observed the matter to which he testified,
14 the reasonableness of his statements and the strength or
15 weaknesses of the recollections.

16 And it says, If you believe that a witness had lied
17 about any material fact in the case, you may disregard the
18 entire testimony of that witness or any portion of his
19 testimony. Well, I'm going to provide some information that
20 would suggest that Anita lied during her testimony, and I'm
21 going to ask you not to disregard it. I'm going to ask you to
22 take it back in the deliberation room and remember it when
23 you're determining who was credible on the witness stand and
24 who wasn't, and the same applies to the defendant.

25 So let's first talk about Anita, Hazel's mom. Every

1 opportunity that she had, she portrayed her daughter in a bad
2 light. At every opportunity she had, she portrayed the
3 defendant in a good light, even when she is faced with the
4 evidence smack in her face, when she was shown the pictures of
5 the little boys she said she'd never seen before, and I don't
6 know if you were able to observe her demeanor when she saw
7 those photos. If you were, I think that was very telling.

8 Who put those photos on his computer? The
9 detectives. The detectives planted those photos because they
10 do that kind of thing, and interestingly enough, there is --
11 there was a series of questions by counsel in regards to
12 Detective Ramirez about could people access the computer.
13 Could it be hacked? Could other people plant evidence on the
14 computer? And interestingly, she indicated that very same
15 thing, and the first time she saw the computer, she suggested
16 that the detective may have done that. Now, she said she
17 hasn't talked to the defendant. You determine whether or not
18 that's true based on her answer to that question.

19 As it pertains to probably the most obvious thing is
20 this -- and I'm going to probably say it wrong -- this SUB
21 (sic) port, flash drive that she claims she found, so here's
22 what I find most -- excuse me it doesn't matter what I find
23 interesting -- here's what you may find very interesting. She
24 said she's not sure if she found it before or after the
25 defendant was arrested, before or after the computer was.

1 seized. She says that her daughter comes to her and says, I've
2 lost my flash drive, mom. Can you look for it, and Anita finds
3 it in Hazel's bedroom.

4 Now, there was no evidence before that except that
5 Hazel had a Facebook where Anita had indicated that she had
6 seen the pictures but that friends had said she appears to be
7 too grown up. Keep an eye on her. Beyond that, no information
8 to suggest that Anita had any concerns about Hazel and Hazel's
9 use of the computer, but for whatever reason, she magically
10 finds this flash -- flash drive. She calls the aunt over, who
11 counsel is suggesting is extremely credible, and she views
12 these videos for the first time, but when she viewed the
13 videos, the defendant's face wasn't on those videos. They
14 must've been added after the fact because they weren't on that
15 flash drive.

16 Why is she looking at the flash drive? Why is she
17 calling the aunt over to help her open the flash drive? She
18 had no concerns about what her daughter was doing on the
19 computer beyond the Facebook where there might be some grown-up
20 pictures of her. Why are they examining this flash drive?

21 But why isn't she telling anybody about it? My
22 goodness. Mr. Jackson, Detective Jaeger, I found the flash
23 drive months ago or weeks ago or days ago that's my daughter's,
24 and it had all of the same images of the bathroom, of my
25 daughter and my son. My goodness, here, or I gave it back to

1 her, or I destroyed it, but you need to know this. Never said
2 a word. Never said a word. Why? Because there was no flash
3 drive. She found absolutely nothing.

4 Let's talk about the aunt, the grandaunt. She
5 indicated when Ms. Beverly asked her about this computer that
6 you can see on one of the videos that Hazel brings into the
7 bathroom, one she's brought in for music, she says, Oh, no,
8 that was the defendant's computer. Well, how do you know that?
9 Because Hazel and the boys didn't have a computer. That was
10 the only computer in the house. So you know that to be true?
11 You know that? There was no other computer? No.

12 And, you know, when the young one got on, and
13 initially when counsel had asked him, did you boys have a
14 computer? He indicated, No, but then when I talked to him and
15 I asked him, Hey, what happened to the computer that you and
16 your brother had that your sister used? Oh, they took it.
17 When? After the defendant got arrested. But she sat up here
18 and she was adamant, adamant that the only computer that any of
19 these people used was the defendant's computer.

20 Now, all throughout this trial, there's this big
21 discussion that -- that Hazel is wonderful with -- okay, not
22 wonderful with computers but wonderful with Photoshop.
23 Photoshop. Photoshop. Photoshop. I saw her changing her hair
24 color, I think it was that her mother or her aunt said. Then
25 all of a sudden when it's brought out that you can't use

1 Photoshop for videos, there was no Photoshop. It was some
2 video program.

3 And for some reason, everyone in this family appears
4 to be super aware of Hazel's expertise with computers. How is
5 that happening? Generally, do most teenagers when they're on
6 the computer, are they usually surrounded by their family? How
7 do you -- how does the defendant know what her technical
8 abilities are? How does the mother know what they're -- what
9 her technically -- what her technical abilities are? They
10 don't. They have no clue, but they're going to make her Steven
11 Spielberg. They're going to put her up here, and -- when
12 they're on the stand and make her the most technologically
13 astute computer person to explain why his face is all over
14 those videos.

15 Counsel said, This is a tough case. It's a
16 complicated case. Well, the subject matter is tough, but it's
17 not a hard case, and it's not a complicated case. It's a very
18 simple case, and counsel would have you believe that the State
19 overcharged the defendant. Well, guess what? If he only took
20 one video of these kids, he'd be charged with one count. If he
21 only possessed one photo, he'd be charged with one count.

22 He chose to videotape these kids in the bathroom over
23 and over and over again, from different angles, close up so you
24 can see the vaginal areas and the penis, real close up in some
25 of them, different angles where they're taking the towels off

1 and drying off because they're there longer. Then let's see
2 them come out of the shower when they're stepping out. He
3 chose to videotape these kids day after day after day after
4 day, possibly year after year because this could have been
5 going on from 2010 to 2012.

6 And counsel objects that the State didn't minimize or
7 limit the dates or say specifically when the dates were. Well,
8 we weren't there, but we do know it happened between 2010 and
9 2012, and we're allowed to charge it that way, and that's what
10 we did. He's charged with as many counts as he is because he
11 committed all of those crimes, and he needs to be held
12 responsible for each and every crime he committed.

13 And with respect to you, ladies and gentlemen, it's
14 not up to you to determine what is pornography. It's up to you
15 to read the law --

16 MR. JACKSON: I'm going to object to that, Your
17 Honor. They have to determine --

18 THE COURT: Yes, that's sustained. It's up to them
19 to determine whether or not the images fit within the
20 definition --

21 MS. LAVELL: Well, and that's where I was going with
22 what I was --

23 THE COURT: -- of pornography --

24 MS. LAVELL: Yes.

25 THE COURT: That's their role to make that

1 determination.

2 MS. LAVELL: That's where I was headed before I was
3 interrupted.

4 THE COURT: So I -- so that objection is sustained.

5 MS. LAVELL: What I was going to say was it's up to
6 you to read the law and determine whether or not what you
7 observed is pornography based on the law that you've agreed to
8 follow.

9 Counsel said you must consider both sides. Well,
10 what you must consider is the evidence presented by the State
11 and by the defense. Now, he talks a lot about the fact that
12 there are a lot -- counsel asked a lot of questions of the
13 younger boys. Did he ever touch you? Did he ever threaten
14 you? Did he ever abuse you? Well, they're not -- he's not
15 charged with that. The littlest one isn't even a named victim
16 in this case. So I'm not really sure what that line of
17 questioning was about or what that argument in closing was
18 about in regards to both the boys.

19 Okay. So in terms of Anita, she wants to get back
20 with the defendant. She told you that, that if he were to go
21 home -- you know, if he was to -- this was all over and he's
22 home again, would she want to have a relationship with him, and
23 she said she would. She said that she would still allow him to
24 have contact with the kids, even after she saw the video, even
25 after she saw the photos. She just is not going to believe, no

1 matter what you say, that the defendant had anything to do with
2 this and for various possibilities that you can -- you can
3 determine.

4 She claimed that she didn't need him for financial
5 assistance, and yet she had to immediately move in with her
6 aunt after he left because she couldn't afford the apartment.
7 So how is she not relying on him for finances? Or maybe she
8 truly, truly loves him and love is blind. Clearly she's not
9 concerned for her children's safety. So whether or not that's
10 because she truly believes he's not guilty or because she truly
11 loves him, that's, you know, for you to consider, but she got
12 up here, and her testimony was not believable.

13 The defendant got up here, and he had an answer for
14 everything except when I started to talk to him about the
15 images on the camera when he suggested that his face was
16 planted by Hazel, this great editor. How is it that every time
17 you're in there and you move the camera, either to a different
18 location in the bathroom or to a different -- I'm going to say
19 focus, but I know that that's not the correct word, but so
20 that, you know, you can see closer, he leaves, the kids come
21 in, and that camera is in the exact same position? It hasn't
22 moved an inch. Look at it. Look at it.

23 So they want you to believe that Hazel found video of
24 the defendant and Anita having sex, cropped out the defendant's
25 face or body, attached it to video -- or had to actually take

1 into consideration the angle of video when he put it in there
2 for Hazel (sic) and himself, and then she would've had to put
3 her camera when she's videotaping her and the boys in the exact
4 same position so that when she clips his head on without any
5 splicing that is apparent -- you look and determine -- the
6 video, the angle hasn't moved an inch. I mean, that's
7 spectacular. You need to look at that.

8 All right. So there's no doubt that the defendant's
9 face is on there because the defendant is the one that did
10 this. You can see him leave and the kids come in. His
11 girlfriend is never in the bathroom with him. He indicated,
12 Well, that's because I was -- I'm leaving to go get her.

13 Where are they having sex? Look at the angles of the
14 camera and determine where it is that -- he's looking. I mean,
15 he's making sure making sure the camera is where he wants it.
16 Where are he and Anita having sex based on the position of that
17 camera? Remember one time it's facing the door. There's not a
18 lot of area there. It's never facing the floor, which they may
19 end up on. It's never really facing the shower -- well, that's
20 not true. There are -- I think there are a few videos where
21 it's actually facing the shower, so if they were in the shower,
22 but a lot of times it's facing to the left of the shower where
23 there's some sort of a shelf or something where the kids get
24 out and dry off. So where are they having sex based on where
25 he's angled this camera? So it's illogical. It's illogical.

1 Remember, ladies and gentlemen, you're going to have
2 Instruction No. 22, which is probably the most important
3 instruction, and that's talking about reasonable doubt, and for
4 doubt to be reasonable, it must be actual and not mere
5 speculation. The defense has speculated, I think it was Hazel
6 because of this. I think it was Hazel because she didn't like
7 me. I think it was Hazel because she was jealous. I think it
8 was Hazel because she's used my computer. I think it was -- no
9 one saw Hazel do anything.

10 And the camera that the defendant described -- jury's
11 indulgence -- the camera that the State showed you in one of
12 the exhibits inside the drawer, does everybody remember that
13 camera that was inside the drawer, the video camera? Does it
14 appear to be the camera the defendant claims that he -- that
15 the defendant admitted that he was placing in the bathroom,
16 which he said was a Snapshot camera, only six inches by
17 four inches, which is a relatively small camera, easy to hide?

18 So, ladies and gentlemen, the State has proven to you
19 beyond -- not only beyond a reasonable doubt, but beyond any
20 doubt whatsoever that the defendant committed each and every
21 crime charged, and we are confident that when you go back and
22 you look at all the information -- I encourage you to look at
23 the videos again. I encourage you to look at the pictures --
24 that you will come back and find him guilty of each and every
25 count, and Hazel will know that it was worth coming in here and

1 testifying about what the defendant did to her.

2 Thank you.

3 THE COURT: All right. Thank you, Ms. Lavell.

4 The clerk will now swear the officer to take charge
5 of the jury.

6 (Officer sworn.)

7 THE COURT: All right. Ladies and gentlemen, before
8 you leave, as some or all of you may know, a criminal jury is
9 composed of 12 people. There are 14 of you. Two of you are
10 the alternates who are seated in chairs that were designated
11 prior to jury selection. Those are Jurors No. 6 and 7.

12 So Mr. Brown and Mr. Luecke, you are our alternates.
13 I'm going to have you gather your belongings and your notepads
14 and exit with the other jurors, and then you're welcome to eat
15 lunch, or you can be excused.

16 The prohibition about speaking about the case and
17 doing anything relating to the case is still in effect because,
18 God forbid, one of the regular jurors should become ill or
19 something like that before a verdict is reached, one or both of
20 you would be called in to take those jurors places. So again
21 you must be mindful of the prohibition.

22 And before you leave, you're to give the bailiff or
23 my secretary phone numbers where you can be contacted if, as I
24 said, one of the jurors becomes ill or something like that, and
25 you need to be called in.

1 So if all of you would please collect your belongings
2 and your notepads and please follow the bailiff through the
3 rear door.

4 (Jury recessed for deliberation 1:04 p.m.)

5 THE COURT: All right. We're going to give them
6 lunch, and then Denise brings back all the stuff and
7 everything.

8 MS. BEVERLY: And for the record, I did get them a
9 clean laptop.

10 THE COURT: Okay. And I need you guys -- I know
11 Ms. Beverly is probably going to be gone by the time there's a
12 verdict, but, Ms. Lavell and Mr. Jackson, you need to give
13 numbers where you can be reached so we can contact you when the
14 jury has a verdict, and don't go super far. You know, don't go
15 to Boulder City or Lake Mead.

16 MR. JACKSON: I'm going to stay in my office until
17 probably 5 o'clock, and then it's been a long week. I'll go
18 home, but I live in Green Valley. It takes, like, 30 minutes.

19 THE COURT: Okay. Can you do this. Normally --

20 MR. JACKSON: I'll call before I leave.

21 THE COURT: Yes, call before you leave because
22 normally at 5 --

23 MR. JACKSON: Because I don't want to be caught in
24 halfway going there or whatever.

25 THE COURT: Normally at 5 we go in if they don't have

1 a verdict, you know, but they may have a verdict right at 5, or
2 Kenny may go in at 5:05 or something like that. So what I
3 don't want to have happen is you're driving to Green Valley
4 right when we're calling everybody for the verdict. So
5 don't --

6 MR. JACKSON: It's like a 25-minute drive for me from
7 my house to here, and before I leave, I'll call around 10 to 5
8 to make sure, you know, that they're not close to a verdict or
9 you've got a verdict.

10 THE COURT: Yes. Well, we don't go in. Just so you
11 know, we don't go in before we're ready to excuse them because
12 we don't want to influence them to hurry up or anything like
13 that.

14 MR. JACKSON: Oh, yes. Right.

15 THE COURT: So we don't go in. You know, it's, like,
16 you've got a verdict or you go home because we don't want to
17 have an impact on anything.

18 MR. JACKSON: I'll leave both my cell phone and my
19 home phone, and I'm going to also -- I'm going to get two
20 numbers from Josh as well. I'm going to tell him to stick
21 around for a while, but they're going to lunch. They won't be
22 starting deliberating until --

23 THE COURT: Right. It's not going to be at least for
24 another hour that they'll have a verdict, I'm sure. So, I
25 mean, I'm more concerned about if they have one at --

1 Mr. Jackson, so don't go home until we give you permission to
2 go home because it'll be around 5, but what I don't want to
3 have happen is if they come in with a verdict at 5:15, that we
4 then have to wait for you until 6 o'clock or something on the
5 Friday before the Labor Day.

6 MR. JACKSON: I won't leave, I mean, if you tell me
7 to stick around. I do want to go get some lunch now because I
8 haven't had anything to eat since 6 in the morning.

9 THE COURT: That's fine. Go to lunch. You can go
10 back to your office. I'm just saying, you know, at 5 o'clock
11 they're either going to have a verdict or they're not.

12 MR. JACKSON: Yes, I understand.

13 THE COURT: If they don't have a verdict, we send
14 them home.

15 MR. JACKSON: Now, you don't keep them sequestered
16 over the -- you send them home for the evening with the
17 admonishment.

18 THE COURT: For the weekend, and then they come back
19 on Tuesday.

20 MR. JACKSON: Oh, they won't -- so they won't --

21 MS. BEVERLY: I'm sure that won't be a problem.

22 MR. JACKSON: All right.

23 THE COURT: Yes, because it's Labor Day. I mean,
24 they don't come in and deliberate on Saturday and Sunday. They
25 go home and come back on -- come back on Tuesday.

1 MR. JACKSON: All right. So you will keep them
2 probably until 5 or 6 at the latest probably and then send them
3 home?

4 THE COURT: Yes, at the latest. I mean --

5 MR. JACKSON: And they won't come back until Tuesday.
6 They won't -- all right. Well --

7 THE COURT: Right it would be Tuesday at 9 o'clock.

8 MS. LAVELL: Thank you, Judge.

9 MS. BEVERLY: Bye, Judge.

10 (Proceedings recessed 1:08 p.m. to 5:38 p.m.)

11 (In the presence of the jury.)

12 THE COURT: All right. Court is now back in session.
13 The record should reflect the presence of the State through the
14 deputy district attorney, the presence of the defendant and his
15 counsel, the officers of the court and the ladies and gentlemen
16 of the jury.

17 Who is the jury foreperson?

18 JUROR NO. 03: I am.

19 THE COURT: All right. Juror No. 3, Ms. Petkewich,
20 has the jury in this matter reached a verdict?

21 JUROR NO. 03: Yes, we have.

22 THE COURT: Would you please hand the forms of
23 verdict to the bailiff.

24 The clerk will now read the verdict out loud and
25 inquire if this is the verdict of the jury.

1 THE CLERK: Yes, Your Honor.

2 District Court, Clark County, Nevada, the State of
3 Nevada, plaintiff Versus Joshua Shue, defendant, Case C288172,
4 Department 21 verdict. We the jury in the above entitled case
5 find the defendant as follows:

6 Count 1, Child abuse, neglect or endangerment, Guilty
7 of child abuse, neglect or endangerment.

8 Count 2, Use of child in production, Guilty of use of
9 child in production.

10 Count 3, Use of child in production, Guilty of use of
11 child in production.

12 Count 4, Use of child in production, Guilty of use of
13 child in production.

14 Count 5, Possession of visual presentation depicting
15 sexual conduct of a child, Guilty of possession of visual
16 presentation depicting sexual conduct of a child.

17 Count 6, Use of child in production, Guilty of use of
18 child in production.

19 Count 7, Use of child in production, Guilty of use of
20 child in production.

21 Count 8, Possession of visual presentation depicting
22 sexual conduct of a child, Guilty of possession of visual
23 presentation depicting sexual conduct of a child.

24 Count 9, Use of child in production, Guilty of use of
25 child in production.

1 Count 10, Use of child in production, Guilty of use
2 of child in production.

3 County 11, Possession of visual presentation
4 depicting sexual conduct of a child, Guilty of possession of
5 visual presentation depicting sexual conduct of a child.

6 Count 12, Use of child in production, Guilty of use
7 of child in production.

8 Count 13, Use of child in production, Guilty of use
9 of child in production.

10 Count 14, Possession of visual presentation depicting
11 sexual conduct of a child, Guilty of possession of visual
12 presentation depicting sexual conduct of a child.

13 Count 15, Use of child in production, Guilty of use
14 of child in production.

15 Count 16, Use of child in production, Guilty of use
16 of child in production.

17 Count 17, Possession of visual presentation depicting
18 sexual conduct of a child, Guilty of possession of visual
19 presentation depicting sexual conduct of a child.

20 Count 18, Use of child in production, Guilty of use
21 of child in production.

22 Count 19, Use of child in production, Guilty of use
23 of child in production.

24 Count 20, Possession -- Possession of visual
25 presentation depicting sexual conduct of a child, Guilty of

1 possession of visual presentation depicting sexual conduct of a
2 child.

3 Count 21, Use of child in production, Guilty of use
4 of child in production.

5 Count 22, Use of child in production, Guilty of use
6 of child in production.

7 Count 23, Possession of visual presentation depicting
8 sexual conduct of a child, Guilty of possession of visual
9 presentation depicting sexual conduct of a child.

10 Count 24, Use of production -- Use of child in
11 production, Guilty of use of child in production.

12 Count 25, Use of child in production, Guilty of use
13 of child in production.

14 Count 26, Possession of visual presentation depicting
15 sexual conduct of a child, Guilty of possession of visual
16 presentation depicting sexual conduct of a child.

17 Count 27, Use of child in production, Guilty of use
18 of child in production.

19 Count 28, Use of child in production, Guilty of use
20 of child in production.

21 Count 29, Use of child in production, Guilty of use
22 of child in production.

23 Count 30, Use of child in production, Guilty of use
24 of child in production.

25 Count 31, Use of child in production, Guilty of use

1 of child in production.

2 Count 32, Use of child in production, Guilty of use
3 of child in production.

4 Count 33, Use of child in production, Guilty of use
5 of child in production.

6 Count 34, Use of child in production, Guilty of use
7 of child in production.

8 Count 35, Use of child in production, Guilty of use
9 of child in production.

10 Count 36, Use of child in production, Guilty of use
11 of child in production.

12 Count 37, Use of child in production, Guilty of use
13 of child in production.

14 Count 38, Use of child in production, Guilty of use
15 of child in production.

16 Count 39, Open and gross lewdness, Guilty of open and
17 gross lewdness.

18 Count 40, Possession of visual presentation depicting
19 sexual conduct of a child, Guilty of possession of visual
20 presentation depicting sexual conduct of a child.

21 Count 41, Possession of visual presentation depicting
22 sexual conduct of a child, Guilty of possession of visual
23 presentation depicting sexual conduct of a child.

24 Dated this 29th day of August, 2014: Sonia
25 Petkewich, Foreperson.

1 Ladies and gentlemen of the jury, is this your
2 verdict as read, so say you one, so say you all?

3 JURORS: Yes.

4 THE COURT: All right. Before the verdict is
5 recorded into the minutes of the court, does either side have
6 the desire to have the jury polled?

7 MS. LAVELL: The State does not.

8 THE COURT: Mr. Jackson?

9 MR. JACKSON: Yes.

10 THE COURT: All right. The clerk will now poll the
11 members of the jury.

12 THE CLERK: Juror in Seat 1, is this your verdict as
13 read?

14 JUROR NO. 01: Yes.

15 THE CLERK: Seat 2, is this your verdict as read?

16 JUROR NO. 02: Yes.

17 THE CLERK: 3, is this your verdict as read?

18 JUROR NO. 03: Yes.

19 THE CLERK: 4, is this your verdict as read?

20 JUROR NO. 04: Yes.

21 THE CLERK: 5, is this your verdict as read?

22 JUROR NO. 05: Yes.

23 THE CLERK: 8, is this your verdict as read?

24 JUROR NO. 08: Yes.

25 THE CLERK: 9, is this your verdict as read?

1 JUROR NO. 09: Yes.

2 THE CLERK: 10, is this your verdict as read?

3 JUROR NO. 10: Yes.

4 THE CLERK: 11, is this your verdict as read?

5 JUROR NO. 11: Yes.

6 THE CLERK: 12, is this your verdict as read?

7 JUROR NO. 12: Yes.

8 THE CLERK: 13, is this your verdict as read?

9 JUROR NO. 13: Yes.

10 THE CLERK: 14, is this your verdict as read?

11 JUROR NO. 14: Yes.

12 THE CLERK: Thank you.

13 THE COURT: All right. The verdict will now be
14 recorded into the minutes of the court.

15 Ladies and gentlemen, this concludes your service as
16 jurors. I want to thank you very much for your service and
17 your attentiveness during these proceedings. The prohibition
18 about speaking about the case is now lifted. You're free to
19 speak with each other or with anyone else you choose.

20 Sometimes the lawyers like to speak with members of
21 the jury. If these individuals want to do so, it's perfectly
22 fine for you to speak with them. Conversely, if you'd rather
23 not speak with them, obviously they'll respect your wishes in
24 that regard.

25 We have arranged to have your vouchers available for

1 you on the third floor. So I'd ask you all to collect your
2 things and follow the bailiff from the courtroom.

3 (Jury excused 5:47 p.m.)

4 THE COURT: All right. We have to set a sentencing
5 date.

6 And is this one we need a psychosexual for?

7 MS. LAVELL: Yes, Your Honor, and at this time, if
8 this is the appropriate time, the State would ask that the
9 defendant be remanded without bail.

10 THE COURT: Mr. Jackson.

11 MR. JACKSON: Well, he's been on bail and made all
12 court appearances. I don't know what's -- you know, he hasn't
13 been sentenced yet, and he hasn't had a psychosexual
14 evaluation.

15 THE COURT: I mean, here's my feeling --

16 MR. JACKSON: I know it's a mandatory sentence on
17 some of the counts. Whether or not I would ask for bail
18 pending appeal is an issue that I haven't researched or briefed
19 yet. I don't think he's going to flee. I think he's made all
20 court appearances, and he knows that if he did he'd be dead
21 meat. Any chance of any issues on appeal of course would be --
22 that would -- that would ruin any chance for him.

23 Obviously, you know, there's always the anticipation
24 of an adverse verdict, and I've explained that to him, and I
25 realized the State would seek to remand him today, and he knew

1 that if he was convicted. So, you know, I still am asking the
2 Court to consider leaving him on the bail that he's posted and
3 require, you know, maybe house arrest or something else.

4 Again, I do -- naturally, he has an automatic appeal
5 for something this serious, and I haven't been retained for the
6 appeal, but I know I have to do a fast track I believe in this
7 matter in any event, but I've discussed with the family, you
8 know, the possibility of doing a more extensive appeal, whether
9 they would retain me for that or not. He's indigent of course
10 if he's in custody.

11 THE COURT: If not, I mean, obviously counsel will be
12 appointed for him for the appeal. You know, based on the
13 seriousness of the charges that he's just been convicted of, I
14 did before coming in check to see how much bond he posted. His
15 bond was \$75,000, which is a relatively modest amount given the
16 charges in this case. So based on that, you know, I don't know
17 very much about this defendant -- he has shown up -- other than
18 what he testified to, about his background and the fact that
19 he's now been convicted of all of these things. So he is
20 remanded, held without bond.

21 The bond that has been posted will be exonerated, and
22 we'll give you a sentencing date.

23 And Ms. Husted will give a date.

24 THE CLERK: December 9th at 9:30.

25 MS. LAVELL: Thank you, Your Honor.

1 MR. JACKSON: Okay. I don't have my --

2 THE COURT: And then obviously that starts once --
3 your appeal starts once we've sentenced him.

4 MR. JACKSON: Well, it'll be 30 days after that.

5 THE COURT: Right.

6 MR. JACKSON: I don't have my calendar with me. I
7 think that date is okay. If not, I will so advise the court.

8 THE COURT: Okay. If not, let us know, or put it on
9 calendar, and we'll move it, or we can move it from chambers,
10 just as long as you let the State know.

11 And, Mr. Jackson, if anyone cares, Ms. Lavell, I'll
12 just briefly thank them, and then the bailiff will escort them
13 to the third floor.

14 MS. LAVELL: I'll go down. Thank you, Your Honor.

15 (Proceedings adjourned 5:51 p.m.)
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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

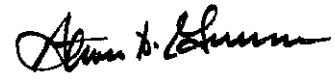
AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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KIMBERLY LAWSON

KARR Reporting, Inc.


CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JOSHUA C. SHUE, aka
JOSHUA CALEB SHUE

Defendant.

CASE#: C288172

DEPT. XXI

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE
TUESDAY, DECEMBER 9, 2014

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
SENTENCING**

APPEARANCES:

For the State:

TIERRA D. JONES, ESQ.
Deputy District Attorney

For the Defendant:

TERRENCE M. JACKSON, ESQ.

RECORDED BY: JANIE OLSEN, COURT RECORDER

1 TUESDAY, DECEMBER 9, 2014 AT 9:46 A.M.

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

4 And I appreciate that you did contact -- you spoke to with my law clerk
5 and we were given a heads up that we would be continuing this. So I appreciate
6 that because I didn't read everything.

7 MR. JACKSON: I advised the deputy district attorney as well. Dr. Paglini
8 needs additional time to complete his report. He advised me of that last Thursday or
9 Friday, whatever it was. And I think he needs about three weeks, so that's going to
10 put us right about Christmas. Whatever the Court's pleasure.

11 THE COURT: Let's put it into the New Year then --

12 MR. JACKSON: Yeah.

13 THE COURT: -- with the holiday. And that could also affect --

14 MR. JACKSON: Okay.

15 THE COURT: -- his ability to get the report done. So Ms. Husted will give a
16 new date the first of the year.

17 MS. JONES: The State would just ask for not the 7th or the 12th of January.

18 THE COURT: Okay. And also I show that we did have victim speakers. So
19 make sure, if they're not here today --

20 MS. JONES: We'll notify them.

21 THE COURT: -- that they're notified of the new date.

22 MS. JONES: We will.

23 THE COURT CLERK: January 15th at 9:30.

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MR. JACKSON: Thank you, Your Honor.

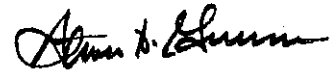
THE COURT: All right. Thank you.

[Proceedings concluded at 9:47 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 A Pruchnic
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, JANUARY 15, 2015

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
17 **SENTENCING**

18 APPEARANCES:

19 For the State:

LEAH C. BEVERLY, ESQ.
Deputy District Attorney

21 For the Defendant:

TERRENCE M. JACKSON, ESQ.

22 ALSO PRESENT:

23 Victim Impact Speaker:

HAZEL IRAL

24
25 RECORDED BY: JANIE OLSEN, COURT RECORDER

1 THURSDAY, JANUARY 15, 2015 AT 10:00 A.M.

2
3 THE COURT: State versus Joshua Shue. Mr. Shue is present in custody
4 with Mr. Jackson. We have Ms. Beverly for the State.

5 This is the time set for the rendition of sentence. Are both sides
6 prepared to go forward?

7 MS. BEVERLY: I am, Your Honor.

8 MR. JACKSON: Yes, Your Honor.

9 THE COURT: All right. And I believe we have a speaker. Is that correct?

10 MS. BEVERLY: Yes, we do. Hazel Iral.

11 THE COURT: All right. And I'm assuming you would like her to address the
12 Court last; is that correct?

13 MS. BEVERLY: Yes, please, Your Honor.

14 THE COURT: All right.

15 MR. JACKSON: Your Honor, is that the tradition to have the speaker go last
16 after --

17 THE COURT: Pursuant to statute it is.

18 MR. JACKSON: All right.

19 THE COURT: All right. This being a jury verdict, obviously, the State has the
20 right to argue. Ms. Beverly.

21 MS. BEVERLY: Thank you, Your Honor.

22 THE COURT: And I did -- just for the record, I would like to note that I did
23 receive the evaluation as well as a submission of numerous letters in support of Mr.
24 Shue. So I'd like the record to reflect that --

25 MR. JACKSON: Thank you.

1 THE COURT: -- and that I have reviewed all of that.

2 MS. BEVERLY: I did receive both of those --

3 THE COURT: All right.

4 MS. BEVERLY: -- as well, Your Honor. Thank you.

5 As Your Honor knows, this was a jury trial and Your Honor sat through
6 this case. It was about a week long and so I don't want to go over the facts of the
7 case too much, but there's a couple of different areas I want to address during my
8 argument.

9 First, just talking generally about this case. This case was never a case
10 about the credibility of the victim, Hazel Iral. No matter how -- how much we tried to
11 make it about the credibility of her it was not. These crimes were caught on video.
12 And one of the saddest things about this case is that Hazel Iral had to watch these
13 videos over and over and over again. She had to watch them in my office when we
14 were talking about charging this case. She had to watch them in front of strangers
15 at the grand jury. She had to watch them in front of strangers at the jury trial. And
16 each time she had to watch these videos she had to be re-victimized having to
17 watch herself and her brothers naked in front of strangers doing private bathroom
18 things that nobody should have to be exposed to. Nobody should have to deal with
19 that type of stress and that type of embarrassment.

20 But she also had to deal with not only having to watch these videos
21 over and over again, but she had to deal with the fact that not only did the
22 Defendant take these videos, but more than likely, based on the photos we saw
23 during trial of where this -- this computer and this camera were found, that more
24 than likely he was pleasuring himself to these videos.

25 MR. JACKSON: I'm going to object to her making conclusions.

1 THE COURT: Well, I would just say stick to the evidence. But there was
2 some evidence in the drawer, I believe, of the computer station where allegedly -- or
3 he was -- appeared to be watching the videos. So I think that's probably what Ms.
4 Beverly is talking about, some of the items. And there was dispute during the trial
5 what the meaning of the items was, but the items in the drawer. Is that what you're
6 talking about --

7 MS. BEVERLY: Yes.

8 THE COURT: -- Ms. Beverly?

9 MS. BEVERLY: Yes.

10 THE COURT: Okay.

11 MS. BEVERLY: Thank you, Your Honor.

12 So -- again, she had to deal with all of this embarrassment and this
13 humiliation based on the Defendant's conduct. She had to not only watch herself
14 being videotaped; she also had to watch her brother being naked in the bathroom.

15 And this is a case where the Defendant was beginning to escalate. We
16 had all of these videos being filmed over a period of time. And we have then the
17 culmination of this is when Hazel came home and the Defendant took a picture up
18 her skirt and tried to inappropriately kiss her. And I think that logic and reason says
19 that the Defendant was beginning to escalate. He was getting bolder in his
20 approach. The videos were no longer enough for him. He was now moving on to
21 physical contact with these victims. And who knows what would have happened
22 had Hazel not reported this on the day that she reported this.

23 During this trial also, despite this crime being on video and despite the
24 State showing video after video after video, the Defendant still took the stand and
25 lied about these videos. He lied about accidentally leaving this camera in the

1 bathroom -- the kids' bathroom. He lied about him and Anita doing these sexual
2 things in the bathroom and maybe that's why the camera was in the bathroom
3 despite multiple witnesses testifying that this was the children's bathroom. He lied
4 about Hazel being the person to crop these videos and somehow put the
5 Defendant's face on these videos and then merged the videos to have herself and
6 her brother in these videos.

7 He has not for one second taken responsibility for his behavior. All he
8 has tried to do is humiliate Hazel and destroy her. And I think that we can see that
9 from the stand completely calling her, you know, a liar and telling her -- saying that
10 she did all of these things. All of these things that have been said about Hazel
11 throughout this trial they're disgusting and they're horrible. And yet the trial -- and
12 this whole proceeding with Mr. Shue has tried to shift the focus away from his
13 behavior and onto Hazel and that's not what we're here for. So for these reasons
14 alone he deserves to spend the rest of his life in prison. But he also deserves to
15 spend the rest of this life in prison because this was not something that just
16 happened one time, it didn't happen twice; it happened over and over and over
17 again.

18 Now during the trial we had only a portion of the video. But there were
19 multiple other videos in this case that the jury didn't hear about. These videos went
20 on for days. And at some point during my charging of the case I had to stop
21 charging because there were too many videos and we had to make this case
22 somewhat manageable. But now that we're here at sentencing we can talk about all
23 of these other videos that were found on his computer and all of these other images
24 that were found on his computer. And what that shows is, that each and every day
25 he chose to put that camera in the bathroom and film these children he was

1 committing a crime. And that is not a continuous course of conduct; it's each and
2 every day. And so each and every day he deserves to be punished for.

3 Now I want to talk about -- a little bit about some of the items in the PSI
4 that was prepared.

5 THE COURT: Right. And you know that we have a supplemental PSI on this
6 one.

7 MS. BEVERLY: Yes, Your Honor. And that was because -- because of the
8 age of the children. There are different punishments based on the age of the
9 children.

10 Now I'm sure that when Mr. Jackson argues he's going to argue that
11 the Defendant doesn't have a criminal history. And I think it's more appropriate to
12 say that he doesn't have a documented criminal history.

13 MR. JACKSON: I think that's an inappropriate argument. If what she --

14 THE COURT: Well --

15 MS. BEVERLY: If I can finish my argument.

16 THE COURT: Okay. As long as there's -- when you say documented -- I
17 mean, there has to have been an arrest or evidence of it that was produced to Mr.
18 Jackson in this case or something like that. So if you don't have anything that we
19 can look to I think it's probably inappropriate argument. I don't know where you're
20 going with this, frankly.

21 MS. BEVERLY: Okay. I'm -- and let me just move on. What I mean to say is
22 that he doesn't have any prior arrests; that's true. He doesn't have a prior -- what
23 we would consider for PSI purposes as a criminal history. But every time he filmed
24 these kids every single day -- and we know it's a different day because Hazel
25 testified to that and we -- you know, she testified she had different clothes on,

1 different hairstyles. So every time that he chose to put that camera in the bathroom
2 for the significant length of time he was committing a crime. And we know that in
3 these types of cases these are crimes of secret. So it's not surprising that he
4 doesn't have any prior arrests or that he seems to be this great person in the
5 community. But he was committing a crime every single day. So I think if we look
6 at each of these videos separately we'll see that he has a pattern of victimizing
7 these children.

8 Now another thing about his PSI is that the Defendant reports that he
9 had a good childhood, there was no abuse, there was no mental health issues, no
10 trauma in his life. And that just raises the question to me -- you know, he has no
11 excuses. This behavior is so unacceptable. He had a great family. In fact, most of
12 his family seems to be here today. And so why -- why would he do this? He also
13 reports that, true, he was in the army. Looked like he worked a good job for a while.
14 I mean, Mr. Shue looks like a great person on paper except for the fact that he has
15 this dirty little secret, which is his sexual obsession for children, and it's evidenced
16 by these video; it's evidenced by his contin -- his escalation now to -- beginning to
17 kiss Hazel and take a picture up her skirt.

18 He also doesn't give a statement in his PSI. It's not surprising because
19 not for one day this entire time we've had this trial has he at any point accepted
20 responsibility for his conduct. He doesn't care about Hazel. He doesn't care about
21 these boys. He wants to just do what he wants to do and he still thinks that he really
22 did nothing wrong.

23 I also want to talk about some of these letters from his family members.
24 There's a letter from his sister Sara [phonetic]. And his sister Sara says the
25 Defendant was like a father figure to the kids in his past relationships. She doesn't

1 know how the kids will make it without him. That is so disturbing and so
2 unbelievable to me that despite him being found guilty of charges involving these
3 same children for some reason his family still thinks he's a good father figure to
4 these kids and she doesn't know what they're going to do without him. Well, I think
5 what they're going to do without him is not be victimized every single day.

6 She also says -- and I'm sorry. Let me just say that I purposely did not
7 call the two younger boys, Hazel's brothers, in this trial. I know that Mr. Jackson did.
8 But I purposely didn't call them because I'm not trying to expose them to something
9 that they don't need to be exposed to. You know, it's a hard position for the State to
10 be in because they are the victims, but at the same time I'm also trying to protect
11 them and so that's the reason the State didn't call them in trial. Hazel was able to
12 cover all of that area.

13 THE COURT: I mean, I'm not going to hold it against the State that you didn't
14 call the children. And obviously, you know, his family has their perception of him
15 based on their dealings with Mr. Shue. You know, they're probably not familiar with
16 all of the evidence in the case. And, candidly, sometimes, you know, people will
17 victimize one set of children and not another set of children because of what their
18 relationships are. So that doesn't seem particularly curious to me, quite frankly, that
19 his sister trusts him and -- you know, maybe he has had a good relationship with
20 those children. As I said, that's not unusual for people to treat different children
21 differently.

22 MS. BEVERLY: Absolutely, Your Honor.

23 And I just want to --

24 THE COURT: And I think there may have even been a suggestion of some of
25 that in this case.

1 MS. BEVERLY: Absolutely.

2 And I just want to note though, Your Honor, though that also in his
3 sister's letter she talks about this long terrible journey the Defendant has been
4 through. And it just bothers me because there's all these people here for the
5 Defendant, yet Hazel -- there's nobody here for her. And I want to specifically talk
6 about the letter from Anita Aguilar [phonetic], who I assume is Anita Iral, based on
7 her statement. And I want to note that Anita is here today. She's in the courtroom.
8 She's not with her daughter, but --

9 THE COURT: Right. And that was -- I mean, obviously, I just remind -- you
10 know, Ms. Beverly, some of these issues were brought out at -- during the trial --

11 MS. BEVERLY: Sure.

12 THE COURT: -- in terms of the dynamic that's going on here between the
13 victims' mother and the Defendant. And we talked about that and we had a hearing,
14 so I'm fully -- I just want to remind you I'm fully aware of a lot of this history. You
15 know, we had the hearing before, even a trial on some issues.

16 MS. BEVERLY: Thank you, Your Honor.

17 So I would just ask that Your Honor just pay close attention to Anita's
18 letter and remember her testimony at trial and how this has really affected Hazel and
19 her relationship with Anita. And the fact that she's even here today, not with her
20 daughter, is very disturbing to the State.

21 I also want to just briefly talk about the psych eval that was done on
22 him. He talks about what a fun child he had -- childhood he had and he had no
23 drama. Again, there's no responsibility being taken here. And the psych eval notes
24 that he is a moderate risk to offend, so that's also disturbing to the State.

25 Lastly, Your Honor, what I'm going to ask for in this case is we have

1 counts -- Count 1, I would ask for a 19 to 48. Then we have the counts relating to
2 Curt, which is on page 1 of the PSI. I would ask -- those counts carry a sentence of
3 10 to life. I would ask that Your Honor sentence him on each of those counts
4 relating to Curt to a sentence of 10 to life and run all of those consecutive because
5 these are separate days; these are separate incidences.

6 Then we have on page 2 the counts relating to Hazel for use of minor in
7 production. There's multiple counts of that. That sentence is 5 to life. I would ask
8 that Your Honor sentence him on each of those counts to 5 to life. Run each of
9 those consecutive, but concurrent to the counts relating to Curt.

10 Then we have the counts of possession of child pornography. On those
11 counts I would ask Your Honor to sentence him to a max of 28 -- excuse me, 28 to
12 72; run those concurrent. Those are based on the same videos. And Count 39 I
13 would ask for the full 364 days; those running concurrent.

14 So the main thing I'm asking for is that the videos on page 1 relating to
15 Curt, and some including Hazel as well, run consecutive because I believe that each
16 of these days was a different event and each day they were victimized.

17 THE COURT: All right. Thank you, Ms. Beverly.

18 Mr. Shue, what, if anything, would you like to say to the Court before
19 the Court pronounces sentence against you this morning?

20 THE DEFENDANT: I would like to say that I'm very sorry I'm in this situation,
21 but I will allow my attorney to speak for me.

22 THE COURT: All right. And obviously the matter's on appeal.

23 Mr. Jackson?

24 MR. JACKSON: Well, the first thing I'd like to say is I thought the rules of
25 professional conduct as a prosecutor isn't to vouch for his witnesses -- his or her

1 witnesses. And Ms. Beverly's done an excellent job vouching for her main witness,
2 the victim in this case. And we all feel sorry for a victim in any criminal case;
3 however, that being said, the prosecutor made a good case for me pointing out all
4 the people that said things at the trial and after the trial about the victim's credibility.

5 I'm not going to say anything about the victim's credibility. I think I've
6 already done that at the trial and through cross-examination and whatever. I think
7 the young woman had difficulty. She was being paid by the State to come here. We
8 know that.

9 MS. BEVERLY: Your Honor, I'm going to object to that.

10 THE COURT: Well --

11 MR. JACKSON: Well, I got -- she got a chance to speak.

12 MS. BEVERLY: I'm going -- we talked about this so many times.

13 THE MARSHAL: Counsel, one at a time.

14 THE COURT: Okay. Ms. Beverly, I'm going to say the same thing to Mr.
15 Jackson and I'll reiterate what I just said to you. I heard the trial. I heard the
16 hearing where we took the testimony on the allegation that she was being paid by
17 the State. And the evidence was that she received a payment based on her status
18 as a foster child. And the Court found that that wasn't related to the District
19 Attorney's Office and had nothing to do with her testifying in the case. So that
20 record has already been made, and it's been remade, and remade again, and made
21 again. And so, you know, I heard all of this and I reviewed everything for today, so
22 that was what it was. And other than that we -- you know, we had the hearing about
23 the allegations. And those were, I thought, fully flushed out. And Mr. Jackson
24 maybe doesn't agree and he still believes that there was something going on, but
25 the evidence is what the evidence was. And we actually set aside time, which was

1 unusual to have a hearing on this issue --

2 MR. JACKSON: I'm sorry, Your Honor.

3 THE COURT: -- long prior to the trial.

4 MR. JACKSON: It's a semantic issue. I mean, she says things about my
5 client --

6 THE COURT: All right.

7 MR. JACKSON: -- and I'm saying things about the victim, which I think were
8 developed on the record. She did receive money as a foster child and that is
9 undisputed. And there is certainly questions about what exactly happened and what
10 the extent of it is.

11 Now the problem with this case is the State has taken a very simple
12 case and made it seem like my client is like Jack the Ripper or a serial sex offender
13 when he's never been in trouble before. The State is implying, well, he's done all
14 these things. The worst case, if you look -- if he did everything they proved in front
15 of the jury without any legal problems with it, he took pictures of young woman -- 16,
16 17-year-old woman in the shower and a young boy sitting on a bathroom toilet. Now
17 this isn't a giant sex offense. There's no evidence of sexual penetration, sexual acts
18 committed with these children. The worst they have is that he attempted to kiss this
19 young girl one night.

20 Now based on that, they act like he's the worst sex offender they've had
21 -- child sex offender in the last 40 years charging all of these offenses this way.
22 They had a camera running in a bathroom taking pictures of what was going on in a
23 bathroom when they got in and out of the shower, sitting on a toilet. The
24 government tries to imply these are major pornography. We looked at the pictures.
25 The prosecutor claims this was terribly offensive, terribly disturbing to the young girl

1 to look at these. The prosecution's the one that made her look at them over and
2 over; made the jury look at them. I'm sorry that she had to look at these pictures.
3 They're pictures of herself standing naked in the shower. Well, that's a -- I didn't
4 think the naked body was that offensive a thing.

5 They have the temerity to come in and argue he should get multiple 10 to
6 life sentences for this offense. I believe the sentences should all run concurrently. I
7 think he should get the minimum sentences in all of these. I think the case should
8 be reversed on appeal, but that's my argument to the Court if I'm appointed to
9 represent him on appeal.

10 I think there was a statute, which I argued before, that he should've
11 been charged at most a gross misdemeanor that he was taking images of someone
12 without their consent. But the Court ruled against me on that and the Court heard all
13 the arguments I made on that. But to argue that these are multiple 10 to life
14 sentences, he should get these run back-to-back like he's a -- I've had murderers
15 that commit --

16 THE COURT: Right. Mr. Jackson, you know, P and P looks at this defendant
17 compared to other defendants. The Court looks at this defendant compared to other
18 defendants. And, you know, I'm aware they have defendants committing sexual
19 assaults on minors and they get probation. So --

20 MR. JACKSON: Well, they get their information --

21 THE COURT: -- the Court's aware of where this --

22 MR. JACKSON: -- from the DA's Office.

23 THE COURT: -- of where -- meaning that's negotiated. You know, the Court
24 has its own opinion of the pictures. I don't need Ms. Beverly to tell me what the
25 pictures look like. I don't need you to tell me --

1 MR. JACKSON: Right.

2 THE COURT: -- what the pictures look like because I sat here and I watched
3 the pictures. And, you know, again, I think P and P takes that into consideration
4 where he kind of falls and -- yes, we had a -- we had -- you know, I don't think we
5 had worst people on this week than Mr. Shue in my estimation in terms of his
6 conduct and the lifetime effect on the victim. So -- you know, I think your point on
7 that is well taken. Like I said, maybe not today, but just this week, in my estimation,
8 we have people who've committed more egregious conduct, reference these types
9 of crimes, and in my opinion have probably had a more detrimental impact on the
10 lives of their victims.

11 MR. JACKSON: I'll wrap it up very quickly. I ask the Court to consider
12 carefully Dr. Paglini's report. He did an analysis of Mr. Shue's background taking
13 into consideration his record; doing some standard tests on him. He assessed him
14 as being low to moderate risk to reoffend, and two to three percent likelihood that
15 he'd reoffend within the next five years once he's released. He said that while in
16 prison he should take whatever counseling is available for sex offender type
17 programs. He did a well-balanced report. He was given all -- I made a list of all the
18 things he was given. I think that his report was -- was balanced and an accurate
19 report as far as Mr. Shue's likelihood to reoffend.

20 The Defendant's background is not the typical background of a sex
21 offender. He does not have any priors. He does not have any background of any
22 criminal history. He served his country in the military. He had a regular job. This is
23 not the kind of person that typically gets these kind of charges. Whether he made a
24 mistake this time, whether the Court -- the appellate court will sustain the conviction
25 or not, I think that anything but a minimum sentence in this matter would be a very

1 excessive sentence. I'll submit it with that.

2 THE COURT: All right. Thank you.

3 We'll hear from Ms. Iral.

4 MS. BEVERLY: Thank you, Your Honor.

5 THE COURT: And, Hazel, just right on up there and face this lady right here
6 who's going to administer the oath to you.

7 **HAZEL IRAL**

8 [having been called as a speaker and being first duly sworn, testified as follows:]

9 THE COURT CLERK: Please state your name for the record and spell it for
10 us, please.

11 THE SPEAKER: Hazel Iral, H-A-Z-E-L, I-R-A-L.

12 THE COURT: All right. Thank you. Please be seated.

13 THE VICTIM SPEAKER: Thank you.

14 THE COURT: And what would you like to say today?

15 THE SPEAKER: Just in general or --

16 THE COURT: Well, you can -- did you talk to Ms. Beverly about the topics
17 that you're allowed to -- or the appropriate areas that you can cover as a victim
18 speaker?

19 THE SPEAKER: Not really.

20 THE COURT: You didn't. Okay. Did you --

21 MS. BEVERLY: I just told her that she could express how this crime affected
22 her.

23 THE COURT: Okay. Right.

24 How has this impacted you?

25 ///

VICTIM STATEMENT

BY THE SPEAKER:

To me, it impact me a whole lot. It's a lot of change for me. And I became aware of everything and everyone. I get really self-conscious about myself. And it was difficult throughout the three years that that happened to me I couldn't trust anyone; any man that tries to talk to me. I -- even when I take the bus I don't look at anyone 'cause it's hard, you know, feeling violated like that. It's -- it hurts me deep inside and it tore me like emotionally because someone that I trusted, that I thought was gonna be the man that's gonna be like my dad treated me as if I'm just some trash like that, you know. I'm not that kind of person. I'm not the type of person that would try to flirt with him. I'm not that kind of woman. I saw him more as a father. I saw him as someone I could trust. And he took advantage of that and that just leaves me speechless for anything else.

THE COURT: All right. Is there anything else you'd like to say before I sentence the Defendant in this case?

THE SPEAKER: Yes, there's this one last thing.

BY THE SPEAKER:

The thing that happened during the summer that escalated to this point, I don't know exactly what happened, but I just said whatever I remembered. And it scared me to the point where I just -- I just didn't want to be around people because I don't know what he put in there. I don't know what he put in my drink. I can't tell you. I can't say it's a drug. I can't say if it's alcohol. I don't know. It makes me really emotional and it scares me a lot as I'm only 20 and what am I gonna say to this guy that I'm gonna marry like that happened to me. What if this video leaks out somewhere and I didn't know about it, you know. It's hard. It's really hard for me.

1 And my relationship with my mother, it's like she doesn't even
2 understand. Like I don't try to get attention. I'm not that kind of person. I just want
3 my mom to love me, you know. I don't [crying] --

4 THE COURT: All right. Anything else, Ms. Beverly?

5 MS. BEVERLY: No.

6 THE COURT: Mr. Jackson?

7 MR. JACKSON: I have no questions.

8 THE COURT: All right.

9 Thank you very much for coming in and being here today.

10 THE SPEAKER: Yeah. Thank you.

11 THE COURT: Very courageous of you.

12 All right. Mr. Shue, by virtue of the jury's verdict, you're hereby
13 adjudged guilty of Count Number 1, Child Abuse, Neglect or Endangerment; Counts
14 4, 7, 10, 13, 16, 19, 22 and 25, Use of a Child in Production Age 14 Years or Less;
15 Counts 2, 3, 6, 9, 12, 15, 18, 21, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and
16 38, Use of a Child in Production Minor 14 Years of Age or Older; Counts 5, 8, 11,
17 14, 17, 20, 23, 26, 40 and 41, Possession of Visual Presentation Depicting a Sexual
18 Conduct of a Child, and Count Number 39, Open and Gross Lewdness.

19 In addition to the \$25 administrative assessment, the \$150 DNA
20 analysis fee, and the fact that you must submit to a test for genetic markers and
21 restitution in the amount of \$3,540.39, on Count Number 1 you are sentenced to a
22 minimum term of 24 months in the Nevada Department of Corrections and a
23 maximum term of 72 months in the Nevada Department of Corrections.

24 On Count Number 2, Use of a Child in Production, you're sentenced to
25 life with the possibility of parole beginning after a minimum of five years has been

1 served and a fine in the amount of \$1,000. That is imposed consecutively to the
2 time I gave you in Count Number 1.

3 On Count Number 3, Use of a Child in Production, you're sentenced to
4 a minimum term of life with the possibility of parole beginning after a minimum of five
5 years has been served. That is imposed concurrently with Count Number 2. I'm
6 also sentencing you to a fine of \$1,000.

7 On Count Number 4, Use of a Child in Production, you're sentenced to
8 a minimum term of life with the possibility of parole beginning after a minimum of ten
9 years has a been served and a fine in the amount of \$1,000. That is imposed
10 concurrently with the time you received on Count Number 3.

11 On Count Number 5, Possession of Visual Presentation Depicting the
12 Sexual Conduct of a Child, you're sentenced to a minimum term of 12 months in the
13 Nevada Department of Corrections and a maximum term of 36 months. That is
14 imposed consecutively to Count 4.

15 Count Number 6, Use of a Child in Production, you're sentenced to a
16 minimum term of life with parole eligibility beginning after five years has been served
17 and a fine in the amount of \$1,000. That is imposed concurrently with Count
18 Number 3.

19 On Count Number 7, Use of a Child in Production, you're sentenced to
20 life with your parole eligibility beginning after a minimum of ten years has been
21 served. That is imposed concurrently with Count Number 6 and a fine in the amount
22 of \$1,000 is also imposed.

23 On Count Number 8, Possession of Visual Presentation Depicting the
24 Sexual Conduct of Child, you're sentenced to 12 to 36 months. That is imposed
25 concurrently.

1 On Count -- with Count -- on Count Number 9, Use of a Child in
2 Production, you're sentenced to life with a minimum parole beginning after five years
3 has been served. That is imposed concurrently. You're also sentenced to a fine of
4 \$1,000.

5 On Count Number 10, Use of a Child in Production, you're sentenced to
6 life with your parole eligibility beginning after ten years has been served and a fine
7 of \$1,000. That is imposed concurrently.

8 On Count Number 11, Possession of Visual Presentation Depicting the
9 Sexual Conduct of a Child, you're sentenced to 12 to 36 months. That is imposed
10 concurrently.

11 On Count Number 12, Use of a Child in Production, you're sentenced to
12 a minimum term of life with your parole eligibility beginning after five years has been
13 served and a fine in the amount of \$1,000. That is imposed concurrently.

14 On Count Number 13, Use of Child in Production, you're sentenced to
15 life with your parole eligibility beginning after a minimum of ten years has been
16 served and a fine in the amount of \$1,000. That is imposed concurrently.

17 On Count Number 14, Possession of Visual Presentation Depicting the
18 Sexual Conduct of a Child, you're sentenced to a minimum term of 12 months; a
19 maximum term of 72 months. That is imposed concurrently.

20 On Count Number 15, Use of a Child in Production, you're sentenced to
21 life with the minimum parole eligibility after five years has been served and a fine in
22 the amount of \$1,000. That is imposed concurrently.

23 On Count Number 16, Use of a Child in Production, you are sentenced
24 to life with the minimum parole eligibility beginning after ten years has been served
25 and a fine in the amount of \$1,000. That is imposed concurrently.

1 On Count Number 17, Possession of Visual Presentation Depicting the
2 Sexual Conduct of a Child, you're sentenced to a minimum term of 12 months; a
3 maximum of 72 months. That is imposed concurrently.

4 On Count Number 18, Use of a Child in Production, you are sentenced
5 to life with the minimum parole eligibility beginning after five years and a fine in the
6 amount of \$1,000. That is imposed concurrently.

7 On Count Number 19, Use of a Child in Production, you are sentenced
8 to life with your parole eligibility beginning after a minimum of ten years has been
9 served and a fine in the amount of \$1,000. That is imposed concurrently.

10 Count Number 20, Possession of Visual Presentation Depicting the
11 Sexual Conduct of a Child, you are sentenced to a minimum term of 12 months; a
12 maximum term of 72 months. That is imposed concurrently.

13 On Count Number 21, Use of a Child in Production, you are sentenced
14 to life with parole eligibility beginning after five years has been served and a fine in
15 the amount of \$1,000. That is imposed concurrently.

16 On Count Number 22, Use of a Child in Production, you are sentenced
17 to a minimum term of life with your parole eligibility beginning after ten years has
18 been served and a fine in the amount of \$1,000. That is imposed concurrently.

19 On Count Number 23, Possession of Visual Presentation Depicting the
20 Sexual Conduct of a Child, you're sentenced to a minimum term of 12 months; a
21 maximum of 72 months. That is imposed concurrently.

22 On Count Number 24, Use of a Child in Production, you are sentenced
23 to life with the minimum parole eligibility beginning after five years has been served
24 and a fine in the amount of \$1,000. That is imposed concurrently.

25 On Count Number 25, Use of a Child in Production, you are sentenced

1 to life with your parole eligibility beginning after a minimum of ten years has been
2 served. That is imposed concurrently.

3 On Count Number 26, Possession of Visual Presentation Depicting the
4 Sexual Conduct of a Child, you're sentenced to a minimum term of 23 months; a
5 maximum term of 72 months. That is imposed concurrently.

6 On Count Number 27, Use of a Child in Production, you're sentenced to
7 life with the parole eligibility beginning after five years has been served and a fine in
8 the amount of \$1,000. That is imposed concurrently.

9 On Count Number 28, Use of a Child in Production, you're sentenced to
10 life with your parole eligibility beginning after five years has been served and a fine
11 in the amount of \$1,000. That is imposed concurrently.

12 On Count Number 29, Use of a Child in Production, you are sentenced
13 to life with your parole eligibility beginning after five years has been served; a fine in
14 the amount of \$1,000. That is imposed concurrently.

15 Count Number 30, Use of a Child in Production, you are sentenced to
16 life with the parole eligibility beginning after five years has been served and a fine in
17 the amount of \$1,000. That is imposed concurrently.

18 On Count Number 31, Use of a Child in Production, you are sentenced
19 to life with your parole eligibility beginning after five years has been served; a fine in
20 the amount of \$1,000. That is imposed concurrently.

21 On Count Number 32, Use of a Child in Production, you are sentenced
22 to life with the parole eligibility beginning after a minimum of five years. That is
23 imposed concurrently and I'm also imposing a fine in the amount of \$1,000.

24 Count Number 33, Use of Production, you're sentenced to life with your
25 parole eligibility beginning after five years has been served; a fine in the amount of

1 \$1,000. That is imposed concurrently.

2 Count Number 34, Use of a Child in Production, you are sentenced to
3 life with your parole eligibility beginning after five years has been served; a fine in
4 the amount of \$1,000. That is imposed concurrently.

5 Count Number 35, Use of a Child, you're sentenced to life with your
6 parole eligibility beginning after five years has been served; a fine in the amount of
7 \$1,000. That is imposed concurrently.

8 Count Number 36, Use of a Child in Production, you're sentenced to life
9 with your parole eligibility beginning after five years has been served; a fine in the
10 amount of \$1,000. That is imposed concurrently.

11 Count Number 37, Use of a Child in Production, you're sentenced to life
12 with your parole eligibility beginning after five years has been served; a fine in the
13 amount of \$1,000. That is imposed concurrently.

14 And Count Number 38, Use of a Child in Production, you're sentenced
15 to life with your parole eligibility beginning after five years has been served. That is
16 imposed concurrently. I'm also assessing a fine of \$1,000.

17 On Count Number 39, Open and Gross Lewdness, you're sentenced to
18 364 days in the Clark County Detention Center. That is imposed concurrently.

19 On Count Number 40, Possession of Visual Presentation Depicting the
20 Sexual Conduct of a Child, you're sentenced to a minimum term of 12 months; a
21 maximum term of 72 months. That is imposed concurrently.

22 On Count Number 41, Possession of Visual Presentation Depicting the
23 Sexual Conduct of a Child, you're sentenced to a minimum of 12 months; a
24 maximum of 72 months. That is imposed concurrently.

25 I show that you are entitled to 106 days of credit for -- let's see. He had

1 106 days. Has anyone done the calculation on what he now has?

2 MS. BEVERLY: I believe it's going to be -- I think it was 141.

3 THE COURT: Does that sound right to you, Mr. Jackson?

4 MR. JACKSON: [No audible response.]

5 THE COURT: One hundred and forty-one days of credit for time served.

6 MS. BEVERLY: Thank you.

7 THE COURT: All right. Thank you.

8 [Proceedings concluded at 10:39 a.m.]

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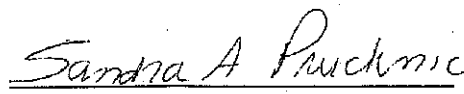
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

22

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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 DOUGLAS E. SMITH, DISTRICT COURT JUDGE
15 THURSDAY, FEBRUARY 5, 2015

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
17 **DEFENDANT'S MOTION FOR APPOINTMENT OF ATTORNEY FOR APPEAL**

18 APPEARANCES:

19 For the State:

CAROLINE BATEMAN, ESQ.
Deputy District Attorney

21 For the Defendant:

TERRENCE M. JACKSON, ESQ.

22
23
24
25 RECORDED BY: JANIE OLSEN, COURT RECORDER

1 THURSDAY, FEBRUARY 5, 2015 AT 9:31 A.M.

2
3 THE COURT: C288172, Joshua Shue.

4 I spoke to Drew Christensen. Mr. Jackson, you're allowed to withdraw
5 and we're going to appoint the public defender to handle the appeal.

6 MR. JACKSON: That's fine, Your Honor.

7 I've spoken to the family. You know, the cost of getting the transcripts
8 and whatever I think is beyond their means at this time. I will provide all my records
9 to the Public Defender's Office in a timely manner.

10 The notice of appeal needs to be filed before February 19th. I'm
11 advising the public defender of that. I will cooperate with them in getting the
12 documents I have in my file. The -- it was a fairly lengthy trial. I have lots of pretrial
13 stuff I'll box up and give to them --

14 THE COURT: Okay.

15 MR. JACKSON: -- and make it available to them within a few days.

16 THE COURT: Okay. Thanks, Terry.

17 [Proceedings concluded at 9:32 a.m.]

18 * * * * *

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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

JOSHUA C. SHUE,) No. 67428
)
)
 Appellant,)
)
)
 v.)
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 THE STATE OF NEVADA,)
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)
 Respondent.)

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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 20 day of July, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO
STEVEN S. OWENS

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WILL WATERS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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BY

Employee, Clark County Public Defender's Office