

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

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May 08 2015 03:51 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

CHARLES JOSEPH MAKI

Petitioner,

vs.

THE STATE OF NEVADA,
Respondent.

Sup. Ct. Case No. 67717

Case No. CR94-0345

Dept. 8

RECORD ON APPEAL

VOLUME 2 OF 8

DOCUMENTS

APPELLANT

**Charles J Maki #42820
Warm Springs Correctional Center
P O Box 7007
Carson City, Nevada 89702**

RESPONDENT

**Washoe County District Attorney's
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APPEAL INDEX

SCN: 67717
Case No. CR94-0345

STATE OF NEVADA VS CHARLES JOSEPH MAKI

MAY 8, 2015

PLEADING	DATE	VOL.	PAGE NO.
AFFIDAVIT IN SUPPORT OF MOTION FOR APPOINTMENT OF COUNSEL/WRIT OF PROHIBITION/WRIT OF MANDAMUS	08/02/13	4	693-705
AFFIDAVIT IN SUPPORT OF MOTION FOR THE APPOINTMENT OF COUNSEL/WRIT OF PROHIBITION/WRIT OF MANDAMUS	02/17/15	6	936-939
AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS	05/09/96	7	2-4
ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	08/23/96	7	64-66
APPLICATION FOR ORDER TO PRODUCE PRISONER	07/15/97	7	87-89
APPLICATION FOR SETTING	02/10/94	2	9
APPLICATION FOR SETTING	02/18/94	2	117
APPLICATION OF SETTING	05/20/97	7	80
APPLICATION TO PRODUCE PRISONER	06/03/97	7	81-83
CASE APPEAL STATEMENT	08/20/13	5	737-738
CASE APPEAL STATEMENT	07/24/14	5	881-882
CASE APPEAL STATEMENT	04/02/15	6	1026-1027
CASE APPEAL STATEMENT	04/20/15	6	1047-1048
CASE APPEAL STATEMENT	04/23/15	6	1055-1056
CASE APPEAL STATEMENT	08/19/97	7	109-110
CERTIFICATE OF CLERK	08/19/97	7	107
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	08/20/13	5	739
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	04/02/15	6	1028
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	04/20/15	6	1049
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	04/23/15	6	1057

APPEAL INDEX

SCN: 67717
Case No. CR94-0345

STATE OF NEVADA VS CHARLES JOSEPH MAKI

MAY 8, 2015

CERTIFICATE OF CLERK AND TRANSMITTAL – RECORD ON APPEAL	09/22/14	6	914
CERTIFICATE OF CLERK AND TRANSMITTAL- NOTICE OF APPEAL	07/24/14	5	883
CERTIFICATE OF TRANSMITTAL	08/19/97	7	108
CRIMINAL PROGRESS SHEET	02/16/94	2	11-12
DESIGNATION OF RECORD ON APPEAL	06/03/94	3	436
DESIGNATION OF RECORD ON APPEAL	07/11/94	3	441
DESIGNATION OF RECORD ON APPEAL	08/02/13	4	685-686
DESIGNATION OF RECORD ON APPEAL	07/18/14	5	853-854
DESIGNATION OF RECORD ON APPEAL	04/17/15	6	1044-1045
DESIGNATION OF RECORD ON APPEAL	04/21/15	6	1053-1054
DESIGNATION OF RECORD ON APPEAL SUPPLEMENTAL BRIEF	08/06/14	6	886-904
EXPARTE APPLICATION FOR INTERIM CLAIM FOR FEES	03/10/14	8	17-24
EXPARTE APPLICATION FOR INTERIM CLAIM FOR FEES	04/14/14	8	28-35
EXPARTE APPLICATION FOR INTERIM CLAIM FOR FEES (HABEAS CORPUS)	07/21/14	8	39-46
EXPARTE MOTION FOR ORDER ALLOWING INTERIM PAYMENT OF ATTORNEY’S FEES AND COSTS TO APPOINTED COUNSEL	06/27/00	8	62-64
FINANCIAL CERTIFICATE	05/09/96	7	5
FINDINGS OF FACT CONCLUSIONS OF LAW AND JUDGMENT	07/24/97	7	92-96
INFORMATION	02/10/94	2	1-8
INTERIM CLAIM FOR COMPENSATION AND REQUEUST FOR ORDER GRANTING ATTORNEY’S FEES AND COSTS	09/30/14	8	50-54
JUDGMENT	04/12/94	3	314
JUDGMENT	05/17/94	3	372-373
JURY INSTRUCTIONS	04/12/94	3	256-293

APPEAL INDEX

SCN: 67717
Case No. CR94-0345

STATE OF NEVADA VS CHARLES JOSEPH MAKI

MAY 8, 2015

JURY QUESTIONS	04/12/94	3	315-319
JUSTICE COURT PROCEEDINGS	02/18/94	2	13-116
LETTER	04/11/94	3	255
MINUTES	02/16/94	2	10
MINUTES	04/11/94	3	250-254
MINUTES – ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE	05/17/94	3	370-371
MINUTES – EVIDENTIARY MOTIONS	03/11/94	2	152
MINUTES – MOTION TO CONFIRM TRIAL DATE/MOTION TO SUPPRESS 04/01/94	04/01/94	2	209
MINUTES – POST CONVICTION HEARING	07/11/97	4	682
MINUTES – POST CONVICTION HEARING	07/18/97	4	683
MOTION FOR APPOINT OF COUNSEL	02/17/15	6	930-935
MOTION FOR APPOINTMENT OF COUNSEL PURSUANT TO NRS 34.750	12/30/13	5	752-756
MOTION FOR APPOINTMENT OF COUSEL	08/02/13	4	687-692
MOTION FOR ENLARGMENT OF TIME IN WHICH TO PREPARE AND FILE THE SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS	03/31/14	5	822-824
MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	05/09/96	7	1
MOTION FOR LEAVE TO PROCEED INFORMA PAUPERIS	12/30/13	8	13-16
MOTION FOR THE APPOINTMENT OF COUNSEL	12/04/96	7	70-71
MOTION FOR TRIAL COURT RECORDS	12/03/08	7	251-252
MOTION FOR TRIAL TRANSCRIPT AT PUBLIC EXPENSE AND SPECIFICATIO OF ERROR	06/09/94	3	438
MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD	04/10/96	4	677-678
MOTION IN LIMINE RE: PRIOR CONVICTIONS	04/04/94	2	217-219
MOTION IN LIMINE RE: UNCHARGED COLLATERAL OR BAD ACTS	04/04/94	2	210-216
MOTION TO COMPEL PRODUCTION OF DISCOVERY	03/21/94	2	156-157

APPEAL INDEX

SCN: 67717
Case No. CR94-0345

STATE OF NEVADA VS CHARLES JOSEPH MAKI

MAY 8, 2015

MOTION TO DETERMINE ADMISSIBILITY OF OUT OF COURT STATEMENTS OF CHILD SEX VICTIM NRS 51.385	03/04/94	2	134-142
MOTION TO DETERMINE ADMISSIBILITY OF VIDEOTAPED INTERVIEW OF DEFENDANT'S CONFESSION	03/04/94	2	124-133
MOTION TO SUPPRESS STATEMENT PURSUANT TO JACKSON V DENNO 378 U.S. 368 (1964); MIRANDA V. ARIZONA, 384 U.S. 436 (1966)	03/25/94	2	185-195
MOTION TO THE COURT	04/02/15	6	1031-1039
MOTION TO WITHDRAW AS COUNSEL	11/25/96	7	67-69
NOTICE OF APPEAL	08/02/13	4	684
NOTICE OF APPEAL	06/03/94	3	435
NOTICE OF APPEAL	07/18/14	5	851-852
NOTICE OF APPEAL	03/27/15	6	1024-1025
NOTICE OF APPEAL	04/17/15	6	1043
NOTICE OF APPEAL	04/21/15	6	1052
NOTICE OF APPEAL	08/18/97	7	104-105
NOTICE OF APPEAL	08/18/97	7	106
NOTICE OF APPEAL	08/26/97	7	111-112
NOTICE OF COURT	07/18/14	5	855-878
NOTICE OF ENTRY OF DECISION OR ORDER	07/28/97	7	97-103
NOTICE OF ENTRY OF ORDER	09/10/14	6	910-911
NOTICE OF INTENT TO OFFER UNCHARGED MISCONDUCT EVIDENCE AT SENTENCING HEARING BUSCHAUER V STATE 106 NEV 890 (1990)	05/12/94	3	359-369
NOTICE OF MOTION	04/10/96	4	679
NOTICE TO COURT OF NO SUPPLEMENT	06/30/14	5	840-842
OPPOSITION TO MOTION TO SUPPRESS STATEMENT	03/31/94	2	196-208
OPPOSITION TO STATE'S MOTION TO DETERMINE ADMISSIBILITY OF OUT OF COURT STATEMENTS OF CHILD SEX VICTIM	03/10/94	2	143-147

APPEAL INDEX

SCN: 67717
Case No. CR94-0345

STATE OF NEVADA VS CHARLES JOSEPH MAKI

MAY 8, 2015

OPPOSITION TO STATE'S MOTION TO DETERMINE ADMISSIBILITY OF VIDEOTAPED INTERVIEW OF DEFENDANT'S CONFESSION	03/10/94	2	148-151
ORDER	05/18/94	3	374
ORDER	05/18/94	3	375
ORDER	06/13/94	3	439-440
ORDER	04/17/14	5	833-835
ORDER	07/07/14	5	845-848
ORDER	05/29/96	7	31-32
ORDER	01/16/97	7	74-76
ORDER	01/29/97	7	77-79
ORDER	10/08/96	8	55
ORDER	08/04/97	8	56
ORDER	06/17/98	8	57-61
ORDER APPROVING FEES AND COSTS OF COURT APPOINTED ATTORNEY	07/14/00	8	65
ORDER DENYING MOTION FOR TRIAL COURT RECORDS	01/30/09	7	255-256
ORDER DENYING PETITION	03/18/15	6	1020-1021
ORDER DISMISSING APPEAL	11/05/13	5	748-750
ORDER EXTENDING TIME FOR TRANSMISSION OF RECORD ON APPEAL	07/11/94	3	443
ORDER GRANTING APPOINTMENT OF COUNSEL	01/07/14	5	809-810
ORDER GRANTING IN FORMA PAUPERIS	01/07/14	5	806-808
ORDER TO PRODUCE PRISONER	06/03/97	7	84-86
ORDER TO PRODUCE PRISONER	07/16/97	7	90-91
PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	05/09/96	7	6-30
PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	12/30/13	5	757-805

APPEAL INDEX

SCN: 67717
Case No. CR94-0345

STATE OF NEVADA VS CHARLES JOSEPH MAKI

MAY 8, 2015

PRESENTENCE INVESTIGATION	05/02/94	8	1-12
PROOF OF SERVICE OF ELECTRONIC FILING	08/20/13	5	740
PROOF OF SERVICE OF ELECTRONIC FILING	08/26/13	5	742
PROOF OF SERVICE OF ELECTRONIC FILING	10/01/13	5	745
PROOF OF SERVICE OF ELECTRONIC FILING	11/05/13	5	751
PROOF OF SERVICE OF ELECTRONIC FILING	01/07/14	5	811
PROOF OF SERVICE OF ELECTRONIC FILING	01/07/14	5	812
RECEIPT	11/07/94	4	667
RECEIPT	12/07/94	4	668
RECOMMENDATION AND ORDER FOR APPOINTMENT OF COUNSEL (POST CONVICTION)	01/29/14	5	813-815
RECOMMENDATION AND ORDER FOR PAYMENT OF ATTORNEY'S FEES (POST CONVICTION)	03/26/14	8	25-27
RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES (POST CONVICTION)	04/29/14	8	36-38
RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES (POST CONVICTION)	08/14/14	8	47-49
REQEUST FOR APPOINTMENT OF AN ATTORNEY	06/03/94	3	437
REQUEST FOR SUBMISSION	08/02/13	5	736
REQUEST FOR SUBMISSION	04/07/14	5	827-828
REQUEST FOR SUBMISSION	04/17/15	6	1046
REQUEST FOR SUBMISSION	12/05/96	7	72
REQUEST FOR SUBMISSION	12/11/96	7	73
REQUEST FOR SUBMISSION	12/03/08	7	253-254
REQUEST OF SUBMISSION	02/17/15	6	1019
RETURN OF NEF	01/29/14	5	816-817
RETURN OF NEF	03/10/14	5	818-819
RETURN OF NEF	03/26/14	5	820-821

APPEAL INDEX

SCN: 67717
Case No. CR94-0345

STATE OF NEVADA VS CHARLES JOSEPH MAKI

MAY 8, 2015

RETURN OF NEF	03/31/14	5	825-826
RETURN OF NEF	04/07/14	5	829-830
RETURN OF NEF	04/14/14	5	831-832
RETURN OF NEF	04/17/14	5	836-837
RETURN OF NEF	04/29/14	5	838-839
RETURN OF NEF	06/30/14	5	843-844
RETURN OF NEF	07/07/14	5	849-850
RETURN OF NEF	07/22/14	5	879-880
RETURN OF NEF	07/24/14	5	884-885
RETURN OF NEF	08/14/14	6	905-906
RETURN OF NEF	08/20/14	6	908-909
RETURN OF NEF	09/10/14	6	912-913
RETURN OF NEF	09/22/14	6	915-916
RETURN OF NEF	12/18/14	6	920-921
RETURN OF NEF	01/12/15	6	928-929
RETURN OF NEF	03/18/15	6	1022-1023
RETURN OF NEF	04/02/15	6	1029-1030
RETURN OF NEF	04/09/15	6	1041-1042
RETURN OF NEF	04/20/15	6	1050-1051
RETURN OF NEF	04/23/15	6	1058-1059
RETURN OF NEF	04/24/15	6	1061-1062
RETURN OF NEF	04/30/15	6	1065-1066
RETURN OF NEF	05/05/15	6	1068-1069
SEIZURE ORDER	09/13/95	4	669-672
STIPULATION	04/06/94	2	220-248

APPEAL INDEX

SCN: 67717
Case No. CR94-0345

STATE OF NEVADA VS CHARLES JOSEPH MAKI

MAY 8, 2015

STIPULATION AND ORDER	08/05/96	7	33
STIPULATION AND ORDER FOR RECIPROCAL DISCOVERY	03/18/94	2	153-155
STIPULATION AND ORDER TO RELEASE EXHIBITS TO COUNSEL	11/07/94	4	666
STIPULATION TO EXTEND TIME FOR TRANSMISSION OF RECORD ON APPEAL	07/11/94	3	442
SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS	08/20/96	7	34-63
SUPREME COURT – CLERK’S CERTIFICATE AND JUDGMENT	10/27/95	4	674
SUPREME COURT – CLERK’S CERTIFICATE AND JUDGMENT	11/05/13	5	747
SUPREME COURT – CLERK’S CERTIFICATE AND JUDGMENT	01/12/15	6	923
SUPREME COURT – CLERK’S CERTIFICATE AND JUDGMENT	11/09/00	7	243
SUPREME COURT – ORDER DIRECTING TRANSMISSION OF RECORD	08/20/14	6	907
SUPREME COURT – ORDER DISMISSING APPEAL	10/27/95	4	675-676
SUPREME COURT – ORDER DISMISSING APPEAL	10/01/13	5	743-744
SUPREME COURT – ORDER OF AFFIRMANCE	12/18/14	6	917-919
SUPREME COURT – ORDER OF AFFIRMANCE	01/12/15	6	924-927
SUPREME COURT – ORDER OF AFFIRMANCE	11/09/00	7	244-250
SUPREME COURT – RECEIPT FOR DOCUMENTS	08/26/13	5	741
SUPREME COURT – RECEIPT FOR DOCUMENTS	04/09/15	6	1040
SUPREME COURT – RECEIPT FOR DOCUMENTS	04/24/15	6	1060
SUPREME COURT – RECEIPT FOR DOCUMENTS	04/30/15	6	1063
SUPREME COURT – RECEIPT FOR DOCUMENTS	04/30/14	6	1064
SUPREME COURT – REMITTITUR	10/27/95	4	673
SUPREME COURT – REMITTITUR	11/05/13	5	746
SUPREME COURT – REMITTITUR	01/12/15	6	922

APPEAL INDEX

SCN: 67717
Case No. CR94-0345

STATE OF NEVADA VS CHARLES JOSEPH MAKI

MAY 8 , 2015

SUPREME COURT – REMITTITUR	11/09/00	7	242
SUPRME COURT – ORDER DIRECTING TRANSMISSION OF RECORD	05/05/15	6	1067
TRANSCRIPT – ARRAIGNMENT 02/16/94	02/23/94	2	118-123
TRANSCRIPT – EVIDENTIARY MOTIONS 03/11/94	03/25/94	2	158-184
TRANSCRIPT – POST CONVICTION 07/18/97	02/10/98	7	113-241
TRANSCRIPT – SENTENCING 05/17/94	06/02/94	3	376-434
TRANSCRIPT – SUPPRESSION HEARING 04/01/94	05/09/94	3	320-358
TRANSCRIPT – TRIAL 04/11 & 12 1994	08/30/94	4	444-665
UNUSED VERDICT	04/12/94	3	294-302
UNUSED VERDICT	04/12/94	3	303-304
VERDICT – COUNT I	04/12/94	3	313
VERDICT – COUNT III	04/12/94	3	312
VERDICT – COUNT IV	04/12/94	3	311
VERDICT – COUNT IX	04/12/94	3	306
VERDICT – COUNT V	04/12/94	3	310
VERDICT – COUNT VI	04/12/94	3	309
VERDICT – COUNT VII	04/12/94	3	308
VERDICT – COUNT VIII	04/12/94	3	307
VERDICT – COUNT X	04/12/94	3	305
VERDICTS COUNT I; II; III-X	04/11/94	3	249
WITHDRAWAL OF ATTORNEY	04/18/96	4	680-681
WRIT OF PROHIBITION/WRIT OF MANDAMUS	08/02/13	4	706-735
WRIT OF PROHIBITION/WRIT OF MANDAMUS	02/17/15	6	940-1018

DA# F94-0236
RPD 016248-94

FILED

No. CR94-0345

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Dept. No. 8

CLERK
DEPUTY
Jack

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

INFORMATION

CHARLES JOSEPH MAKI,

Defendant.

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

COUNT I. SEXUAL ASSAULT ON A CHILD UNDER THE AGE
OF FOURTEEN YEARS, a violation of NRS 200.366, a felony, in
the manner following:

That the said defendant on or between the 15th day
of November A.D. 1993, and the 18th day of January A.D.
1994, or thereabout, and before the filing of this
Information, at and within the County of Washoe, State of

CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court
Washoe County
Nevada
DC-9900039406-042
8 Pages
02/10/1994 03 16 PM
1800

1 Nevada, did willfully and unlawfully subject DESIREE M., a
2 child under the age of fourteen years, to sexual penetration
3 against her will or under conditions in which the said
4 defendant knew or should have known that the victim was
5 mentally or physically incapable of resisting or
6 understanding the nature of his conduct by reason of her
7 young age, in that the said defendant inserted his penis
8 into the victim's vagina.

9 COUNT II: SEXUAL ASSAULT ON A CHILD UNDER THE AGE
10 OF FOURTEEN YEARS, a violation of NRS 200.366, a felony, in
11 the manner following:

12 That the said defendant on or between the 15th day
13 of November A.D. 1993, and the 18th day of January A.D.
14 1994, or thereabout, and before the filing of this
15 Information, at and within the County of Washoe, State of
16 Nevada, did willfully and unlawfully subject DESIREE M., a
17 child under the age of fourteen years, to sexual penetration
18 against her will or under conditions in which the said
19 defendant knew or should have known that the victim was
20 mentally or physically incapable of resisting or
21 understanding the nature of his conduct by reason of her
22 young age, in that the said defendant inserted his penis
23 into the victim's vagina.

24 ///

25 ///

26 ///

1 COUNT III. SEXUAL ASSAULT ON A CHILD UNDER THE AGE
2 OF FOURTEEN YEARS, a violation of NRS 200.366, a felony, in
3 the manner following:

4 That the said defendant on or between the 15th day
5 of November A.D. 1993, and the 18th day of January A.D.
6 1994, or thereabout, and before the filing of this
7 Information, at and within the County of Washoe, State of
8 Nevada, did willfully and unlawfully subject DESIREE M., a
9 child under the age of fourteen years, to sexual penetration
10 against her will or under conditions in which the said
11 defendant knew or should have known that the victim was
12 mentally or physically incapable of resisting or
13 understanding the nature of his conduct by reason of her
14 young age, in that the said defendant inserted his penis
15 into the victim's vagina.

16 COUNT IV. SEXUAL ASSAULT ON A CHILD UNDER THE AGE
17 OF FOURTEEN YEARS, a violation of NRS 200.366, a felony, in
18 the manner following:

19 That the said defendant on or between the 15th day
20 of November A.D. 1993, and the 18th day of January A.D.
21 1994, or thereabout, and before the filing of this
22 Information, at and within the County of Washoe, State of
23 Nevada, did willfully and unlawfully subject DESIREE M., a
24 child under the age of fourteen years, to sexual penetration
25 against her will or under conditions in which the said
26 defendant knew or should have known that the victim was

1 mentally or physically incapable of resisting or
2 understanding the nature of his conduct by reason of her
3 young age, in that the said defendant inserted his finger
4 into the victim's vagina.

5 COUNT V. SEXUAL ASSAULT ON A CHILD UNDER THE AGE
6 OF FOURTEEN YEARS, a violation of NRS 200.366, a felony, in
7 the manner following:

8 That the said defendant on or between the 15th day
9 of November A.D. 1993, and the 18th day of January A.D.
10 1994, or thereabout, and before the filing of this
11 Information, at and within the County of Washoe, State of
12 Nevada, did willfully and unlawfully subject SUMMER M., a
13 child under the age of fourteen years, to sexual penetration
14 against her will or under conditions in which the said
15 defendant knew or should have known that the victim was
16 mentally or physically incapable of resisting or
17 understanding the nature of his conduct by reason of her
18 young age, in that the said defendant inserted his penis
19 into the victim's vagina.

20 COUNT VI. LEWDNESS WITH A CHILD UNDER THE AGE OF
21 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
22 manner following:

23 That the said defendant on or between the 15th day
24 of November A.D. 1993, and the 18th day of January A.D.
25 1994, or thereabout, and before the filing of this
26 Information, at and within the County of Washoe, State of

1 Nevada, did willfully, unlawfully, and lewdly commit a lewd
2 or lascivious act upon and with the body of DESIREE M., a
3 female child under the age of fourteen years, in that the
4 said defendant sucked or kissed the victim's breasts with
5 the intent of arousing, appealing to, or gratifying the
6 lust, passions, or sexual desires of himself or the child.

7 COUNT VII. LEWDNESS WITH A CHILD UNDER THE AGE OF
8 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
9 manner following:

10 That the said defendant on or between the 15th day
11 of November A.D. 1993, and the 18th day of January A.D.
12 1994, or thereabout, and before the filing of this
13 Information, at and within the County of Washoe, State of
14 Nevada, did willfully, unlawfully, and lewdly commit a lewd
15 or lascivious act upon and with the body of DESIREE M., a
16 female child under the age of fourteen years, in that the
17 said defendant touched or rubbed the exterior of the
18 victim's vagina with the intent of arousing, appealing to,
19 or gratifying the lust, passions, or sexual desires of
20 himself or the child.

21 COUNT VIII. LEWDNESS WITH A CHILD UNDER THE AGE OF
22 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
23 manner following:

24 That the said defendant on or between the 15th day
25 of November A.D. 1993, and the 18th day of January A.D.
26 1994, or thereabout, and before the filing of this

1 Information, at and within the County of Washoe, State of
2 Nevada, did willfully, unlawfully, and lewdly commit a lewd
3 or lascivious act upon and with the body of DESIREE M., a
4 female child under the age of fourteen years, in that the
5 said defendant caused the victim to touch or fondle his
6 penis and/or testicles with the intent of arousing,
7 appealing to, or gratifying the lust, passions, or sexual
8 desires of himself or the child.

9 COUNT IX. LEWDNESS WITH A CHILD UNDER THE AGE OF
10 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
11 manner following:

12 That the said defendant on or between the 15th day
13 of November A.D. 1993, and the 18th day of January A.D.
14 1994, or thereabout, and before the filing of this
15 Information, at and within the County of Washoe, State of
16 Nevada, did willfully, unlawfully, and lewdly commit a lewd
17 or lascivious act upon and with the body of SUMMER M., a
18 female child under the age of fourteen years, in that the
19 said defendant touched or rubbed the exterior of the
20 victim's vagina with the intent of arousing, appealing to,
21 or gratifying the lust, passions, or sexual desires of
22 himself or the child.

23 COUNT X. LEWDNESS WITH A CHILD UNDER THE AGE OF
24 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
25 manner following:

26 ///

1 That the said defendant on or between the 15th day
2 of November A.D. 1993, and the 18th day of January A.D.
3 1994, or thereabout, and before the filing of this
4 Information, at and with in the County of Washoe, State of
5 Nevada, did willfully, unlawfully, and lewdly commit a lewd
6 or lascivious act upon and with the body of SUMMER M., a
7 female child under the age of fourteen years, in that the
8 said defendant rubbed or touched his penis on or over the
9 exterior of the victim's vagina with the intent of arousing,
10 appealing to, or gratifying the lust, passions, or sexual
11 desires of himself or the child.

12
13 All of which is contrary to the form of the Statute
14 in such case made and provided, and against the peace and
15 dignity of the State of Nevada.

16 DOROTHY NASH HOLMES
17 District Attorney
18 Washoe County, Nevada

19 By 
20 DANIEL J. GRECO
21 Deputy District Attorney

22
23
24
25
26 (Continued)

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

4
5 RENO POLICE DEPARTMENT

6 DETECTIVE JIM STEGMAIER
7 DETECTIVE JOHN BOHACH
8 OFFICER G. BALLEW

9 GARY MENEES, 1015 Nevada Street, #7, Reno, Nevada

10 DESIREE M.

11 SUMMER, M.

12 S.A.I.N.T.S. EXAMINER

13 PHYSICIAN
14
15
16
17
18
19
20

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

24 By *Daniel J. Greco*
25 DANIEL J. GRECO
26 Deputy District Attorney

PCN 84033540
02071A5248

Trial - No. _____ Setting at _____ m. on the _____ day of _____, 19____

Motion - No. _____ Setting at 9:00 a.m. on the 16th day of FEBRUARY, 1994

Attorney(s) for Plaintiff _____ Attorney(s) for Defendant _____

Estimated Duration of Trial: _____
☐ No Jury Demanded By (Name): _____
☐ Jury Demanded By (Name): _____
 Estimated No. of Jurors: _____
 Bail _____ OR _____ In Custody _____
 CUSTODY STATUS _____

Instructions: Check the appropriate box. Indicate clearly who is requesting the jury.

NAME AND ADDRESS OF COUNSEL FOR DEFENDANT: P.D./SCHMUCK

NAME AND ADDRESS OF COUNSEL FOR PLAINTIFF: D.A./GRECO

Date of Application: 2/10/94 Made by: PLAINTIFF Plaintiff or Defendant

MATTER TO BE HEARD: ARRAIGNMENT

TYPE OF ACTION: CRIMINAL: 6 CTS. SEX ASLT W/CHILD; 4 CTS. LEWD W/CHILD

APPLICATION FOR
SETTING

STATE OF NEVADA
 Plaintiff, CHARLES JOSEPH MAKI,
 VS.
 Defendant.

State of Nevada, Washoe County
 Second Judicial District Court
 94 FEB 10 P3:16
 FILED

CR94-0345
 DC-9900039406-044
 STATE VS CHARLES JOSEPH MAKI 1 Page
 District Court 02/10/1994 03 1250
 Washoe County JVS

Dept. No. 8
 No. CH94-0345
 6.2A

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES - HEARING

CONT'D TO

2/16/94

ARRAIGNMENT

HONORABLE

STEVEN R.

KOSACH

DEPT. NO. 8

L. Romero

(Clerk)

I. Zihn

(Reporter)

Deputy District Attorney Dan Greco was present for the State. Defendant present with counsel, Deputy Public Defender, Janet Schmuck.

TRUE NAME: CHARLES JOSEPH MAKI.

Copy of Information handed to the Defendant; reading waived. Defendant waived time in which to enter a plea; entered a plea of Not Guilty to the offenses charged in the Information. Defendant did waive the 60-day rule.

COURT ORDERED: Matter continued for trial by jury; Defendant was remanded to the custody of the sheriff.

4/1/94

9:00 a.m.

Motion to

Confirm

4/11/94

Jury

Trial

CR94-0345 DC-9900039406-057
STATE VS CHARLES JOSEPH MAKI 1 Page
District Court 02/16/1994 02 12 PM MIN
Washoe County JVS-

DC-9900039406-064
CR94-0345
STATE VS CHARLES JOSEPH MAKI 2 Pages
02/16/1994 02 21 PM
District Court
Washoe County
WNV

CRIMINAL PROGRESS SHEET

CR94-0345

CHARLES JOSEPH MAKI

Arrest Date: 2/16/94

STATUS: Custody ☒ NIC ☐
Bail ☐ OR ☐

Bail Amount: _____

Date Inf/Ind filed: 2/10/94

Amended Inf. filed: _____

Dept. No: 8 Reporter: I. Zhn

True Name: ☒ _____ Handed Copy ☒

Not Guilty ☒ By: Info _____ Waived Reading ☒

Requested Time to Plea ☐

Waived PSI ☐

Guilty ☐ Nolo ☐ To: _____

Juv. Ref. _____ P & P Ref. _____ Waived 60 Day: Yes ☒ No ☐

Continued To: _____ Date _____

4/1/94 @ 9:00am For: Mtn to confirm

4/1/94 @ 10:00am For: Trial - Confirmed

7/18/94 @ 10:00 For: Post-Conviction

For: _____

For: _____

Sentencing Date: 5/17/94 Dept. No. 8 Reporter: I. ZHN

Disposition: NSP Life w/ the possibility of parole on Count III; NSP Life w/ the possibility of parole to be served consecutive to Count III; Count V. NSP Life w/ the possibility of parole to be served consecutive to Count III; Count VI: NSP 10 yrs to be served consecutive to Count III; Count VII: NSP 10 yrs to be served consecutive to Count III; (over ->) Time Served: 118 days Bail Exonerated ☐

Motions: _____

SENTENCING - DISPO CONT'D: COUNT VIII: NSP 10 yrs to be served consecutive to Count III; ~~and~~ Count IX: NSP 10 yrs to be served consecutive to Count III; and, Count X: NSP 10 yrs to be served consecutive to Count III. It is further ordered that Defendant effect restitution in the amount of \$ 526⁰⁰. \$ 25⁰⁰ AAF.

CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court
Washoe County
DOC
DC-9900039406-043
104 Pages
02/18/1994 11:36 AM
JYD

RJC 62,921 STATE OF NEVADA vs CHARLES JOSEPH MAKI

FEBRUARY 17 19 94

Received of Justice of the Peace of Reno Township Documents to be filed:

TRANSCRIPT OF PRELIMINARY EXAMINATION

AMENDED CRIMINAL COMPLAINT; CRIMINAL COMPLAINT; DECLARATION OF PROBABLE CAUSE ARREST

AND DETENTION

'94 FEB 18 A11:36

SECOND JUDICIAL DISTRICT COURT CASE ASSIGNMENT NOTIFICATION FORM

PUBLIC DEFENDER APPLICATION

B

DEPUTY

CERTIFIED COPY OF COURT DOCKET

FELONY COMMITMENT

CR94-0345

JUDI BAILEY

County Clerk

By

Deputy

1 Case No. 62,921

2 Dept. No. 2

3 -ooo-



4
5
6 IN THE JUSTICE'S COURT OF RENO TOWNSHIP
7 IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA
8 THE HONORABLE EDWARD DANNAN, JUSTICE OF THE PEACE

9 -ooo-

10
11 THE STATE OF NEVADA,
12 Plaintiff,
13
14 vs.
15 CHARLES JOSEPH MAKI,
16 Defendant.

PRELIMINARY EXAMINATION

February 3, 1994

Reno, Nevada

ORIGINAL

17 APPEARANCES:

18 For the Plaintiff:

DANIEL GRECO
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

21 For the Defendant:

JANET COBB SCHMUCK
Deputy Public Defender
195 South Sierra Street

24
25 Reported by:

LISA A. YOUNG, CSR #353

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INDEX

PLAINTIFF'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VD
MENEES, Desiree	7	24	37		
MENEES, Summer	37	46			
STEGMAIER, James	54	71			

PLAINTIFF'S EXHIBITS	MARKED	ADMITTED
A, A videotape.	58	68

1 RENO, NEVADA; THURSDAY, FEBRUARY 3, 1994; 1:30, P.M.

2 -oOo-

3
4 THE COURT: This is the time set for the
5 preliminary hearing in the case of State of Nevada versus
6 Charles Joseph Maki.

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

8 THE COURT: Let's see. Mr. Greco is here
9 representing the State this morning. Ms. Schmuck is here
10 from the Public Defender's Office representing Mr. Maki.

11 It's case number 62,921. In this case the
12 defendant is charged with, I believe, six counts of sexual
13 assault on a child under the age of 14 years, and it appears
14 to be five counts of lewdness with a child under the age of
15 14 years. Is that correct, Mr. Greco?

16 MR. GRECO: That's correct. The amended complaint
17 was filed yesterday, and--

18 MS. SCHMUCK: Your Honor, I'm going to indicate I
19 have not seen the amended complaint.

20 THE COURT: Has he been arraigned on the amended
21 charges?

22 MR. GRECO: No. That was filed yesterday, so
23 we'll need to arraign him on the amended charges.

24 THE COURT: Ms. Schmuck, will you have your client
25 look at the amended complaint? Mr. Greco?

1 MR. GRECO: Your Honor, is there a copy in your
2 file?

3 THE COURT: I have the amended complaint.

4 MR. GRECO: Is there an extra copy for the defense
5 in your file?

6 THE COURT: No, I can have one made.

7 MR. GRECO: Your Honor, I submitted two copies.

8 THE COURT: Let me do this, while she looks at
9 that I'll have my bailiff make a copy of the amended
10 complaint.

11 MR. GRECO: In a nut shell, what the amended
12 complaint changes from the original criminal complaint is it
13 adds one count of lewdness with a child under the age of 14,
14 the dates are changed to broaden the period, and finally
15 stylistically on the top, although the under 14 allegation
16 was made in the original complaint, I'd like to have it on
17 the actual heading and I've done that. Those are the
18 changes.

19 THE COURT: All right.

20 MS. SCHMUCK: Your Honor, perhaps during this
21 interim I'd like to indicate to the Court that Mr. Maki is
22 somewhat hard of hearing. He is wearing a hearing aid in
23 his left ear and does not have a hearing aid for his right
24 ear. He will let me know if he has problems with hearing,
25 and I'll let the Court know.

1 THE COURT: That's fine. All right. We have a
2 copy of the amended criminal complaint that has been
3 provided to the defendant. I have to sign one thing here.
4 Okay.

5 We have the amended complaint before us in case
6 number 62,921. I guess Mr. Maki needs to be arraigned on
7 these charges as well. Let's see. For my own information
8 is the name correctly spelled in the amended complaint?
9 That's his true and correct name, is that right,
10 Ms. Schmuck?

11 MS. SCHMUCK: That's correct, your Honor.

12 THE COURT: For the record then, Mr. Maki, you are
13 charged in the amended complaint with six counts of sexual
14 assault on a child under the age of 14 years and it involves
15 two persons by the name of Desiree M. and Summer M, and
16 Counts VII through XI all charged lewdness with a child
17 under the age of 14 years with the same persons, Desiree M.
18 and Summer M. They are violations of NRS 200.366 and
19 201.230. Do you understand these charges, Mr. Maki?

20 THE DEFENDANT: Yes, I do your Honor.

21 THE COURT: Okay. You have the right to have me
22 read this complaint to you in its entirety, but if you
23 understand it, you can waive a reading. Do you want to
24 waive the reading?

25 THE DEFENDANT: Yeah.

1 THE COURT: All right. And for your information,
2 I guess the bail, Mr. Greco, is still at \$80,000.

3 MR. GRECO: That's my understanding, yes, your
4 Honor.

5 THE COURT: It's not on the amended complaint, but
6 the bail will continue at \$80,000 as set forth in the
7 original criminal complaint.

8 This is the time set for the preliminary hearing
9 on the amended criminal complaint that you have before you
10 this morning. So I guess we are ready to proceed.

11 MR. GRECO: The State is ready.

12 MS. SCHMUCK: The defense is ready.

13 THE COURT: How many witnesses do we have to call
14 this morning?

15 MR. GRECO: I have three, possibly four. The two
16 adult witnesses are in the courtroom. I'd like to have the
17 adults sworn in now, and we can't swear the children until
18 we establish competency.

19 THE COURT: If the two adults will stand, raise
20 your right hand and be sworn.

21 (The Court administered the oath to
22 the prospective witnesses.)

23 THE COURT: I guess we can go ahead and begin.
24 You can be seated.

25 MS. SCHMUCK: I'd ask the Rule of Exclusion be

1 invoked.

2 THE COURT: The defense attorney has requested
3 that the witnesses be excluded from the courtroom until they
4 are called to testify. Please remain outside until you are
5 called and do not discuss the case among yourselves or any
6 other persons until you are called to testify.

7 Call your first witness.

8 MR. GRECO: The first witness is Desiree Menees.

9 THE COURT: If you will come up sit to my left.

10

11 DESIREE MENEES

12 having been called as a witness

13 herein, was examined and testified as follows:

14

15 DIRECT EXAMINATION

16 BY MR. GRECO:

17 Q Would you tell us your name please.

18 A Desiree Menees.

19 Q How do you spell your first name?

20 A D-e-s-i-r-e-e.

21 Q How do you spell your last name?

22 A M-e-n-e-e-s.

23 Q Desiree, what grade are you in?

24 A Fourth.

25 Q Desiree, I'm going to put the microphone right in

1 front of you, and I want you to talk right in front of it,
2 okay. Put your mouth right up to it. All right. Desiree,
3 what grade are you in?
4 A Fourth.
5 Q Desiree, do you know the difference between the
6 truth and a lie?
7 A Yes.
8 Q What's the difference?
9 A Well, truth is when you tell your mom and dad if
10 you broke, like, a model.
11 Q If you broke a model and you told your mom and dad
12 that your little sister broke it, would that be a truth or
13 would that be a lie?
14 A Lie.
15 Q Is the truth something that happened?
16 A Yes.
17 Q Okay. What about a lie? Is a lie something that
18 happened?
19 A No.
20 Q Okay. Desiree, if I told you this shirt I have
21 on-- Can you see it from there? If I told you this shirt I
22 have on is red, is that a truth or a lie?
23 A A lie.
24 Q If I said you are a boy, is that a truth or a lie?
25 A A lie.

1 Q Why is that a lie?

2 A Because I'm a girl.

3 Q Okay. If Ms. Schmuck and myself ask you some
4 questions, will you tell us the truth?

5 A Yes.

6 Q To every question we ask?

7 A Yes.

8 MR. GRECO: Your Honor, at this point I ask she be
9 deemed competent.

10 THE COURT: Ms. Schmuck?

11 MS. SCHMUCK: No objection.

12 THE COURT: All right. By stipulation she is
13 deemed competent to testify.

14 MR. GRECO: Does this take care of the swearing
15 in? Do we formally need to swear her in?

16 THE COURT: Ms. Schmuck?

17 MS. SCHMUCK: I have no objection if she is not
18 formally sworn in.

19 THE COURT: I think basically her ability to tell
20 the truth is sufficient, so go ahead.

21 BY MR. GRECO:

22 Q Desiree, what school do you go to?

23 A Peavine.

24 Q How old are you?

25 A Ten.

1 Q And what is your dad's name?
2 A Gary Menees.
3 Q And do you live with your dad?
4 A Yes.
5 Q Where?
6 A Nevada Street.
7 Q Is that in Reno?
8 A Yes.
9 Q Desiree, do you know a Chuck Maki?
10 A Yes.
11 Q All right. What name do you know him by?
12 A Chuck.
13 Q Is he a friend? Well, was he acquainted with your
14 dad?
15 A Yes.
16 Q During the month of December, Desiree, did Chuck
17 ever baby-sit you?
18 A Yes.
19 Q All right. And do you see Chuck here in the
20 courtroom?
21 A Yes.
22 Q You have to say yes or no because this lady here
23 is taking down everything you say. If you shake your head,
24 she won't be able to type your answer down.
25 Do you know Chuck?

1 A Yes.

2 Q Is he here in the courtroom?

3 A Yes.

4 Q Would you point him out for the Judge?

5 A Right there.

6 Q Is he the gentleman in the orange suit?

7 A Yes.

8 MR. GRECO: Can the record reflect she identified
9 the defendant?

10 THE COURT: The record will so reflect.

11 BY MR. GRECO:

12 Q Desiree, did Chuck ever baby-sit you in December?

13 A Yes.

14 Q Where did he baby-sit you at?

15 A Sometimes he watched us at his house and at our
16 house.

17 Q Did he live near you and your dad?

18 A Yes.

19 Q How near?

20 A He was a neighbor.

21 Q Is that a house or is that an apartment complex?

22 A Apartments.

23 Q Desiree, when Chuck baby-sat you, did he ever do
24 anything bad to you?

25 A Just that one time.

1 Q Okay. Now, you say one time. What month are we
2 talking about?

3 A December.

4 Q All right. Was Chuck baby-sitting you that day in
5 December?

6 A Yes.

7 Q And where was he baby-sitting you at?

8 A I guess at our house. I'm not sure.

9 Q All right. Did he-- Did the two of you go to
10 both his house and to your house that day?

11 A Yeah.

12 Q All right. Now, can you remember to that date
13 when you were at his house with Chuck?

14 A No.

15 Q Okay. Well, let me ask it this way. I'm sorry.
16 Did Chuck ever touch you in a bad way?

17 A Yes.

18 Q Was that in December?

19 MS. SCHMUCK: Your Honor, excuse me. Could I have
20 the district attorney please repeat that question? My
21 client didn't hear that.

22 THE COURT: Sure.

23 BY MR. GRECO:

24 Q Desiree, you are going to have to talk into the
25 microphone.

1 THE COURT: He didn't hear your question.

2 MR. GRECO: I'm sorry, your Honor, I
3 misunderstood. Could we have it read back?

4 (The court reporter read the question back.)

5 BY MR. GRECO:

6 Q Desiree, did he touch you in a bad way when he was
7 baby-sitting you?

8 A Yes.

9 Q Was that at his house?

10 A His house and ours.

11 Q All right. Let's focus first on when you were
12 with him at his house. Was there anybody else with you
13 while you were being baby-sat at his house?

14 A Summer.

15 Q Who is Summer?

16 A My sister.

17 Q When you were there at Chuck's house, was it the
18 daytime?

19 A It was in the morning.

20 Q All right. And what was Chuck wearing that
21 morning?

22 A His robe.

23 Q Okay. Is that all he had on?

24 A (The witness nodded her head.)

25 Q What did you have on that morning?

1 A My nightgown.

2 Q Okay. And did Chuck do something bad to you that
3 morning?

4 A Yes.

5 Q What is the first bad thing he did?

6 A He started to rub his finger on my vagina.

7 Q What was the word you used?

8 MS. SCHMUCK: Excuse me. Could I have her repeat
9 that answer?

10 THE COURT: Yeah, I think he is going to right
11 now. Desiree, can you say that again?

12 THE WITNESS: He rubbed his finger on my vagina.

13 BY MR. GRECO:

14 Q Would you point out for the Judge where your
15 vagina is

16 A (Pointing.)

17 Q Is it your private part?

18 A Yes.

19 Q Did you learn that word, vagina, from school or a
20 teacher? How do you know that word?

21 A School and movies.

22 Q Again what did he rub it with?

23 A His finger.

24 Q Now, when he first touched you with his finger
25 there, did you have on some underwear?

1 A Yes.

2 Q So did he rub it over your underwear?

3 A Yes.

4 Q All right. After he rubbed your vagina did he do
5 something else?

6 A He asked my sister to go get some warm milk from
7 our house.

8 Q Okay. And did your sister leave?

9 A Yes.

10 Q Did she leave Chuck's house?

11 A Yes.

12 Q To get the milk?

13 A Yeah.

14 Q Did something else bad happen then when she left?

15 A Yeah.

16 Q Okay. I know you are nervous. Just try and relax
17 and try and say what happened next.

18 A He pulled down my underwear and laid on top of me.

19 Q Did that make you feel bad?

20 A Yes.

21 Q Did he make you touch him at all?

22 A The second time.

23 Q Okay. Let's just stay on the first time right
24 now. Desiree, when he laid down on top of you after he
25 pulled down your underwear, what did he do next?

1 A He started to hump me.
2 Q Okay. Did you say "hump"?
3 A Yes.
4 Q Okay. Now, that's kind of a big persons' word.
5 Where have you heard that from?
6 A Movies.
7 Q Okay. And what do you mean by "hump"?
8 A He started to go up and down.
9 Q What part of his body was going up and down?
10 A His private part.
11 Q Okay. Are you familiar with the word "penis"?
12 A Yeah.
13 Q Have you heard that in school?
14 A Yeah.
15 Q When you say "private part," are you talking about
16 his penis?
17 A Yes.
18 Q And how did it go up and down and where?
19 A It went up and down in my private.
20 Q Inside your vagina?
21 A (The witness nodded her head.)
22 Q Remember what I said? You have to say the
23 answers, yes or no.
24 A Yes.
25 Q Did you feel it actually go inside your vagina?

1 A Sort of.

2 Q Can you tell us how far you felt it go inside your
3 vagina?

4 A I don't know.

5 Q All right. Did it feel like a little ways inside
6 or a lot?

7 A A little.

8 Q Okay. Thank you. Desiree, can you remember right
9 before he put it inside your vagina, can you remember his
10 penis?

11 A Yeah.

12 Q Was it-- Was it lying down or was it standing up
13 in the air?

14 A I think it was going down.

15 Q Okay. And how long was it inside you the first
16 time?

17 A Maybe for ten seconds.

18 Q Okay. And then what happened?

19 A My sister came back in.

20 Q Okay. You are going to have to talk louder,
21 Desiree, okay. I know it's hard, but talk a little louder,
22 okay.

23 Did your sister come back in with some milk?

24 A No.

25 Q What happened when your sister came back in?

1 A Chuck told her to go back and get the milk.
2 Q Okay. When your sister came back inside, did
3 Chuck get off of you?
4 A He got off of me when he heard our screen door
5 shutting.
6 Q Okay. And so he stood up when Summer came in?
7 A Yes.
8 Q And how long did Summer stay in there with you?
9 A Maybe a few seconds.
10 Q Okay. And did she go somewhere else then?
11 A She went back to watch-- ask for more milk.
12 Q Why did she do that?
13 A I don't know.
14 Q And after Summer left did Chuck touch you again?
15 A Yes.
16 Q In a bad way?
17 A Yes.
18 Q Tell the Judge what happened.
19 A He touched me in the same way.
20 Q Did he lay down on top of you?
21 A Yes.
22 Q Did he put his penis inside of you?
23 A Yes.
24 Q Could you feel that inside you?
25 A Yes.

1 Q And what did you do that time when he put it
2 inside you?

3 A He just did the same thing.

4 Q Did he go in and out?

5 A Yes.

6 Q Did you like that?

7 A No.

8 Q All right. And how long was he inside you this
9 time?

10 A I'm not sure.

11 Q Okay. Did he eventually stop?

12 A Yes, when me sister came back in.

13 Q Okay. Summer?

14 A Yes.

15 Q What happened when Summer came back in?

16 A She gave him his warm milk.

17 Q And he got off of you at that point?

18 A Yes.

19 Q Okay. And how long did Summer stay in there this
20 time?

21 A She stayed in there for maybe five minutes, and
22 then I went over to my house.

23 Q Okay. And after Summer left did something else
24 happen?

25 A At our house.

1 Q Okay. Did you leave Chuck's house?
2 A Yes.
3 Q And where did you go?
4 A To our house to watch TV in color.
5 Q Okay. And again how far is your house from
6 Chuck's house?
7 A Just next door.
8 Q And did Chuck come over there at some time?
9 A Yes.
10 Q All right. And when Chuck came over, did
11 something else happen?
12 A Yes.
13 Q What happened?
14 A He did the same thing in our room.
15 Q Did he put his penis inside you again?
16 A Yes.
17 Q Did he move it in and out?
18 A Yes.
19 Q Desiree, that same day did Chuck ever put his
20 finger inside you?
21 A Yes.
22 Q Okay. Was that at his house or was that at your
23 house?
24 A Ours.
25 Q At your house?

1 A (The witness nodded her head.)
2 Q When did that happen?
3 A When he was doing the same thing in our room.
4 Q When he was putting his penis inside of you?
5 A Yes.
6 Q Can you remember if it was about the time-- the
7 first or second time he put his penis in you at your house,
8 can you remember?
9 A No.
10 Q But you remember him putting his finger inside
11 your vagina?
12 A Yes.
13 Q Desiree, do you know where your chest area is?
14 A Yes.
15 Q Would you show myself and the Judge where that is?
16 A Right here.
17 Q Okay. And do you have a name for those?
18 A My boobs.
19 Q Your boobs?
20 A Yeah.
21 Q Okay. That's a good name. Did Chuck ever touch
22 your boobs?
23 A My right one.
24 Q What did he do?
25 A He sucked on it.

1 Q Okay. Did he kiss it, too?
2 A Sort of.
3 Q Okay. Desiree, did Chuck ever make you touch his
4 penis with your hands?
5 A At his house.
6 Q Okay. What happened?
7 A Well, he took my hand and made me feel it.
8 Q His penis?
9 A Yes.
10 Q Did you want to do that?
11 A No.
12 Q Did you want to do any of those other things that
13 he did to you?
14 A No.
15 Q Did you ever tell him no?
16 A When he first started.
17 Q And did he listen to you and stop when you said
18 no?
19 A I don't think he heard me. I didn't think he
20 heard me.
21 Q All right. Desiree, did Chuck ever tell you to
22 say anything about that day to anyone?
23 A No.
24 Q Did he ever tell you to not tell anyone?
25 A Yes.

1 Q Tell the Judge what he told you.
2 A He said not to tell anyone because he would go to
3 jail.
4 Q But did you end up telling someone?
5 A Yes.
6 Q Who did you tell?
7 A I told my downstairs neighbor.
8 Q Okay. Did you tell your dad eventually?
9 A My sister told her friend and her friend told her
10 mom and her mom told my dad.
11 Q All right. And eventually, though, did you talk
12 to your dad about it?
13 A Yes.
14 Q Was that the same day or night?
15 A No.
16 Q How later was it?
17 A It was in January.
18 MR. GRECO: Okay. Can I just have a moment, your
19 Honor?
20 THE COURT: Sure. Desiree, would you like some
21 water or something?
22 THE WITNESS: Yes, please.
23 THE COURT: Will you get it?
24 MR. GRECO: I'll get it, Judge.
25 ///

1 BY MR. GRECO:

2 Q Oh, Desiree, I know you said this happened in
3 December. Can you remember when in December it happened?

4 A It happened on a Monday.

5 Q Okay. Do you remember Christmas in December?

6 A Yeah.

7 Q Okay. We're talking about just this past
8 Christmas, right?

9 A Yes.

10 Q Can you recall roughly how far away from Christmas
11 it happened, if you can remember?

12 A I think it was two weeks or one.

13 Q Okay. Before or after, if you can remember?

14 A Before.

15 Q All right. But you are-- I take it you are
16 really not sure of the exact date?

17 A I'm not sure.

18 MR. GRECO: Your Honor, that's all I have.

19 THE COURT: Ms. Schmuck, cross-examine?

20 MS. SCHMUCK: Thank you.

21

22 CROSS-EXAMINATION

23 BY MS. SCHMUCK:

24 Q Desiree, my name is Janet Cobb Schmuck, and I'm an
25 attorney. I'm representing Chuck in this case, and I need

1 to ask you some questions.

2 I believe you said that you are in the fourth
3 grade at Peavine School?

4 A Yes.

5 Q Okay. Who is your teacher, Desiree?

6 A Mr. Warren.

7 Q And you also stated that you live on Nevada
8 Street?

9 A Yes.

10 Q How long have you lived on Nevada Street?

11 A With my dad, I think, for four and a half years.

12 Q Four and a half years?

13 A Yes.

14 Q Do you live there with someone else?

15 A No.

16 Q So you have only lived with your father on Nevada
17 Street?

18 A Yes.

19 Q On this particular day that you just talked to the
20 district attorney about, I believe you said it was a Monday?

21 A Yes.

22 Q Did you have to go to school that day?

23 A No, it was a holiday.

24 Q Okay. But you also said you thought it was about
25 two weeks before Christmas?

1 A I think.

2 Q Okay. So you were on a holiday from school that

3 day?

4 A Yes.

5 Q On that day that you just talked about do you

6 remember what time it was when you went to Chuck's

7 apartment?

8 A Around nine o'clock.

9 Q Why did you go to Chuck's apartment?

10 A He asked if we wanted to go over there.

11 Q Did he come to your apartment and ask you to come

12 over?

13 A Yes.

14 Q Where was your father?

15 A He was at work.

16 Q Did your father make any sort of arrangements for

17 Chuck to stay with you?

18 A No, he was just watching us until twelve o'clock

19 that day.

20 Q Did your father ask him to watch you until twelve

21 o'clock?

22 A Yes.

23 Q Why?

24 A We were going to go somewhere with our uncle at

25 1:00.

1 Q You were going with your uncle at one o'clock?
2 A Uh-huh.
3 Q What's your uncle's name?
4 A Francis.
5 Q What's his last name?
6 A Lepe.
7 Q So this was about nine o'clock in the morning when
8 you went to Chuck's apartment?
9 A Yes.
10 Q Okay. Did you watch TV when you got there?
11 A Yes.
12 Q Did you have breakfast?
13 A No.
14 Q Had you already had breakfast?
15 A Yes.
16 Q Did you-- Where was Chuck when you first arrived
17 at the apartment?
18 A He was in his apartment.
19 Q Where was he in his apartment? What room was he
20 in?
21 A The living room.
22 Q And was Summer with you?
23 A Yes.
24 Q Okay. Did he go into another room in the
25 apartment?

1 A No.

2 Q Okay. What was he wearing?

3 A His robe.

4 Q And what were you wearing?

5 A My nightgown.

6 Q What kind of nightgown was it?

7 A A long one.

8 Q What color was it?

9 A Yellow.

10 Q Did there come a point, Desiree, where you went to

11 another room in the apartment?

12 A No.

13 Q You stayed right in the living room?

14 A Yes.

15 Q Okay. And I believe you said that Summer left to

16 go back to your apartment to get milk?

17 A Yes.

18 Q And you were still in the front room of the

19 apartment?

20 A Yes.

21 Q Is that like a living room?

22 A Yes.

23 Q Okay. Is it only a living room or is it a

24 combination living room, bedroom, kitchen?

25 A Living room and kitchen.

1 Q So there is a living room and kitchen together?
2 A Yes.
3 Q What kind of windows are in that room?
4 A I guess triangle-- not triangle, but rectangle.
5 Q Where are the windows?
6 A There is one by his door and one in the kitchen.
7 Q Okay. Do you remember whether the window-- Does
8 it have curtains? Did it have a blind?
9 A It has a blind.
10 Q Do you remember if the blind was open or closed?
11 A I think it was open.
12 Q Okay. I believe that you said to the district
13 attorney when he asked you questions about what happened
14 that the first thing that happened was that Chuck rubbed
15 you?
16 A Yes.
17 Q Where did he rub you?
18 A Around my private.
19 Q Okay. And did you have on your underwear and your
20 gown?
21 A Yes.
22 Q Both?
23 A Yes.
24 Q When he rubbed you, were you standing up or were
25 you sitting down?

1 A I was like--
2 Q You were laying down?
3 A (The witness nodded her head.)
4 Q Were you lying on something?
5 A I was laying on him.
6 Q You were laying on him?
7 A Yes.
8 Q Was he laying on something?
9 A His couch.
10 Q You were laying on top of him?
11 A With my back on him.
12 Q You were laying with your back on him?
13 A Yes.
14 Q Did he ask you to touch him?
15 A No.
16 Q You indicated to the district attorney or said to
17 the district attorney that his penis was down.
18 A Yes.
19 Q Okay. Do you remember-- Could you explain to me
20 when his penis was down-- what happened after his penis was
21 down?
22 A I'm not sure.
23 Q Okay. Did anything happen after you saw his penis
24 down?
25 A No.

1 Q Desiree, you stated that you told your neighbor
2 about this happening?
3 A Yes.
4 Q What's your neighbor's name?
5 A I told her son.
6 Q Okay. What's his name?
7 A John.
8 Q Do you know what his last name is?
9 A No.
10 Q So John was the first person you told about this?
11 A Yes.
12 Q Did you tell anyone else?
13 A I told my sister's friend, and she told her--
14 Q What's your sister's friend's name?
15 A Megan.
16 Q Megan. And then did you tell someone else?
17 A No.
18 Q Did you go to Chuck's apartment often?
19 A Yes.
20 Q How often did you go to his apartment?
21 A Maybe two times a week.
22 Q Two times a week?
23 A Yes.
24 Q Was there a certain day that you would go to his
25 apartment?

1 A Mondays and Tuesdays.

2 Q Okay. And was there a certain time that you would

3 go to his apartment?

4 A After school.

5 Q What time would that be?

6 A Three o'clock.

7 Q Would you stay at his apartment?

8 A Sometimes. I'd be at my house, too.

9 Q Okay. Where was your father?

10 A Work.

11 Q What time does your father get home from work?

12 A 6:30.

13 Q 6:30. Desiree, on the day in December, the Monday

14 that we have been talking about, do you remember if there

15 had been a party the day before?

16 A No.

17 Q Okay. Do you remember if there was a party that

18 morning?

19 A No.

20 Q Okay. Desiree, did you ever talk to a doctor

21 about this?

22 A Yes.

23 Q Do you remember when you talked to the doctor

24 about this?

25 A No.

1 Q Has it been in the last two weeks?
2 A I think.
3 Q You think so?
4 A (The witness nodded her head.)
5 Q Did you talk to your school counselor?
6 A Yes.
7 Q Do you know if that was in the last two weeks?
8 A Yes.
9 Q Desiree, when you were staying with Chuck on some
10 occasions, did he ever get mad at you?
11 A No.
12 Q Did he ever ask you to do chores?
13 A No.
14 Q Did he ever have to discipline you? Do you know
15 what the word "discipline" means?
16 A No.
17 Q Did he ever have to tell you not to do something?
18 A No.
19 Q So he never had to tell you not to do certain
20 things or to do certain things?
21 A Yes.
22 Q Desiree, have you ever seen a man without his
23 clothes on?
24 A My dad.
25 Q Okay. And when did you see your dad without his

1 clothes on?

2 A When I was really young.

3 Q Okay. Have you ever taken a shower with your

4 father?

5 A When I was young, yes.

6 MS. SCHMUCK: May I have the Court's indulgence?

7 THE COURT: Sure. That's fine.

8 BY MS. SCHMUCK:

9 Q Is your friend John someone that you spend a lot

10 of time with?

11 A We play with him.

12 Q Do you play with him everyday?

13 A Mostly.

14 Q How old is John?

15 A Eight.

16 Q Does he go to the same school that you do?

17 A No.

18 Q Desiree, do you ever spend time with your mother?

19 A During the summer.

20 Q Did you go and stay with your mother last summer?

21 A Yes.

22 Q How long did you stay with her?

23 A Two months.

24 Q Was that somewhere here in Reno?

25 A No.

1 Q Where was it?
2 A California.
3 Q Do you remember where it was in California?
4 A Tracy.
5 Q Tracy?
6 A (The witness nodded her head.)
7 Q What's your mother's name?
8 A Marlita.
9 Q Marlita. Is your mother married?
10 A No.
11 Q Does she have a boyfriend?
12 A Yes.
13 Q Does she live with her boyfriend?
14 MR. GRECO: I am going to object on relevancy
15 grounds.
16 MS. SCHMUCK: I would indicate to the Court this
17 child's exposure to other men is entirely relevant here, and
18 I'm trying to determine what other men she has had access
19 to, that she has been around.
20 THE COURT: I thought that was the purpose of the
21 question. I'll allow it. Go ahead.
22 BY MS. SCHMUCK:
23 Q Does your mother have a boyfriend?
24 A Yes.
25 Q Does she live with her boyfriend?

1 A Yes.

2 Q Did you see the boyfriend when you were there this
3 summer?

4 A Yes.

5 Q Do you know what his name is?

6 A Walter.

7 Q Walker?

8 A Walter.

9 Q Did you spend a lot of time with him?

10 A No.

11 Q Okay. Desiree, again, you stated that you saw
12 Chuck's penis?

13 A Yes.

14 Q And that his penis was down?

15 A Yes.

16 Q Could you tell us again what you mean by down?

17 A Sort of like hanging.

18 Q Hanging. Okay. Can you describe it any further
19 than that?

20 A No.

21 Q Was it-- Do you remember what color it was?

22 A It had a lot of hair on it.

23 MS. SCHMUCK: Okay. I have no further questions,
24 your Honor.

25 THE COURT: All right. Mr. Greco, anything

1 further?

2 MR. GRECO: Just one.

3

4 REDIRECT EXAMINATION

5 BY MR. GRECO:

6 Q Desiree, did you ever see his penis up a little
7 bit?

8 A I'm not sure.

9 MR. GRECO: All right. That's all I have, your
10 Honor.

11 THE COURT: Thank you, Desiree. There are no more
12 questions. That's all, okay.

13 Call your next witness.

14 Come up here and sit down.

15

16 SUMMER MENEES

17 having been called as a witness

18 herein, was examined and testified as follows:

19

20 DIRECT EXAMINATION

21 BY MR. GRECO:

22 Q Are you comfortable? Can you tell us what your
23 name is.

24 A Summer.

25 Q And what's your last name?

1 A Menees.
2 Q Summer, do you go to school?
3 A Yeah.
4 Q Where at?
5 A Peavine.
6 Q All right. And what grade are you in?
7 A Second.
8 Q How old are you?
9 A Seven and a half.
10 Q Summer, do you know the difference between a truth
11 and a lie?
12 A Yeah.
13 Q Is a truth something that happened or did not
14 happen?
15 A That happened.
16 Q Okay. And is a lie something that happened or did
17 not happen?
18 A Did not happen.
19 Q Okay. Summer, if I said you are a boy, is that
20 the truth?
21 A No.
22 Q Why not?
23 A Because I'm a girl.
24 Q Okay. If I said I'm a boy, is that true?
25 A Yeah.

1 Q Okay. If I said your dress you have on that's a
2 pretty pink dress, is that a truth or a lie?

3 A A lie.

4 Q Why is it a lie?

5 A Because it's white.

6 Q Summer, if myself and that lady over there ask you
7 some questions, will you tell us the truth?

8 A Yeah.

9 Q To each and every question?

10 A Yeah.

11 Q You promise?

12 A Yeah.

13 Q What happens to little girls that lie?

14 A They get in trouble.

15 MR. GRECO: Okay. Your Honor, at this point I
16 would ask that she be deemed competent to testify for the
17 purposes of this hearing.

18 MS. SCHMUCK: I have no objection.

19 THE COURT: She will be deemed competent to
20 testify.

21 BY MR. GRECO:

22 Q Summer, tell us again how old are you?

23 A Seven and a half.

24 Q And where do you live, Summer?

25 A Reno, Nevada.

1 Q Here in Reno?
2 A (The witness nodded her head.)
3 Q Okay. Who do you live with?
4 A My dad.
5 Q All right. Does anybody else live with you there?
6 A My sister.
7 Q What's her name?
8 A Desiree.
9 Q Summer, can you remember way back a couple months
10 ago to December?
11 A Yeah.
12 Q Summer, in December did a man named Chuck ever
13 watch you or baby-sit you?
14 A Yeah.
15 Q Who is Chuck?
16 A Our next-door neighbor.
17 Q Do you see Chuck here in the courtroom?
18 A Yeah.
19 Q Would you point him out so the Judge can see?
20 A (Pointing.)
21 Q Is it the man in the orange suit?
22 A Yeah.
23 MR. GRECO: Can the record reflect she identified
24 the defendant?
25 THE COURT: The record will again reflect

1 identification of Mr. Maki.

2 BY MR. GRECO:

3 Q Summer, when Chuck watched you in December, did he
4 ever do anything bad to you?

5 A Yeah.

6 Q All right. Can you tell the Judge what Chuck did
7 to you that was bad?

8 A Well, he did it with us.

9 Q All right. What did he do?

10 A He humped with me.

11 Q Okay. That's kind of a funny word. What do you
12 mean he humped with you?

13 A He moved his private around on my private.

14 Q All right. Now, can you point out for the Judge
15 where your private is?

16 A Right here.

17 Q Okay. And where was Chuck's private?

18 A Right here.

19 Q All right. Do you have any other names that you
20 call a boy or man's private part? Do you call it anything
21 else?

22 A A dick.

23 Q Let's use the word private, okay. Now, when you
24 say he humped you with his private, exactly what did he do?

25 A He moved his hand around and moved his private on

1 mine.

2 Q Okay. Did he-- Now, when you say he moved his
3 private on yours, did he start with rubbing it around your
4 private?

5 A I forget.

6 Q All right. Well, when you say he moved his
7 private around, what do you mean?

8 A He moved it around, I think, on the outside.

9 Q Okay. He touched his private to the outside of
10 your private?

11 A I think.

12 Q And then later on did he ever put his private
13 inside your private?

14 A I'm not sure.

15 Q Summer, did his private ever go inside your
16 private in December?

17 A No.

18 Q Okay. Summer, do you recall talking to Detective
19 Stegmaier a little while ago, not today, a few days ago or a
20 few weeks ago?

21 A Yeah.

22 Q Did he interview you?

23 A Yeah.

24 Q Okay. He talked to you about what happened with
25 Chuck?

1 A Yeah.

2 Q And did you know that you were being watched by a
3 camera?

4 A Yeah.

5 Q Okay. And did you tell Detective Stegmaier the
6 truth?

7 A Yeah.

8 Q Is everything you said to Detective Stegmaier the
9 truth?

10 A Yeah.

11 Q Do you remember telling him that Chuck put his
12 private inside your private a little bit?

13 A Yeah.

14 Q Okay. Now, I want to ask you that question again.
15 Did that happen?

16 A Yeah.

17 Q Chuck put his private inside your private?

18 A A little.

19 Q Why don't you show the Judge how far he put it in
20 your private?

21 A Can I show it with my fingers?

22 Q Turn around and show him. He is looking right at
23 you.

24 A Like this far.

25 THE COURT: Okay.

1 BY MR. GRECO:

2 Q Could you feel it a little bit inside you, too?

3 A Yeah.

4 Q Now, Summer, did Chuck ever touch your private
5 with his hand or fingers?

6 A Pointy finger.

7 Q Did you say pointy finger?

8 A (The witness nodded her head.)

9 Q Whose pointy finger?

10 A Chuck's.

11 Q Will you show-- Well, what's the pointy finger?
12 Will you hold that up for the Judge so he can see?

13 THE COURT: Okay.

14 BY MR. GRECO:

15 Q All right. Was that in December, too?

16 A Yeah.

17 Q When Chuck was watching you?

18 A Yeah.

19 Q How did he touch you with his pointy finger?

20 A I think he licked his finger and put it on mine.

21 Q Put it on your what?

22 A Private.

23 Q Okay. And then what did he do with it?

24 A He just put his finger on me.

25 Q Did he rub you?

1 A I don't know.

2 Q Okay. But he touched you?

3 A Yeah.

4 Q You remember that?

5 A (The witness nodded her head.)

6 Q Did Chuck ever ask you to touch his privates?

7 A Yeah.

8 Q And did you do that?

9 A No.

10 Q What did you tell Chuck when he asked you to touch

11 his privates? Did you tell him yes or no?

12 A No.

13 Q Okay. Now, did Chuck ever tell you anything about

14 not telling anybody?

15 A Yeah.

16 Q What did Chuck tell you?

17 A Don't tell anybody or else I'll have to go to

18 jail.

19 MR. GRECO: Okay. Can I just have a moment, your

20 Honor?

21 THE COURT: Sure. That's fine.

22 BY MR. GRECO:

23 Q Summer, did Chuck ever put his finger inside your

24 private?

25 A No.

1 Q He never did that?

2 A Huh-uh.

3 Q Oh, Summer, besides the time when Chuck put his
4 penis inside your private did he ever touch his private to
5 the outside of your private?

6 A No.

7 MR. GRECO: Okay. That's all I have, your Honor.

8 THE COURT: All right. Ms. Schmuck,
9 cross-examination?

10 MS. SCHMUCK: Thank you.

11

12 CROSS-EXAMINATION

13 BY MS. SCHMUCK:

14 Q Summer, my name is Janet Schmuck. I'm an
15 attorney, and I'm representing Chuck. I need to ask you
16 some questions.

17 You go to Peavine School, is that right?

18 A Yeah.

19 Q Okay. And what grade are you in?

20 A Second.

21 Q What's your teacher's name?

22 A Mrs. Redfield.

23 Q Rayfield?

24 A Redfield.

25 Q How long have you been at Peavine School?

1 A I think two years-- three years.

2 Q Okay. Is that very far from your house?

3 A No.

4 Q Do you walk to school?

5 A Sometimes.

6 Q Okay. Now, Summer, you were just talking to the

7 district attorney about something bad happening. Do you

8 remember talking to the D.A. about that?

9 A Yeah.

10 Q Okay. Could you tell me if that was-- When this

11 something bad happened, was that before Christmas or after

12 Christmas?

13 A After.

14 Q It was after Christmas. Do you remember what day

15 of the week it was?

16 A Monday.

17 Q Okay. Do you remember how long after Christmas

18 that it happened?

19 A About three weeks ago.

20 Q About three weeks ago?

21 A (The witness nodded her head.)

22 Q When this happened, where were you?

23 A At Chuck's house.

24 Q You were at Chuck's house. Do you remember what

25 room you were in at Chuck's house?

1 A His room.

2 Q Could you tell us what you call his room? Is that

3 a bedroom?

4 A Yeah, bedroom.

5 Q Okay. When this happened, where was your sister?

6 A At our house.

7 Q She was at your house?

8 A (The witness nodded her head.)

9 Q Do you remember if this happened in the morning or

10 the afternoon?

11 A In between.

12 Q Sort of around lunch time?

13 A (The witness nodded her head.)

14 Q Is that right?

15 A Yeah.

16 Q Where was your father?

17 A He was at work.

18 Q He was at work. Do you know where your dad works?

19 A Boomtown.

20 Q Did your father ask Chuck to look after you that

21 day?

22 A Yeah.

23 Q Okay. Did you-- Do you remember what time you

24 went to Chuck's house?

25 A About 9:00.

1 Q About nine o'clock. Did you watch TV that day?
2 A Yeah.
3 Q Did you watch TV at his house?
4 A Both.
5 Q What do you mean by both?
6 A I watched half of some cartoons at my house and
7 half of it at his house.
8 Q Was there anybody else there?
9 A No.
10 Q Okay. Summer, I believe you told the district
11 attorney you used the word humped?
12 A Yeah.
13 Q Okay. How do you know that word?
14 A On TV.
15 Q Okay. You have heard it on TV?
16 A (The witness nodded her head.)
17 Q Okay. Did you see Chuck without his clothes on?
18 A Yeah.
19 Q Okay. He had no clothes on at all?
20 A No.
21 Q Okay. Did you have any clothes on?
22 A I had my nightie shirt and my pants on.
23 Q Okay. Did you have any shoes on?
24 A My slippers.
25 Q And your slippers. Did you have your clothes on

1 all the time?

2 A No.

3 Q Okay. Did you have your clothes off some of the
4 time?

5 A Yeah.

6 Q What parts of your clothes did you have off?

7 A My pants.

8 Q Okay. Do you remember seeing Chuck's privates?

9 A Yeah.

10 Q Okay. Could you tell us what they looked like?

11 A It has lots of hair around it.

12 Q Okay. Do you remember anything else?

13 A No.

14 Q Do you remember if they were laying down or were
15 they standing up?

16 A Laid down.

17 Q Okay. Do you remember if-- Do you remember what
18 color they were?

19 MR. GRECO: Your Honor, I'm going to object to the
20 phrase "they." I'm not sure what we are talking about with
21 the word "they."

22 MS. SCHMUCK: I'll change the question.

23 THE COURT: Okay.

24 BY MS. SCHMUCK:

25 Q Summer, do you know what a penis is?

1 A Yeah.

2 Q Do you remember seeing Chuck's penis?

3 A Yeah.

4 Q Do you remember what color it was?

5 A Peach.

6 Q Do you remember if it had hair on it?

7 A Yeah.

8 Q Now, Summer, after this happened did you tell

9 someone that this had happened?

10 A I told my sister first, and then my sister told

11 our next-- I mean, the people that live downstairs from us.

12 Q Who are the people that live downstairs from you?

13 A There is a boy named John that we know and his mom

14 we told.

15 Q So then you talked to John and his mother?

16 A Yeah.

17 Q Okay. About what had happened?

18 A Yeah.

19 Q Did you talk to your teacher at school?

20 A Yeah.

21 Q Did you talk to your school counselor?

22 A Yeah.

23 Q Did you talk to a doctor?

24 A Yeah.

25 Q Okay. Did you talk to your mother?

1 A My mother is in Tracy.

2 Q So you didn't talk to your mother about this?

3 A Well, my dad did.

4 Q Okay. Do you ever go and stay with your mom

5 sometimes?

6 A In the summertime.

7 Q Did you go and stay with her this last summer?

8 A Yeah.

9 Q How long did you stay with her?

10 A Two months.

11 Q Do you remember if somebody else was living with

12 your mother?

13 A My-- He's going to be my stepdad, Walt.

14 Q He was living with your mother?

15 A Yeah.

16 Q Okay. Summer, did you stay with Chuck often? Did

17 you stay with Chuck once a week, or did you stay with him

18 twice a week?

19 A I forget.

20 Q Okay. What time does your dad get home from work?

21 A 6:30.

22 Q Okay. What time do you get out of school?

23 A Three o'clock.

24 Q So you get home pretty soon after three o'clock?

25 A (The witness nodded her head.)

1 Q And do you stay by yourself at home?
2 A No, I stay with my sister.
3 Q Okay. Do you stay with Chuck sometimes?
4 A Yeah, with my sister.
5 Q Okay. And Chuck lives right next door to you?
6 A Yeah.
7 Q Did Chuck ever tell you that you had to do certain
8 things like clean up your room or do the dishes?
9 A I forget.
10 Q Did Chuck ever-- Do you ever remember him telling
11 you that you had to stop watching television?
12 A No.
13 MS. SCHMUCK: Okay. I have no further questions,
14 your Honor.
15 THE COURT: Mr. Greco, anything on redirect?
16 MR. GRECO: No additional questions, your Honor.
17 THE COURT: Okay. Thank you, Summer. That's all
18 the questions we have. You can go now. Thank you.
19 MR. GRECO: Detective Stegmaier is next, your
20 Honor.
21 THE COURT: All right. The detective has already
22 been sworn and is under oath.
23
24 \\\
25 \\\

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JAMES STEGMAIER

having been called as a witness herein, being
previously duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. GRECO:

Q Detective Stegmaier, will you please state your
name and spell your last.

A It's James J. Stegmaier, S-t-e-g-m-a-i-e-r.

Q Who are you employed by?

A I'm employed with the City of Reno.

Q By what division of the City of Reno?

A I'm employed with the police department in the
detectives' division, specifically the sex crimes youth
services section.

Q How long have you been employed by RPD?

A Approximately six years.

Q Are you familiar with the case of State of Nevada
versus Charles Joseph Maki?

A Yes, I am.

Q How are you familiar with that case?

A It was assigned to me approximately January 19th,
of this year.

Q Did you conduct interviews of the victim and

1 suspect in this case?

2 A Yes, I did.

3 Q On what day?

4 A January 19th.

5 Q Where did those interviews occur?

6 A At the Reno Police Department.

7 Q Who specifically did you interview?

8 A I interviewed both of the young ladies, Desiree
9 and Summer, and also Mr. Maki himself.

10 Q And do you recall what time of day you interviewed
11 Desiree and Summer?

12 A Yes, I do.

13 Q What time?

14 A At 11:45 in the morning.

15 Q And in what room did you interview Desiree and
16 Summer?

17 A We have an interview room that is attached to the
18 youth services section. It's specifically equipped with a
19 video camera and an audio monitor. It has an aquarium in it
20 and stuffed animals and stuffed things. It's basically
21 designed to make the girls feel comfortable in that type of
22 setting in the police department.

23 Q Are there toys in that room?

24 A Yes, there is.

25 Q Are there games?

1 A No.

2 Q Can you recall which of the girls you interviewed

3 first?

4 A Yes, I can.

5 Q Who was that?

6 A That was Desiree.

7 Q Prior to your going into that interview room did

8 you ask the girls any questions about Charles Joseph Maki?

9 A Not at all.

10 Q All right. How did you decide which girl to

11 interview first?

12 A Both girls were brought down to the police

13 department by their father, Mr. Gary Menees. And at that

14 time when they arrived at the station, I asked them to all

15 have a seat in the briefing room in the police department.

16 It's a large room approximately the size of this room.

17 At that particular time they sat there I'd say for

18 10 or 15 minutes while I equipped the room with a VHS

19 videotape to capture the interview itself.

20 Upon entering the briefing room, Mr. Maki's name

21 was never mentioned to the girls. As a matter of fact, how

22 I approached the girls was I said, Who would like to go

23 first, and both of them pointed to each other.

24 Q All right. Did you make the final decision?

25 A Actually I tossed a coin in the air and had one of

1 the them call it, and whoever lost is who went first.

2 Q Who went first?

3 A Desiree did.

4 Q How long did your interview of Desiree take?

5 A I would say approximately 20 minutes.

6 Q Who was interviewed next?

7 A After her interview was concluded I returned her
8 back to the briefing room, and immediately when she sat down
9 I took Summer with me and started her interview.

10 Q All right. And as you walked into that room with
11 Summer did you discuss the details of the case with her at
12 all?

13 A Not at all.

14 Q Had you met either of these girls before that
15 date?

16 A Negative.

17 Q All right. Now, you mention that room was
18 equipped with video-tape equipment?

19 A Yes, sir.

20 Q Was the interview videotaped?

21 A Yes, it was.

22 Q At the conclusion of the interview did you remove
23 the original videotape from the machine?

24 A Yes, I did.

25 Q Did you check it to make sure it had accurately

1 recorded the interviews?

2 A Yes, I did.

3 MR. GRECO: I'd like to mark this.

4 THE COURT: Sure. Do you want it on the tape or
5 on the box?

6 MR. GRECO: Your Honor, I think it's better on the
7 box. It's up to you, your Honor.

8 THE COURT: Why don't I put it on the tape since
9 the box could get lost. I'll do both.

10 MR. GRECO: Thanks, Judge. I'd just like to be
11 able to store it in that later.

12 THE COURT: Okay.

13 (State's Exhibit A was marked for identification.)

14 BY MR. GRECO:

15 Q Now, Detective Stegmaier, showing you a box and a
16 videotape that's been marked as State's Exhibit A, will you
17 take a look at the writing on the exterior of the tape
18 itself?

19 A Okay.

20 Q Whose writing is that?

21 A It's my writing.

22 Q When did you record that writing?

23 A Immediately after I had returned both girls. At
24 the conclusion of their interviews I ejected the tape after
25 checking it and labeled it with this label here.

1 Q Is that the videotape you removed from the machine
2 that day?

3 A Yes, it is.

4 MR. GRECO: Your Honor, to let you and the public
5 defender know where I'm going to proceed, I plan on showing
6 the videotape of Summer only under the child hearsay
7 statute, that's the foundation I just laid for it, and then
8 we are going to get into the interview of the suspect's
9 alleged confession. I'm not going to show the videotape of
10 Desiree because she was 10 and so she didn't come under the
11 statute.

12 THE COURT: All right.

13 MR. GRECO: So at this time I would ask that you
14 tentatively admit the tape and let it be shown, the
15 interview of Summer, subject to any objection after it's
16 played.

17 MS. SCHMUCK: That's fine, your Honor.

18 THE COURT: All right. Do you want to do that,
19 Mr. Greco, or do you want me to have my bailiff do that? He
20 is probably better equipped to do that. Let me call him in.

21 MR. GRECO: I'll let your bailiff handle it.

22 Your Honor, I have the times on your unit based
23 upon minutes and seconds. Do you know if that unit has a
24 minute and second--

25 THE COURT: It has a counter. I don't think it

1 has a--

2 MR. GRECO: Summer is about--

3 BY MR. GRECO:

4 Q Detective Stegmaier, do you know where that is at?

5 A It was at the beginning of Mr. Maki's interview so
6 I would say in about another five seconds you might be
7 pretty good.

8 THE COURT: We'll see where we are at, and Pat
9 will help you locate her testimony.

10 THE WITNESS: I would say if you push play, you
11 might be in good shape.

12 THE COURT: Okay.

13 THE WITNESS: It sounds like it went all the way.

14 THE COURT: Okay. You want it to play now?

15 MR. GRECO: Yes.

16 Your Honor, the record should probably reflect
17 that we have now fast forwarded the tape to the beginning of
18 Summer Menees's interview with Detective Stegmaier which is
19 coming on the screen momentarily I believe.

20 THE WITNESS: You might want to fast forward for
21 about five seconds. There you go.

22 THE COURT: Let me put it on pause. If your
23 client would like to stand near the TV set so he can hear
24 it, that will be fine.

25 MS. SCHMUCK: Thank you, your Honor.

1 (State's Exhibit A, the videotape, was
2 played in open court.)

3 MR. GRECO: Your Honor, I'm requesting to leave
4 State's Exhibit A in the unit because the defendant's
5 admissions are next in line.

6 THE COURT: All right.

7 BY MR. GRECO:

8 Q Detective Stegmaier, after you interviewed the two
9 girls did you attempt to make contact with the defendant,
10 Charles Maki?

11 A Yes, I did.

12 Q And where did you go?

13 A I went to his residence which is located at 1015
14 Nevada Street in the City of Reno.

15 Q Is that within Washoe County, Nevada?

16 A Yes, it is.

17 Q Did anyone go with you?

18 A Yes, they did.

19 Q Who went with you?

20 A Detective John Bohach who was also seen on that
21 video accompanied me over to Mr. Maki's house.

22 Q Did you locate Mr. Maki at 1015 Nevada Street?

23 A Yes, I did.

24 Q Did you make contact with him?

25 A Yes, I did.

1 Q Do you see Mr. Maki here in the courtroom?

2 A Yes, I do.

3 Q Would you point him out to the Court?

4 A Mr. Maki is wearing the orange coveralls there
5 seated at the defense table.

6 Q Did you identify yourself to the defendant?

7 A Yes, I did.

8 Q And what did you talk to him about?

9 A I found Mr. Maki working on his truck at the rear
10 of the apartment building located at 1015 Nevada Street.

11 Detective Bohach and I approached him. Mr. Maki
12 was with another gentleman. I asked Mr. Maki, after I
13 showed him my badge, if I could speak to him away from his
14 friend to avoid any embarrassment.

15 He stepped approximately 20 feet away, and I told
16 him I was a detective with the Reno Police Department and
17 that I was investigating a case involving where his name had
18 come up. I stated that I wanted to know if he would
19 voluntarily come with me to the Reno Police Department to
20 speak with me about it. I even offered at that time for him
21 to take his own truck.

22 Q Did you tell him-- When you asked him about going
23 down to the police department, did you tell him he was under
24 arrest?

25 A Just the opposite. I told him he was specifically

1 not under arrest. And at that time he told me he was
2 working on his truck so he would grab a ride with John
3 Bohach and I.

4 Q Did you explain to him that he had the right to
5 not go down with you if he so desired?

6 A Yes, I did.

7 Q So what happened next?

8 A Mr. Maki was allowed to sit in the front seat of
9 the patrol vehicle unhandcuffed, and we drove down to the
10 police department. He was placed in an interview room in
11 the fraud, burglary section of the Reno Police Department
12 again unhandcuffed, and we began our interview.

13 Q Okay. And prior to starting the interview there
14 at the police department did you again advise him regarding
15 whether or not he was under arrest?

16 A On the tape-- I had the tape started when I first
17 entered the room with Mr. Maki while he was seated in the
18 interview room. I again on tape reiterated the fact that he
19 is not under arrest. In fact if he wanted to leave at that
20 time, he could.

21 Q All right. And during the ride over to the police
22 department did either you or Mr. Bohach threaten the
23 defendant in any way?

24 A Not at all.

25 Q How would you describe your conversation as you

1 drove over to the police station?

2 A Basically it was Detective Bohach and I sat and
3 listened to Mr. Maki who was very cooperative with us
4 showing-- concerned that this whole incident was possibly in
5 reference to a battery that he had been involved in one way
6 or another, whether he was the victim or whatever that never
7 came out.

8 At no time-- We kept telling Mr. Maki that we
9 wanted to allow him the opportunity to review the police
10 work we had, and we would explain and answer any questions
11 that he had once we were at the police department in
12 reference to what it was for.

13 Q Approximately what time did the interview of
14 Mr. Maki occur at the police department?

15 A I believe it was approximately seven minutes after
16 one on the 19th of January, 1994.

17 Q And roughly how long did that interview last?

18 A I would say half an hour.

19 Q All right. And was that interview videotaped?

20 A Yes, it was.

21 Q And did you utilize the same VHS that you had used
22 for the girls?

23 A Yes, I did.

24 Q Is that the same VHS tape that we saw a little bit
25 of here?

1 A Yes, it's on the original also. On the front part
2 after I had finished the girls' interview I wrote their
3 names. When Mr. Maki came down, I decided to use the same
4 tape. If you pull the tape out, you will see I wrote on the
5 center-console area of the tape. There is a label there. I
6 wrote Mr. Maki's interview was completed also on the same
7 date, the 19th.

8 MR. GRECO: Your Honor, at this time I ask the
9 interview of the defendant be played.

10 THE COURT: All right.

11 (State's Exhibit A, the videotape, was
12 played in open court.)

13 BY MR. GRECO:

14 Q Detective Stegmaier, do you know how much lag time
15 there is in this portion of the time before he comes into
16 view?

17 A I would say at this speed right now if it was fast
18 forwarded for approximately 30 more seconds, you will be
19 fine. When this tape goes off, the other one will follow.

20 MR. GRECO: Your Honor, while he is sitting there,
21 there are some more spontaneous admissions. They come
22 inadvertently. The total remaining running time of the tape
23 right now is ten minutes.

24 THE COURT: What I was going to ask is do you want
25 to break for lunch, and we can continue this at 1:30? I can

1 do it-- I can go ahead and continue--

2 MR. GRECO: Your Honor, after the ten minutes of
3 the tape are played I have two or three more questions of
4 the detective and I'm done.

5 THE COURT: You don't have another witness to
6 call?

7 MR. GRECO: I decided I don't need to call the
8 fourth witness. He will be my last witness.

9 THE COURT: Let's see if we can go for another 15
10 or 20 minutes then.

11 (State's Exhibit A, the videotape,
12 was played in open court.)

13 MR. GRECO: Your Honor, can you stop the tape at
14 this point?

15 THE COURT: Stop it?

16 MR. GRECO: Yes, your Honor. At this point there
17 is another five or six minutes. In the interest of time I
18 don't want to play it. If Ms. Schmuck wants it played, I
19 have no objection to that.

20 THE COURT: Do you want to see the rest of the
21 tape?

22 MS. SCHMUCK: I'd like to see the rest of the
23 tape.

24 MR. GRECO: That's fine, your Honor.

25 THE COURT: All right.

1 MR. GRECO: Your Honor, they will leave the room
2 together in about twenty seconds, and there are two minutes
3 of blank space after that and that's the end of the tape.

4 THE COURT: Okay.

5 (State's Exhibit A, a videotape,
6 was played in open court.)

7 BY MR. GRECO:

8 Q What charges did you place the defendant under
9 arrest for?

10 A NRS 200.366, which is sexual assault, and NRS
11 201.230, lewdness with a minor under the age of 14.

12 Q All right. And why about two thirds of the way
13 through the tape did you Mirandize the defendant? Why did
14 you do it at that point?

15 A Up to that point Mr. Maki, which I mentioned
16 several times to him on the tape, had been free to leave.
17 At that particular point I felt Mr. Maki was no longer free
18 to leave, and I wanted him to stay there and answer further
19 questioning. At that time I decided to advise him of his
20 Miranda rights.

21 Q Why did you decide he was not free to leave?

22 A Because in my mind I had enough to place him under
23 arrest.

24 Q Because of all the admissions he had made up to
25 that point?

1 A Correct.

2 MR. GRECO: I know earlier I asked the tape be
3 admitted. At this time I move for the tape's admission for
4 purposes of this preliminary hearing.

5 THE COURT: All right. Ms. Schmuck, any
6 objection?

7 MS. SCHMUCK: Your Honor, I would-- Actually, I'm
8 going to object to the admission of the portion of the tape
9 showing Summer because I think that's cumulative. We have
10 had the child here. You had the chance to see the child. I
11 don't see any reason why the tape of the interview with her
12 should be admitted. I have no objection to the other tape.

13 THE COURT: Other portion?

14 MS. SCHMUCK: Right.

15 MR. GRECO: When the legislature accepted the
16 child hearsay statute, it says if you satisfy the
17 trustworthiness requirements, it can come in whether the
18 child testifies at the proceeding or even if the child is
19 unavailable, and I think it should come in. And it just
20 buttresses the State's case. And there was some additional
21 information on it that I did not ask her on the stand.

22 THE COURT: It may be cumulative, but under the
23 statute I will admit it as provided by law.

24 (State's Exhibit A was admitted into evidence.)

25 MR. GRECO: Your Honor, I have no other witnesses,

1 and that concludes the State's case.

2 THE COURT: Did you want to cross-examine the
3 detective?

4 MR. GRECO: I'm sorry.

5 MS. SCHMUCK: I would like to cross-examine. I
6 have some questions I'd like to ask, and I'll leave it to
7 the Court's discretion if you wish to proceed after lunch.

8 THE COURT: It might be better. It might be
9 better to break for now and continue at 1:30. Will that be
10 all right or possibly 1:15?

11 MS. SCHMUCK: That's fine with me.

12 THE COURT: Deputy, is that going to give you
13 enough time to do what you need to do?

14 THE DEPUTY: If we go code three.

15 THE COURT: Let's make it 1:30. Does that give
16 you enough time?

17 THE DEPUTY: Yes, sir.

18 THE COURT: So at 1:30 we'll be all ready, or is
19 that not enough--

20 THE DEPUTY: Yeah, we can make it at 1:30.

21 THE COURT: I don't know if we'll be here or in
22 another courtroom.

23 The record will reflect I'm giving the tape back
24 to Mr. Greco.

25 MR. GRECO: We'll maintain custody of it.

1 THE COURT: We'll see you at 1:30.
2 (The proceedings were continued to 1:30, February 3, 1994.)
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1 RENO, NEVADA, THURSDAY, FEBRUARY 3, 1994, 1:30 P.M.

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4 THE COURT: Are we all set? This is the time set
5 for the continuation of the preliminary hearing in the case
6 of State of Nevada versus Charles Joseph Maki. It's case
7 number 62,921. At the time we broke for lunch the State had
8 completed its direct examination of Detective Stegmaier, and
9 I believe, Ms. Schmuck, you wish to ask questions on
10 cross-examination.

11 MS. SCHMUCK: Yes, your Honor. Thank you.

12
13 CROSS-EXAMINATION

14 BY MS. SCHMUCK:

15 Q Officer Stegmaier, I believe you indicated that
16 you went out to speak to Mr. Maki on January 19th?

17 A Correct.

18 Q What time was that when you went out to the
19 apartment?

20 A Approximately a quarter to one.

21 Q Is that afternoon or morning?

22 A That would have been in the afternoon.

23 Q Okay. When you arrived at the apartment, you also
24 indicated that Mr. Maki was working on a car out in back of
25 the apartment?

1 A Yes, ma'am, correct.

2 Q And there was someone with him?

3 A Yes.

4 Q Did you determine who that someone was?

5 A Someone who he was working on a car for a friend

6 of his.

7 Q Working on the car?

8 A Yes, ma'am.

9 Q How was Mr. Maki dressed that afternoon?

10 A Just casual, jeans and a cuff-off shirt with no

11 sleeves.

12 Q Okay. How did he appear to you? Did he appear

13 sleepy?

14 A Mr. Maki has a-- He did not appear sleepy to me.

15 He appeared mainly just kind of real quiet, kind of easy

16 going.

17 Q When you first made contact with him, did he show

18 any reluctance to speak to you?

19 A Not at all.

20 Q Did he smell of alcohol?

21 A No, he didn't.

22 Q Did you notice any signs of drug usage?

23 A No, ma'am, but I wasn't looking for anything of

24 that nature either.

25 Q I guess I was using drugs in a more generic

1 meaning drug use in the sense of a medication?

2 A Nothing that comes to mind at this time.

3 Q Did he indicate to you at any time he was taking
4 something for medication?

5 A He may have. I don't recall.

6 Q Okay. When you first spoke with him, did you
7 notice him having any problems being able to understand you?

8 A No, ma'am, not at all.

9 Q Did he ever indicate to you that he could not hear
10 you or hear your questions?

11 A At one particular time Mr. Maki asked if I could
12 speak up because he explained to me he had one bad ear, I
13 think it was, and needed for me to speak up a bit so he
14 could hear me. I don't remember what point that occurred.

15 Q Did he indicate to you which ear was bad?

16 A I don't recall, ma'am.

17 Q Did you ever notice him following your lips very
18 closely?

19 A No.

20 Q On the tape that we were looking at this morning,
21 the interview that you did with Summer?

22 A Yes, ma'am.

23 Q You asked a question about tattoos. Could you
24 indicate to me what led you to ask that question?

25 A When I had-- Let me think. When I had asked

1 Summer on the tape about the tattoos-- This is Summer in
2 particular rather than--

3 Q Yes.

4 A Oh, the reason I asked that question was because I
5 finished a case recently where one of the most
6 distinguishing things that the girl in that case could
7 remember was something that was very unusual in the penis
8 area. And sometimes it is a tattoo, sometimes you use the
9 word scar, anything at all unusual. And I'm looking for
10 specifically in that area.

11 Q Okay. Thank you. This morning I-- I'm trying to
12 remember-- Would you refresh my recollection in terms of
13 your training in so far as dealing particularly with
14 children and this type of crime?

15 A I've attended three post-certified academies which
16 are each roughly 16 weeks in length courses, and those
17 include talking with victims on sensitive issues such as
18 rape and child molestation. Those victims being also
19 sometimes children and women and people who may need special
20 handling.

21 I've also have a two year administration degree in
22 criminal justice which also will include classes on
23 interview techniques. Most recently, as of I think November
24 of 1993, I attended a 40-hour course on sexual assault
25 investigations which included a special eight-hour block on

1 children-interview techniques, non-leading questions, things
2 of that nature and a variety of things that are not as
3 specific as those I just mentioned.

4 Q You also mentioned-- I think you mentioned
5 something about techniques or things you were taught to
6 indicate to you that a child would not be telling the truth?

7 A Yes, ma'am.

8 Q Could you indicate to the Court what some of those
9 indications might be?

10 A In my experience of interviewing children, usually
11 if in fact they are being very truthful, everything will
12 flow chronologically. There won't be parts that will be so
13 fantastic that you can tell they are in fact making them up.
14 They are consistent, very consistent.

15 They are concentrating more on you and what's
16 around them rather than what they are saying. In other
17 words, if I ask them a question, if they are truthful, the
18 answer comes out again and again. I can ask it two hours
19 later, and it won't change. They are not concentrating on
20 what they are saying. Their eyes, to me, will be very
21 scared, concerned and trying to concentrate on exactly what
22 they are saying as opposed to-- These two girls were just
23 very, very, very spontaneous with their answers.

24 Q Did you interview the children's father?

25 A A formal-type interview, no.

1 Q Did you interview the children's mother?
2 A No, ma'am.
3 Q Did you interview the neighbors?
4 A No, ma'am.
5 Q Downstairs in particular?
6 A No.
7 MS. SCHMUCK: I have no further questions.
8 THE COURT: Mr. Greco, anything further?
9 MR. GRECO: Nothing further, your Honor.
10 THE COURT: Thank you, detective. You are
11 excused. That's the State's case?
12 MR. GRECO: That's the State's case.
13 THE COURT: Ms. Schmuck, have you advised your
14 client of his right to testify in these proceedings this
15 afternoon and call witnesses on his own behalf?
16 MS. SCHMUCK: Yes, I have discussed that with him,
17 your Honor. He has chosen not to testify, and we will not
18 be calling any witnesses.
19 THE COURT: All right. Do either of you wish to
20 argue the case?
21 MR. GRECO: Your Honor, I'm going to move to
22 dismiss Count VI, which is the finger penetration of Summer
23 because of course there was no such testimony.
24 THE COURT: Right. I made a note that neither in
25 the tape nor in the testimony was that covered.

1 MR. GRECO: Yes, your Honor.

2 THE COURT: Okay.

3 MR. GRECO: Other than that, I would simply submit
4 the case.

5 THE COURT: Let me make a note. I did compare the
6 tape to the in-court testimony and this is what I noted. As
7 to Count XI, Summer testified on tape that this had occurred
8 but it was not what I noted from the testimony. I think she
9 said-- when you asked her, I think she said no to that
10 question as to that, but then on the tape she did indicate
11 that so there is some question. I will go ahead and--
12 Because it is on the tape and it is admitted I will go ahead
13 and allow it so long as there was probable cause to believe
14 this occurred.

15 MR. GRECO: That hearsay exception is it does
16 become substantive evidence, so--

17 THE COURT: One other note, and then, Ms. Schmuck,
18 if you want to argue on it. On Count IV, I believe that
19 when Desiree was asked as to whether or not the defendant
20 had inserted his finger into her vagina she said, No, he had
21 not placed it inside.

22 MR. GRECO: No, your Honor, that's not my memory
23 of the testimony. Summer said that, but Desiree-- I believe
24 when she was asked again she said it went inside of her.
25 And I suppose we could have the reporter check that, but I'm

1 almost certain of that.

2 THE COURT: Ms. Schmuck?

3 MS. SCHMUCK: Unfortunately, I tend to believe the
4 representation made by the district attorney. That's what
5 my recollection is. That's what I remember hearing.

6 THE COURT: I remember Desiree saying, if it was
7 her, that he wet his finger but he did not insert it.

8 MR. GRECO: No, your Honor, I think that was not
9 Desiree, your Honor. I think that was Summer.

10 THE COURT: Summer. Okay.

11 MR. GRECO: But in any event, I'm certain that
12 Desiree said he inserted his finger inside her.

13 THE COURT: I guess if my recollection is faulty,
14 it will be decided at the district court level.

15 Ms. Schmuck, did you have anything you wanted to
16 argue in regard to the case?

17 MS. SCHMUCK: I'm planning to submit this,
18 however, I would just ask the Court to consider that there
19 were discrepancies. And I think you are well aware of
20 those. I won't belabor them. I will ask the Court in light
21 of the fact of the videotape this morning to disregard the
22 comments of particularly what I would consider or what could
23 be construed as prior bad acts on the part of Mr. Maki in
24 several different areas, but particularly with the ex-felon,
25 the drugs and the battery that was discussed. I ask the

1 Court to disregard those.

2 THE COURT: I will. I focused only on the portion
3 of the tape that related to the charges that are facing
4 Mr.-- that Mr. Maki is facing.

5 Based on the tape and also the testimony of the
6 detective and also Desiree and Summer, I will find that
7 there is probable cause to believe the defendant committed
8 Counts I through V. Count VI is dismissed. And Counts VII
9 through XI I find that there is probable cause to believe
10 that those offenses were also committed and bind him over
11 for trial in the Second Judicial District Court on all but
12 Count VI.

13 MR. GRECO: I neglected to mention one thing. In
14 regard to Count VII at line 25 it says, Said defendant
15 kissed the victim's breasts, referring to Desiree, and I
16 would ask that be amended to sucked or kissed which I think
17 was the testimony.

18 THE COURT: She did say sucked. Okay. I'll make
19 it sucked and/or--?

20 MR. GRECO: I'd like it sucked or kissed, your
21 Honor.

22 THE COURT: Okay. All right. That's amended.
23 All right. Anything further?

24 MR. GRECO: No, your Honor.

25 THE COURT: Okay. We'll be in recess.

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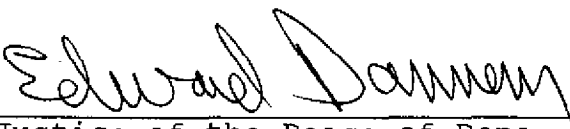
(The proceedings were concluded.)

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1 I, EDWARD DANNAN, Justice of the Peace of Reno
2 Township, sitting as Committing Magistrate in Reno, Nevada,
3 do hereby certify:

4 That LISA A. YOUNG, a CSR #353, a Certified
5 Shorthand Reporter, was duly appointed and sworn by me to
6 report the proceedings had in the Preliminary Examination in
7 the case of the STATE OF NEVADA, Plaintiff, versus CHARLES
8 JOSEPH MAKI, Defendant; that the witnesses were first duly
9 sworn and their testimony taken in stenotype notes and
10 thereafter transcribed into longhand typewriting as herein
11 appears;

12 Then when the examination of the witnesses and the
13 presentation of evidence was closed, it appearing from the
14 evidence adduced at said Preliminary Examination that there
15 was probable cause and sufficient evidence to believe that
16 said CHARLES JOSEPH MAKI committed the said crimes as
17 charged, that said CHARLES JOSEPH MAKI, was therefore bound
18 over to the Second Judicial District Court for trial.

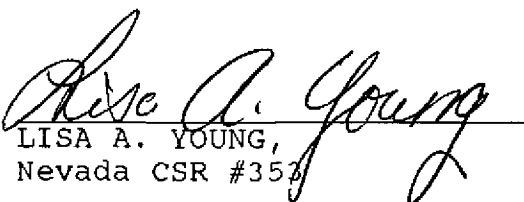
19
20
21 
22 Justice of the Peace of Reno
23 Township, sitting as Committing
24 Magistrate in Reno, Washoe
25 County, Nevada

1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)
4

5 I, LISA A. YOUNG, a Certified Shorthand
6 Reporter, do hereby certify that I was duly appointed
7 and sworn by the Magistrate Reno, Washoe County, Nevada to
8 report the proceedings in the within-entitled cause, and
9 that I was present on the 3rd day of February, 1994, at the
10 hour of 1:30 p.m. of said day, and reported the proceedings
11 had in said cause in stenotype notes, which were thereafter
12 transcribed under my direction.

13 That the foregoing transcript, consisting of
14 pages 1 through 81, both inclusive, contains a full, true
15 and complete transcript of my said stenotype notes, and is a
16 full, true and correct record of the proceedings had at said
17 time and place.

18 Dated at Reno, Nevada this 16th day
19 of February, 1994.
20
21

22
23 
24 LISA A. YOUNG,
25 Nevada CSR #353

DA# F94 0236

RPD 016248-94

IN THE JUSTICE COURT OF RENO TOWNSHIP,
IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA.

'94 FEB -2 P4:01

THE STATE OF NEVADA,

Plaintiff

S. Murphy

RJC: 62,921

Against

DEPT: 2

CHARLES JOSEPH MAKI,

Defendant.

AMENDED
CRIMINAL COMPLAINT

DANIEL J. GRECO

of the County of Washoe,

State of Nevada, verifies and declares upon information and
belief and under penalty of perjury, that CHARLES JOSEPH
MAKI, the defendant above-named, has committed the crimes
of:

COUNT I. SEXUAL ASSAULT ON A CHILD UNDER THE AGE
OF FOURTEEN YEARS, a violation of NRS 200.366, a felony, in
the manner following, to wit:

That the said defendant on or between the 15th day
of November, 1993, and the 18th day of January, 1994, at
Reno Township, in the County of Washoe, State of Nevada, did
willfully and unlawfully subject DESIREE M., a child under
the age of fourteen years, to sexual penetration against her
will or under conditions in which the said defendant knew or
should have known that the victim was mentally or physically
incapable of resisting or understanding the nature of his

///

1 conduct by reason of her young age, in that the said
2 defendant inserted his penis into the victim's vagina.

3 COUNT II: SEXUAL ASSAULT ON A CHILD UNDER THE AGE
4 OF FOURTEEN YEARS, a violation of NRS 200.366, a felony, in
5 the manner following, to wit:

6 That the said defendant on or between the 15th day
7 of November, 1993, and the 18th day of January, 1994, at
8 Reno Township, in the County of Washoe, State of Nevada, did
9 willfully and unlawfully subject DESIREE M., a child under
10 the age of fourteen years, to sexual penetration against her
11 will or under conditions in which the said defendant knew or
12 should have known that the victim was mentally or physically
13 incapable of resisting or understanding the nature of his
14 conduct by reason of her young age, in that the said
15 defendant inserted his penis into the victim's vagina.

16 COUNT III. SEXUAL ASSAULT ON A CHILD UNDER THE AGE
17 OF FOURTEEN YEARS, a violation of NRS 200.366, a felony, in
18 the manner following, to wit:

19 That the said defendant on or between the 15th day
20 of November, 1993, and the 18th day of January, 1994, at
21 Reno Township, in the County of Washoe, State of Nevada, did
22 willfully and unlawfully subject DESIREE M., a child under
23 the age of fourteen years, to sexual penetration against her
24 will or under conditions in which the said defendant knew or
25 should have known that the victim was mentally or physically
26 incapable of resisting or understanding the nature of his

1 conduct by reason of her young age, in that the said
2 defendant inserted his penis into the victim's vagina.

3 COUNT IV. SEXUAL ASSAULT ON A CHILD UNDER THE AGE
4 OF FOURTEEN YEARS, a violation of NRS 200.366, a felony, in
5 the manner following, to wit:

6 That the said defendant on or between the 15th day
7 of November, 1993, and the 18th day of January, 1994, at
8 Reno Township, in the County of Washoe, State of Nevada, did
9 willfully and unlawfully subject DESIREE M., a child under
10 the age of fourteen years, to sexual penetration against her
11 will or under conditions in which the said defendant knew or
12 should have known that the victim was mentally or physically
13 incapable of resisting or understanding the nature of his
14 conduct by reason of her young age, in that the said
15 defendant inserted his finger into the victim's vagina.

16 COUNT V. SEXUAL ASSAULT ON A CHILD UNDER THE AGE
17 OF FOURTEEN YEARS, a violation of NRS 200.366, a felony, in
18 the manner following, to wit:

19 That the said defendant on or between the 15th day
20 of November, 1993, and the 18th day of January, 1994, at
21 Reno Township, in the County of Washoe, State of Nevada, did
22 willfully and unlawfully subject SUMMER M., a child under
23 the age of fourteen years, to sexual penetration against her
24 will or under conditions in which the said defendant knew or
25 should have known that the victim was mentally or physically
26 incapable of resisting or understanding the nature of his

1 conduct by reason of her young age, in that the said
2 defendant inserted his penis into the victim's vagina.

3 COUNT VI. SEXUAL ASSAULT ON A CHILD UNDER THE AGE
4 OF FOURTEEN YEARS, a violation of NRS 200.366, a felony, in
5 the manner following, to wit:

6 That the said defendant on or between the 15th day
7 of November, 1993, and the 18th day of January, 1994,, at
8 Reno Township, in the County of Washoe, State of Nevada, did
9 willfully and unlawfully subject SUMMER M., a child under
10 the age of fourteen years, to sexual penetration against her
11 will or under conditions in which the said defendant knew or
12 should have known that the victim was mentally or physically
13 incapable of resisting or understanding the nature of his
14 conduct by reason of her young age, in that the said
15 defendant inserted his finger into the victim's vagina.

16 COUNT VII. LEWDNESS WITH A CHILD UNDER THE AGE OF
17 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
18 manner following, to wit:

19 That the said defendant on or between the 15th day
20 of November, 1993, and the 18th day of January, 1994, at
21 Reno Township, in the County of Washoe, State of Nevada, did
22 willfully, unlawfully, and lewdly commit a lewd or
23 lascivious act upon and with the body of DESIREE M., a
24 female child under the age of fourteen years, in that the
25 said defendant ^{Stuck} kissed the victim's breasts with the intent

26 ///

1 of arousing, appealing to, or gratifying the lust, passions,
2 or sexual desires of himself or the child.

3 COUNT VIII. LEWDNESS WITH A CHILD UNDER THE AGE OF
4 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
5 manner following, to wit:

6 That the said defendant on or between the 15th day
7 of November, 1993, and the 18th day of January, 1994, at
8 Reno Township, in the County of Washoe, State of Nevada, did
9 willfully, unlawfully, and lewdly commit a lewd or
10 lascivious act upon and with the body of DESIREE M., a
11 female child under the age of fourteen years, in that the
12 said defendant touched or rubbed the exterior of the
13 victim's vagina with the intent of arousing, appealing to,
14 or gratifying the lust, passions, or sexual desires of
15 himself or the child.

16 COUNT IX. LEWDNESS WITH A CHILD UNDER THE AGE OF
17 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
18 manner following, to wit:

19 That the said defendant on or between the 15th day
20 of November, 1993, and the 18th day of January, 1994, at
21 Reno Township, in the County of Washoe, State of Nevada, did
22 willfully, unlawfully, and lewdly commit a lewd or
23 lascivious act upon and with the body of DESIREE M., a
24 female child under the age of fourteen years, in that the
25 said defendant caused the victim to touch or fondle his
26 penis and/or testicles with the intent of arousing,

1 appealing to, or gratifying the lust, passions, or sexual
2 desires of himself or the child.

3 COUNT X. LEWDNESS WITH A CHILD UNDER THE AGE OF
4 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
5 manner following, to wit:

6 That the said defendant on or between the 15th day
7 of November, 1993, and the 18th day of January, 1994, at
8 Reno Township, in the County of Washoe, State of Nevada, did
9 willfully, unlawfully, and lewdly commit a lewd or
10 lascivious act upon and with the body of SUMMER M., a female
11 child under the age of fourteen years, in that the said
12 defendant touched or rubbed the exterior of the victim's
13 vagina with the intent of arousing, appealing to, or
14 gratifying the lust, passions, or sexual desires of himself
15 or the child.

16 COUNT XI. LEWDNESS WITH A CHILD UNDER THE AGE OF
17 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
18 manner following, to wit:

19 That the said defendant on or between the 15th day
20 of November, 1993, and the 18th day of January, 1994, at
21 Reno Township, in the County of Washoe, State of Nevada, did
22 willfully, unlawfully, and lewdly commit a lewd or
23 lascivious act upon and with the body of SUMMER M., a female
24 child under the age of fourteen years, in that the said
25 defendant rubbed or touched his penis on or over the
26 exterior of the victim's vagina with the intent of arousing,

On tape
but not
in testimony

1 appealing to, or gratifying the lust, passions, or sexual
2 desires of himself or the child.

3

4

DATED this 3rd day of FEBRUARY, 1994.

5

6

Samuel Lee

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23 PCN 84033540

24 Restitution:

Custody:

25 Bailed:

Warrant:

26 0120SA2248

Unit:

Defense Attorney:

Bail 80,000

DA# F94 0236

RPD 016248-94

IN THE JUSTICE COURT OF RENO TOWNSHIP,
IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA.

* * *
94 DEC 21 1993

THE STATE OF NEVADA,

Plaintiff

R. Baker

RJC: 62,921

DEPT: 2

Against

CHARLES JOSEPH MAKI,

Defendant.

CRIMINAL COMPLAINT

LEWIS TAITEL of the County of Washoe, State of Nevada, verifies and declares upon information and belief and under penalty of perjury, that CHARLES JOSEPH MAKI, the defendant above-named, has committed the crimes of:

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

That the said defendant on or between the 1st day of December, 1993, and the 31st day of December, 1993, at Reno Township, in the County of Washoe, State of Nevada, did willfully and unlawfully subject DESIREE M. to sexual penetration under conditions in which the said defendant knew or should have known that the victim was mentally and/or physically incapable of resisting and/or understanding the nature of his conduct by reason of her young age in that the said defendant caused the said victim to submit to sexual intercourse.

///

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

3 That the said defendant on or between the 1st day
4 of December, 1993, and the 31st day of December, 1993, at
5 Reno Township, in the County of Washoe, State of Nevada, did
6 willfully and unlawfully subject DESIREE M. to sexual
7 penetration under conditions in which the said defendant
8 knew or should have known that the victim was mentally
9 and/or physically incapable of resisting and/or
10 understanding the nature of his conduct by reason of her
11 young age in that the said defendant caused the said victim
12 to submit to sexual intercourse.

13 COUNT III. SEXUAL ASSAULT, a violation of NRS 200.366,
14 a felony, in the manner following, to wit:

15 That the said defendant on or between the 1st day
16 of December, 1993, and the 31st day of December, 1993, at
17 Reno Township, in the County of Washoe, State of Nevada, did
18 willfully and unlawfully subject DESIREE M. to sexual
19 penetration under conditions in which the said defendant
20 knew or should have known that the victim was mentally
21 and/or physically incapable of resisting and/or
22 understanding the nature of his conduct by reason of her
23 young age in that the said defendant caused the said victim
24 to submit to sexual intercourse.

25 ///

26 ///

1 COUNT IV. SEXUAL ASSAULT, a violation of NRS 200.366,
2 a felony, in the manner following, to wit:

3 That the said defendant on or between the 1st day
4 of December, 1993, and the 31st day of December, 1993, at
5 Reno Township, in the County of Washoe, State of Nevada, did
6 willfully and unlawfully subject DESIREE M. to sexual
7 penetration under conditions in which the said defendant
8 knew or should have known that the victim was mentally
9 and/or physically incapable of resisting and/or
10 understanding the nature of his conduct by reason of her
11 young age in that the said defendant caused the said victim
12 to submit to digital penetration.

13 COUNT V. SEXUAL ASSAULT, a violation of NRS 200.366,
14 a felony, in the manner following, to wit:

15 That the said defendant on or between the 1st day
16 of December, 1993, and the 31st day of December, 1993, at
17 Reno Township, in the County of Washoe, State of Nevada, did
18 willfully and unlawfully subject SUMMER M. to sexual
19 penetration under conditions in which the said defendant
20 knew or should have known that the victim was mentally
21 and/or physically incapable of resisting and/or
22 understanding the nature of his conduct by reason of her
23 young age in that the said defendant caused the said victim
24 to submit to sexual intercourse.

25 ///

26 ///

1 COUNT VI. SEXUAL ASSAULT, a violation of NRS 200.366,
2 a felony, in the manner following, to wit:

3 That the said defendant on or between the 1st day
4 of December, 1993, and the 31st day of December, 1993, at
5 Reno Township, in the County of Washoe, State of Nevada, did
6 willfully and unlawfully subject SUMMER M. to sexual
7 penetration under conditions in which the said defendant
8 knew or should have known that the victim was mentally
9 and/or physically incapable of resisting and/or
10 understanding the nature of his conduct by reason of her
11 young age in that the said defendant caused the said victim
12 to submit to digital penetration.

13 COUNT VII. LEWDNESS WITH A CHILD UNDER THE AGE OF
14 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
15 manner following, to wit:

16 That the said defendant on or between the 1st day
17 of December, 1993, and the 31st day of December, 1993, at
18 Reno Township, in the County of Washoe, State of Nevada, did
19 willfully, unlawfully, and lewdly commit a lewd, indecent,
20 and lascivious act upon and with the body of DESIREE M. a
21 female child under the age of fourteen years at the time
22 that the said act was committed, in that the said defendant
23 kiss and/or fondle said victim's breasts with the intent of
24 arousing, appealing to, and gratifying his lust, passions,
25 and sexual desires.

26 ///

1 COUNT VIII. LEWDNESS WITH A CHILD UNDER THE AGE OF
2 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
3 manner following, to wit:

4 That the said defendant on or between the 1st day
5 of December, 1993, and the 31st day of December, 1993, at
6 Reno Township, in the County of Washoe, State of Nevada, did
7 willfully, unlawfully, and lewdly commit a lewd, indecent,
8 and lascivious act upon and with the body of DESIREE M., a
9 female child under the age of fourteen years at the time
10 that the said act was committed, in that the said defendant
11 rubbed her vaginal area with his fingers with the intent of
12 arousing, appealing to, and gratifying his lust, passions,
13 and sexual desires.

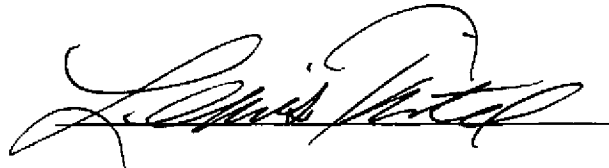
14 COUNT IX. LEWDNESS WITH A CHILD UNDER THE AGE OF
15 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
16 manner following, to wit:

17 That the said defendant on or between the 1st day
18 of December, 1993, and the 31st day of December, 1993, at
19 Reno Township, in the County of Washoe, State of Nevada, did
20 willfully, unlawfully, and lewdly commit a lewd, indecent,
21 and lascivious act upon and with the body of DESIREE M., a
22 female child under the age of fourteen years at the time
23 that the said act was committed, in that the said defendant
24 did place his penis in said victim's hand with the intent of
25 arousing, appealing to, and gratifying his lust, passions,
26 and sexual desires.

1 COUNT X. LEWDNESS WITH A CHILD UNDER THE AGE OF
2 FOURTEEN YEARS, a violation of NRS 201.230, a felony, in the
3 manner following, to wit:

4 That the said defendant on or between the 1st day
5 of December, 1993, and the 31st day of December, 1993, at
6 Reno Township, in the County of Washoe, State of Nevada, did
7 willfully, unlawfully, and lewdly commit a lewd, indecent,
8 and lascivious act upon and with the body of SUMMER M., a
9 female child under the age of fourteen years at the time
10 that the said act was committed, in that the said defendant
11 rubbed her vaginal area both on the inside and outside of
12 her panties with his fingers, with the intent of arousing,
13 appealing to, and gratifying his lust, passions, and sexual
14 desires.

15 DATED this 21st day of JANUARY , 1994.

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23 PCN 84033540

24 Restitution:
25 Custody: X
26 Bailed:
 Warrant:
 0120CA4248

 Unit: STANTON (MV)
 Defense Attorney:
 Bail 80,000

84033540

Reno Police Department

ARREST REPORT and
DECLARATION OF PROBABLE CAUSE44 MULTIPLE CLEARANCE
INDICATOR41 AGENCY
ARREST/CASE NO. 16248-94ARREST GROUP
CLASSIFICATION: ☒ "A" ☐ "B"C ☐ Count Arrestee
M ☐ Multiple
N ☐ Non Applicable

2 LOCAL NO.

ARRESTEE
SEQUENCE NO.REFER TO
NO. (Specify)1 ARRESTING
AGENCY ORI NO NV 0160100ARRESTEE'S (Last, First, Middle)
NAME: MARI, Charles Joseph

AKA/ALIAS:

"Chuck" 62921

RESIDENCE (Street, City, State, Zip)
ADDRESS: 1015 Nevada St. #8

61 RESIDENCE STATUS:

R ☒ Resident
N ☐ Nonresident
U ☐ Unknown

If Resident, how long in:

Nevada? 4 yrs

Washoe Co? 5 yrs

49 RACE:
W ☒ White ☐ Indian
B ☐ Black ☐ Asian
U ☐ Unknown48 SEX:
M ☒ Male
F ☐ Female50 ETHNICITY:
H ☐ Hispanic
N ☐ Non-Hispanic
U ☐ UnknownDOB: 2-11-55
AGE: 39POB: San Bernardino, CA
HT: 6'0" WT: 200

HAIR: Blk EYES: BRN

OCCUPATION & BUS. ADDRESS: Roofer / unemployed

HOME PHONE: 324-4552

DRIV LIC
NO.DRIV LIC.
STATEARRESTEE'S VEH. ☐ Stored ☐ Left at Scene
☐ Not Applicable ☐ Impounded ☐ Held to Uth Per

BUS. PHONE

VEH LIC.
NO.VEH LIC
STATE

VIN

LOCATION
OF VEH.46 ARRESTEE WAS ARMED WITH: (Check Up to Two) (Enter 'A' in Box if Auto)
67 ☒ Unarmed ☐ Rifle ☐ Lethal
11 ☐ Unk Type of Firearm ☐ Shotgun ☐ Cutting Instrument
12 ☐ Handgun ☐ Oth Firearm ☐ Club/Blackjack/Etc43 TYPE OF ARREST:
6 ☐ On-View
9 ☐ Summoned/Cited
7 ☐ Taken Into Custody62 DISPOSITION OF
ARRESTEE UNDER 18.
H ☐ Handled Within Dept
R ☐ Refer to Other Auth.

45 UCR CODE:

ARREST. DATE 1-19-94 TIME 1345 LOCATION 455 E 2ND ST RENO

OFFENSE: DATE Dec 93 TIME APPROX 0900 LOCATION 1015 NV ST #8

CHARGE

("F"=Felony, "G"=Gross Misd., "M"=Misdemeanor) F-G-M

NRS/ORD NO.

BAIL

WARRANT NO & DATE

1. Sexual Assault (5 Counts) F 200-300

2. Lewdness of Minor under 14 yrs (5 Counts) F 200-230

3.

4.

5. 1015 NEVADA ST

ARRESTING OFFICER(S)
AND I.D NO(S) STEPHEN CRISP / BOHACHTRANSPORTING OFFICER
AND I.D NO(S)PRIVATE PERSON MAKING
THE ARREST (Citizen Arrest) THE RENO POLICEREVIEWING SUPERVISOR
AND I.D NO

The undersigned, _____, a police officer, of RENO POLICE DEPARTMENT, hereby declares under penalty of perjury, that the above-named defendant has been arrested on probable cause and is subject to detention for the above-listed offense(s). Either personally or upon information and belief this officer learned the following facts and circumstances which support the arrest and detention:

* SEE ATTACHED P.C. SHEETS *
FOR DETAILS

REL TO: DA DATE: 1/19/94 BY: PK

UNLAWFUL DISSEMINATION OF THIS RESTRICTED INFORMATION IS PROHIBITED.
VIOLATION WILL SUBJECT THE OFFENDER TO CRIMINAL AND CIVIL LIABILITY.

RELS TO: _____ DATE: _____ BY: _____
DISSEMINATION IS RESTRICTED TO CRIMINAL JUSTICE AGENCIES ONLY. SECONDARY DISSEMINATION TO NON-CRIMINAL AGENCIES IS PROHIBITED.

WHEREFORE, Declarant requests that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charge is a felony or gross misdemeanor) or for trial (if charge is a misdemeanor).

Page _____ of _____ DECLARANT: James G. Hine I.D. # 1835

REVIEWED FOR PROBABLE CAUSE (PC).
PC FOUND ☒ PC NOT FOUND ☐ DATE: 1-20-94 TIME: 1110

DEFENDANT ORDERED RELEASED, DATE: _____ MAGISTRATE: V2.409

S-308 (REVISED 6/93) PLEASE PRINT CLEARLY See instructions on back of fast page 104

DECLARATION SUPPLEMENT

Page 1/2

On 1-18-94, Officer Greg Ballew was dispatched to 1015 Nevada St. #7, in reference to a Child Molestation report. Upon arrival, he met with two sisters named Summer and Desiree. Summer is seven years old, Desiree is 10. Both females had disclosed to their father that their next door baby sitter "Chuck" had molested them. Chuck has been identified as Charles Joseph Maki.

On 1-19-94, I called the girls father Gary Menees on the telephone and set up an appointment at the police department to interview both girls about the allegations. The interview was scheduled for 1100 hrs. this date at the Reno Police Department Youth Services Section.

At 1100 hrs., I met with Gary and the girls. It was decided that the first girl to be interviewed was 10 year old Desiree. Desiree told me that on an unknown date approx. December 15th, 1993, she was at Maki's house being baby sitted by him. Maki then proceeded to remove her underwear and lift her nightgown up to her chest area. Maki then reportedly "french-kissed" her breast area and rubbed her vagina with his fingers including inserting his index finger directly into her vagina. Desiree also said that Maki had rubbed her vagina on the outside of her underwear and asked her if "it felt good." Desiree told me that on this date, she had sexual intercourse with Maki three separate times total where Maki actually placed his penis into her vagina. Two of these times occurred at Maki's apartment, and one time occurred at her apartment after she had returned home. She also said that Maki asked her to place her mouth on his exposed penis, but that she refused. Maki did have Desiree fondle his penis during this incident. Although he would on another date request that Desiree submit to the same activity again, she refused and he left her alone.

WHEREFORE, Declarant requests that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charge is a felony or gross misdemeanor) or for trial (if charge is a misdemeanor).

REVIEWED FOR PROBABLE CAUSE (PC)

PC FOUND ☐ PC NOT FOUND ☐DECLARANT Jame SlyI.D. # 1835

DATE: _____

MAGISTRATE

Page 1of 2

DEFENDANT ORDERED RELEASED, DATE: _____

MAGISTRATE

PLEASE PRINT CLEARLY

V2.110

105

DECLARATION SUPPLEMENT

Page 2/2

I spoke to the younger sister Summer who is seven years of age. Summer told me that she had also been "touched" by Maki during the month of December while he was baby sitting her. Summer related that Maki rubbed her both on the inside and outside of her panties with his fingers. She said that he removed her pants and underwear and placed his penis into her vagina. Summer also said that he placed his finger into her vagina and that it hurt. Summer said that Maki asked her to fondle his penis and that she refused. Summer said that this was the only incident that happened between Maki and her.

After speaking to both girls, I responded to Maki's house to meet with him. Maki was cooperative and agreed to come to the police department to discuss my investigation. Once at the police department, Maki admitted that the allegations were true, and that he had in fact fondled both girls. He stated that he had taken a shower and allowed Summer to "wash" his genital area with soap. I then advised Maki of his Miranda Rights to which he stated and he said that he understood. Maki said that he did not wish to speak anymore about the incidents, "Hey, I am guilty as hell," Maki said.

WHEREFORE, Declarant requests that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charge is a felony or gross misdemeanor) or for trial (if charge is a misdemeanor).

REVIEWED FOR PROBABLE CAUSE (PC).

PC FOUND ☐ PC NOT FOUND ☐

DECLARANT James J. H.

I.D. # 1025

DATE: _____, MAGISTRATE Page 2 of 2

DEFENDANT ORDERED RELEASED, DATE: _____, MAGISTRATE

PLEASE PRINT CLEARLY

V2.111

106

62,921



Second Judicial District Court
CASE ASSIGNMENT NOTIFICATION FORM

Case Record Number: F94-236

Today's Date: 1-24-94

Complaint Date: 1-21-94

Defendant Name(s): Maki, Charles Joseph

Id #: _____ Lower Court: RJC

() This is an appeal case from the lower courts.

This is to certify that on Date: 1-24-94 the above named defendant/case
was randomly assigned to Department: D-8

See the following related case(s): _____

This case () has () has not a trial/hearing date already scheduled as follows (Date): _____

Additional Information: _____

Assigned By (Name): Macke Phone #: 328-3110

Instructions: A copy of this form shall be distributed to the judge (where applicable), District Attorney and Public Defender/Private Attorney. The original shall be included in the case file. For cases assigned prior to January 1, 1992, the assignment shall have no effect unless the case is scheduled into 1992.

IN THE JUSTICE COURT OF RENO TOWNSHIP, COUNTY OF WASHOE
STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs. *Charles Joseph Maki*

Defendant.

NO. ESC 62,921

APPLICATION FOR APPOINTMENT OF PUBLIC DEFENDER

In accordance with NRS 171.188, as amended, the above named Defendant, says under penalties of perjury:

1. Affiant is indigent.
2. Affiant is without the financial means to employ an attorney because:
(a) Affiant has no personal funds and no family or friends with the ability to provide funds to assist him; (b) Affiant has no assets of any kind in this State or elsewhere to assist in the employment of counsel.

Defendant respectfully requests the court consider this Application for the appointment of the Public Defender of Washoe County, Nevada to represent Defendant.

x Charles J. Maki
DEFENDANT

DONE BEFORE ME January 28th 1994

E. D. Damm
COURT SERVICES OFFICER

ORDER

Upon reading the above Application, and Defendant's answers to financial inquiry, the court is satisfied that Defendant is an indigent person. IT IS HEREBY ORDERED THAT THE PUBLIC DEFENDER OF WASHOE COUNTY BE APPOINTED TO REPRESENT DEFENDANT.

DATED: 1/31/94

E. Damm
JUSTICE OF THE PEACE

The Public Defender is appointed at the rate of \$60/hour payable by the Defendant. A minimum of \$100.00 is charged for a Preliminary Examination, a waiver of the Preliminary Hearing or a plea at that time. More will be charged if justified. The first payment of \$100.00 is to be paid to this Court on or before the date set for Preliminary Examination or Trial.

☒ Reimbursement may be ordered at the time of Preliminary Examination or Trial.

1131 FINANCIAL INQUIRY TO DETERMINE ELIGIBILITY FOR WASHOE COUNTY PUBLIC DEFENDER #2
FILING DATE 1-19-94 Charles S. Maki ADDRESS: 1015 Nevada St #8 WORK PHONE: 824-4558
OFFENSE(S) SEXUAL ASSAULT (6cts) & LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (4 cts) PHONE: 89.503

CO-DEFENDANTS

I. PERSONAL INFORMATION:
A. PERSONS WHO CAN VERIFY FINANCIAL INFORMATION:
Name: Esther Chung Address: Home Phone: 912-5029 Work Phone: sister Relationship:

Name: Address: Home Phone: Work Phone: Relationship:
B. DOB: 02-11-55 SS#: MARITAL STATUS: single

C. NAME, RELATIONSHIP AND AGE OF DEPENDENTS YOU ACTUALLY SUPPORT:

D. IN CUSTODY? Yes ☒ No ☐ If no, bail amount: Bondsman:
Who paid premium: Name: Address: Phone:
Who put up collateral? Name: Address: Phone:

II. INCOME:
A. Are you employed? Yes ☐ No ☒ If yes, name of employer: Type of employment: Length of job:
Income: Shift: Week: Month:
If no, last employer: Alpine Pooling Month and year job ended: 8/17/92
Length of employment with last employer: 2 months
B. If married is spouse employed? Yes ☐ No ☒ If yes, where:
Income: Shift: Week: Month:
C. Are you unable to work? Yes ☒ No ☐ If yes, why: accident 8/92
D. If unemployed, how have you supported yourself: SITS

III. A. In the past 12 months have you received any income from self employment, disability payments, insurance settlements, an inheritance, dividend or interest payments or other? Yes ☒ No ☐
If yes, Source: SITS Amount Received: \$960/mo
Source: Amount Received:
B. Cash on hand or money in savings or checking accounts? Yes ☒ No ☐ If yes, cash amount: 30
Checking account number: Bank: Savings account amount:
Bank: C. Do you own real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing) Yes ☒ No ☐
If yes, Description: 1977 Ford P/U, Stolen Value:

IV. MONTHLY HOUSEHOLD EXPENSES:
A. Residence — Own: 400 — Rent: 400 — Other: Amount:
B. Food — Amount: 250 — C. Utilities — Amount: 20 — D. Transportation Expenses: 100 —
E. Alimony or Child Support — Amount: F. Insurance — Amount:
G. Child Care: H. Other: Amount:

V. Debts and Bills - List all creditors including banks, loan companies, charge accounts, medical/dental, etc.
Creditor: Monthly Payment: Total Due:
NONE

UNDER PENALTIES OF PERJURY I CERTIFY THAT THE INFORMATION PROVIDED IS TRUE. I REALIZE THAT ANY MISINFORMATION OR WITHHELD INFORMATION MAY AFFECT MY ELIGIBILITY TO RECEIVE SERVICES OF THE WASHOE COUNTY PUBLIC DEFENDER'S OFFICE AND FURTHER, COULD SUBJECT ME TO SEVERE PENALTIES OF FINE AND/OR IMPRISONMENT

Date: 1/28/94 Signature: x Charles S. Maki
Court Services Officer's Comments:

Defendant in this case had indicated private (Dennis Widdis) however, he was unable to afford him. He says that he has not worked since August of 92 when he was involved in an accident. He's currently on SITS. He claims no money & his only asset was a Ford P/U that was recently stolen. I believe that he qualifies for the Public Defender.

In the Justice Court of Reno Township
County of Washoe, State of Nevada

THE STATE OF NEVADA,

Plaintiff,

Against

CHARLES JOSEPH MAKI

Defendant.

FELONY
COMMITTMENT

RJC 62,921

COUNTY OF WASHOE }
STATE OF NEVADA } ss.

The State of Nevada to the Sheriff of the County of Washoe, Nevada:

An order having been this date made by me that the above named Defendant be held to answer upon a charge of CTS. I thru V: SEXUAL ASSAULT and COUNTS VII thru X: LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS

(stating briefly the nature of the offense)

committed in RENO Township, Washoe County, Nevada, on or about NOVEMBER 15 through JANUARY, 1993-94.

You are commanded to receive the Defendant into your custody, and detain the Defendant until the Defendant is legally discharged.

DATE: February 8, 1994.

EDWARD DANNAN

JUSTICE OF THE PEACE

Bail fixed at \$ 80,000.000

By *Nelora Heale*
Deputy Criminal Clerk

In the Justice Court of Reno Township, County of Washoe, STATE OF NEVADA

The State of Nevada

CHARLES JOSEPH MAKI
PCN 84033540

PLAINTIFF

DEFENDANT

COMPLAINT OF LEWIS TAITEL
AGENCY NO. RPD 016248-94

DA'S NO. F94 0236

ATTORNEY FOR PLAINTIFF
DISTRICT ATTORNEY

ATTORNEY FOR DEFENDANT PUBLIC DEFENDER

CHARGING: CT.I-VI: SEXUAL ASSAULT, a violation of NRS 200.366. CT.VII-X:
LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS, a violation of NRS
201.230, all felonies.

DATE
19 94

PROCEEDINGS

Jan. 20

Probable Cause Affidavit reviewed by Magistrate.
Probable Cause found.

Jan. 21

Complaint and Declaration of Probable Cause Arrest and Detention filed
and Defendant in custody.

Jan. 24

Defendant appeared before the Honorable Edward Dannan, and was duly
arraigned. Bail set at \$80,000.00. Defendant advised of his rights and
informed of the complaint. Preliminary Examination set for February 3,
1994, at 10:00 A.M. Defendant remanded to the custody of the Washoe
County Sheriff.

Feb. 2

Defendant indicated that he would retain Dennis Widdis, Esq.
Washoe County Public Defender appointed.

Feb. 3

AMENDED CRIMINAL COMPLAINT FILED TO READ AS FOLLOWS: CT.I-VI: SEXUAL
ASSAULT ON A CHILD UNDER THE AGE OF FOURTEEN YEARS, a violation of
NRS 200.366, CT.VII-XI: LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN
YEARS, a violation of NRS 201.230, all felonies.

Preliminary hearing proceeded before the Honorable Edward Dannan and
Defendant present with attorney, Janet Schmuck, Esq. State represented
by Daniel Greco, Esq. Witnesses called. State rests. Defendant WAIVED
right to make statement. Matter submitted.

The evidence indicates that COUNTS I, II, III, IV, V, and COUNTS VII,
VIII, IX, X, as set forth in the criminal complaint were committed and
that there is probable cause to believe that the Defendant participated
as principal in the commission of that offense. Therefore, Defendant is
held to Answer.

The evidence indicates that there is INSUFFICIENT evidence to find
probable cause to believe the crime as charged in COUNT VI was
committed. Therefore, COUNT VI is hereby DISMISSED.

ORDERED.

Edward Dannan

JUSTICE OF THE PEACE
DEPARTMENT NO. 2

Commitment issued and Defendant remanded to the custody of the Washoe
County Sheriff.

I hereby certify this is a true and correct copy of the original records of the
Reno Justice Court, Reno, Washoe County, Nevada and that the Clerk of the
Court is the custodian of the original record and that I am authorized to make
this certification.

Dann, Justice Court, Reno Justice Court

By *[Signature]*
Deputy Clerk of the Court

No. CR94-0345

Dept. No. 8

FILED

'94 FEB 18 P 4:34

Second Judicial District Court

State of Nevada, Washoe County

State of Nevada

Plaintiff,

vs.

Charles Joseph Masi

Defendant.

**APPLICATION FOR
SETTING**

TYPE OF ACTION: Criminal

MATTER TO BE HEARD: Motions

Date of Application: 2/17/94 Made by: Plaintiff
Plaintiff or Defendant

COUNSEL FOR PLAINTIFF: Greco

COUNSEL FOR DEFENDANT: Schmuck

Instructions: Check the appropriate box. Indicate clearly who is requesting the jury.

☐ Jury Demanded By (Name): _____

Estimated No. of Jurors: _____

☐ No Jury Demanded By (Name): _____

Estimated Duration of Trial: 3 1/2 hours

Attorney(s) for Plaintiff

Attorney(s) for Defendant

Motion - No. 1 Setting at 1:30p. m. on the 11th day of March, 19 94

Trial - No. _____ Firm Setting at _____ m. on the _____ day of _____, 19 _____

DC-9900039406-046
CR94-0345
STATE VS. CHARLES JOSEPH MAKI 6 Pages
District Court 02/23/1994 08:07 AM
Washoe County 4185
JYOS-
DOC

Case No. CR94-0345

FILED

Department No. 8

'94 FEB 23 A8:07

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JUDICIAL CLERK
BY *W. Stewart*
DEPUTY

HONORABLE STEVEN R. KOSACH

THE STATE OF NEVADA,

Plaintiff,

vs.

Arraignment

CHARLES MAKI,

Defendant.

-----/

TRANSCRIPT OF PROCEEDINGS

February 16, 1994

Reno, Nevada

APPEARANCES:

For the State:

Dan Greco
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant:

Janet Cobb Schmuck
Deputy Public Defender
195 South Sierra Street
Reno, Nevada

Reported by:

Isolde Zihn, CSR #87

1 RENO, NEVADA, WEDNESDAY, FEBRUARY 16, 1994, 9:00 A.M.

2 THE COURT: State of Nevada versus Charles Maki.

3 MS. SCHMUCK: Good morning, your Honor. Janet
4 Schmuck on behalf of Mr. Maki.

5 THE COURT: Good morning, Miss Schmuck.

6 MS. SCHMUCK: Your Honor, I would indicate to the
7 Court that Mr. Maki does have a severe hearing loss
8 problem. I know he's wearing a hearing aid this morning,
9 but he seems to be having some problems with it. I'd like
10 for the Court to be aware that he is--he will let me know if
11 he can't hear very well. He does have some hearing
12 problems.

13 THE COURT: Can you hear me?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you Charles J. Maki?

16 THE DEFENDANT: Yes.

17 THE COURT: Charles Joseph Maki?

18 THE DEFENDANT: Correct.

19 THE COURT: Let the record show that Charles Joseph
20 Maki is present with counsel, Miss Janet Schmuck. Present
21 for the State is Mr. Dan Greco.

22 We're here on an arraignment in case number
23 CR94-0345.

24 Let the record further show that I'm handing a

1 February 10th file-stamped Information entitled, "The State
2 of Nevada versus Charles Joseph Maki" to Miss Schmuck for
3 her review.

4 MS. SCHMUCK: Thank you, your Honor.

5 I'm sorry for the delay.

6 Your Honor, Mr. Maki has indicated to me his name
7 is spelled correctly on line 12. He is aware of the
8 contents of this Information and would waive a formal
9 reading at this time.

10 Your Honor, we're prepared to go forward and enter
11 not-guilty pleas to each of the 10 counts listed in the
12 Information.

13 THE COURT: Okay. How long do you think trial will
14 take?

15 MR. GRECO: Your Honor, I believe trial will take
16 no longer than three days, and it's possible that we might
17 finish in two.

18 THE COURT: All right. Is that--

19 MS. SCHMUCK: I would agree with that, your Honor.

20 Your Honor, I have also spoken to my client. We
21 would be waiving the 60-day rule.

22 THE COURT: Okay.

23 MR. GRECO: Your Honor, in this particular case,
24 the State does not wish to waive its 60-day right under

1 174.511. The statutory right does apply equally to the
2 State as well as the defendant. I'd like to move this case
3 along.

4 It's not particularly complicated for a sexual
5 assault. There's no psych testimony in this case. It's
6 just a matter of two little girls testifying, an alleged
7 confession from the defendant coming into evidence. There's
8 no shrink or other type of psychiatric testimony involved.

9 THE COURT: Mr. Maki, do you understand-- First of
10 all, let me confirm this. You desire to plead not guilty to
11 all 10 counts; is that right?

12 THE DEFENDANT: Yes.

13 THE COURT: You have the absolute right to go to
14 jury trial within 60 days. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: But you don't mind going outside of the
17 60 days; is that right?

18 THE DEFENDANT: No, I don't care.

19 THE COURT: The State desires to exercise it. I
20 have-- Let's go ahead and set the trial for April 11. Let's
21 set a motion to confirm for April 1st. Trial will start at
22 10:00 a.m. The motion to confirm will be at 9:00.

23 And please have everything done by April 1. When I
24 say "done," I mean all discovery, all motions out of the

1 way. In other words, when you come in on the 1st of April,
2 you just tell me you're going to trial or not. Okay?

3 MS. SCHEMUCK: Yes, your Honor.

4 THE COURT: Thank you.

5 MS. SCHEMUCK: Thank you.
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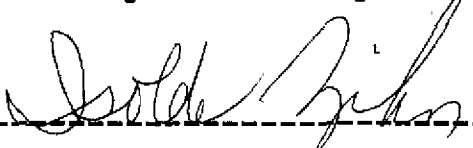
1 STATE OF NEVADA)
2 COUNTY OF WASHOE)
3

4 I, ISOLDE ZIHN, a Certified Shorthand Reporter of
5 the Second Judicial District Court of the State of Nevada,
6 in and for the County of Washoe, do hereby certify:

7 That I was present in Department 8 of the
8 above-entitled court on Wednesday, the 16th day of February,
9 1994, at the hour of 9:00 a.m. Of said day, and took
10 verbatim stenotype notes of the proceedings had upon the
11 matter of THE STATE OF NEVADA, Plaintiff, versus CHARLES
12 JOSEPH MAKI, Defendant, Case No. CR94-0345, and thereafter
13 reduced to writing by means of computer-assisted
14 transcription as herein appears;

15 That the foregoing transcript, consisting of pages,
16 1 through 5, all inclusive, contains a full, true and
17 complete transcript of my said stenotype notes, and is a
18 full, true and correct record of the proceedings had at said
19 time and place.

20
21 Dated at Reno, Nevada this 16th day of February, 1994.

22 
23 -----

24 Isolde Zihn, CSR #87

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FILED

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[Signature]
DEPUTY

No. CR94-0345
Dept. No. 8

DC-9900039405-048
CR94-0345
STATE VS CHARLES JOSEPH MAKI 10 Pages
District Court 03/04/1994 08 09 AM
Washoe County 2490
DOC

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

* * *

THE STATE OF NEVADA,
Plaintiff,

v.

CHARLES JOSEPH MAKI,
Defendant.

MOTION TO DETERMINE
ADMISSIBILITY OF VIDEOTAPED
INTERVIEW OF DEFENDANT'S
CONFESSION

COMES NOW, the State of Nevada, by and through DOROTHY NASH HOLMES, District Attorney of Washoe County, and DANIEL J. GRECO, Deputy District Attorney, and offers its Motion to Detemine Admissibility of the Videotaped Interview of Defendant's Confession.

This motion is based upon the attached Points and Authorities, and the pleadings and papers on file herein.

DATED this 3rd day of March, 1994.

DOROTHY NASH HOLMES
District Attorney

By *[Signature]*
DANIEL J. GRECO
Deputy District Attorney

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1 began moving it in and out. A short time later Summer walked
2 back into the room and the defendant once again pulled his
3 penis out of Desiree. The above events occurred in the
4 defendant's apartment.

5 After the defendant penetrated Desiree for the second
6 time, she left his apartment and went to her own apartment,
7 which was next door. A short time later the defendant entered
8 the apartment where Desiree lived and went into her bedroom.
9 He lifted her nightgown up and pulled her panties down. He
10 then inserted his penis a short distance into her vagina and
11 began moving it in and out.

12 The defendant also inserted his finger into Desiree's
13 vagina while he was still at the Menees' apartment. The
14 defendant moved his finger in and out of Desiree's vagina using
15 his index finger on his right hand. According to Desiree this
16 penetration "hurt."

17 The defendant also made Desiree touch and fondle his
18 penis and testicles during the day in question.

19 Several times during the same day the defendant was
20 also alone with Desiree's sister, Summer. At one point during
21 the day the defendant began rubbing and fondling the exterior
22 of Summer's vagina. The defendant asked Summer to touch his
23 "privates" but she said "no."

24 At one point the defendant laid Summer down, removed
25 her panties, and inserted his penis a short distance into her
26 vagina. He began moving his penis in and out of Summer's

1 vagina. Summer asked the defendant to "please stop" but the
2 defendant would not stop. According to Summer, the defendant's
3 penis "hurt" her. She told him to stop several times during
4 the ordeal.

5 The defendant also rubbed and fondled the exterior of
6 Summer's vagina for a period of time. On a number of occasions
7 the defendant also asked Summer to touch his "privates" but
8 Summer refused to do so.

9 During the day the defendant instructed both girls not
10 to tell anyone or else he would "go to jail."

11 Several weeks after the above-described events
12 occurred, the girls disclosed to their father exactly what had
13 happened to them. The police were immediately contacted and
14 the case was assigned to Reno Police Department Detective James
15 Stegmaier.

16 Detective Stegmaier interviewed the girls at the Reno
17 Police Department on January 19, 1994. The interview of the
18 girls was conducted in a non-leading manner and was
19 videotaped. Detective Stegmaier had no previous discussions
20 with the girls about what had happened to them prior to the
21 commencement of the videotaped interviews. During the
22 interviews the two girls freely discussed all of the above-
23 described acts in great detail.

24 Later that same day Stegmaier contacted the defendant,
25 Charles Joseph Maki. Maki voluntarily went with Stegmaier to
26

///

1 the Reno Police Department for the purposes of an interview.
2 The entire interview was videotaped.

3 During the first ten minutes of the interview the
4 defendant denied having any improper sexual contact with either
5 Desiree or Summer. During the next five minutes of the
6 interview, the defendant began making statements like "I don't
7 know what happened" and "I don't really remember what
8 happened."

9 A short time later the defendant began to make
10 inculpatory statements. The defendant admitted that he had
11 Desiree wash his back while he took a shower at his
12 residence. The defendant admitted that he had her wash around
13 his genitals and that she "might have" washed his testicles. A
14 short time later, the defendant began making many more
15 admissions. The defendant admitted that he pulled Desiree's
16 panties off and rubbed his penis on her vagina.

17 When Stegmaier asked the defendant to tell him exactly
18 what happened, the defendant replied "probably what Desiree
19 told you." The defendant also admitted "[he] was guilty"
20 regarding Desiree. The defendant made numerous other general
21 admissions of guilt such as "I should have known better."

22 Detective Stegmaier and his partner left the interview
23 room for a period of time. The defendant was left alone in the
24 room during this time. While alone, the defendant made a
25 number of spontaneous admissions of guilt. The defendant made
26 statements like "Why ... the stupidist thing," and "Why, why

1 ... I don't believe I did that." While making these admissions
2 the defendant would alternatively place his head in his hands
3 or look skyward.

4 At the conclusion of the interview the defendant was
5 placed under arrest. While Detective John Bohach asked the
6 defendant the routine questions necessary to fill out the
7 booking/probable cause form, the defendant spontaneously
8 blurted out "I had to get this off my chest ... I did something
9 wrong ... I've never done this before ... I hope it never
10 happens again." This was not in response to any questioning by
11 Bohach. After Bohach completed the booking/probable cause
12 form, he placed handcuffs on the defendant. A short time later
13 the defendant spontaneously blurted out "My lawsuit with
14 S.I.I.S. just went down the drain ... why, why ...". This
15 admission was also not made in response to any question asked
16 by Bohach. The defendant did in fact have a worker's
17 compensation case pending at the time of the interview. The
18 defendant was then taken into custody.

19 Later that day, while still in custody, the defendant
20 telephoned the girls' father, Gary Menees. The defendant
21 apologized to Menees for what he had done to Desiree and
22 Summer. He told Menees that he "couldn't explain why it
23 happened, it just happened." He also told Menees that he was
24 sorry he had "messed up" their friendship and told Menees not
25 to blame the girls.

26 ///

1 The preliminary hearing was held on February 3, 1994,
2 and the defendant was bound over on the ten counts of Sexual
3 Assault and Lewdness alleged in the Information.

4 ARGUMENT

5 The defendant's confession was completely voluntary in
6 nature. Jackson v. Denno, 378 U.S. 137 (1964); see also State
7 v. Passama, 103 Nev. 212 (1987). When Detective Stegmaier
8 asked the defendant to accompany him to the police station the
9 defendant immediately agreed. Absolutely no pressure or
10 coercion was implied in order to get the defendant to come down
11 to the police station. Additionally, the videotape which will
12 be played at the Motion Hearing in this matter clearly shows
13 that no coercion or intimidation was utilized by the police.
14 Indeed, the interview was remarkably calm and polite, given the
15 seriousness of the allegations discussed.

16 The defendant was not subjected to repeated
17 questioning, nor was he deprived of food or sleep. He was not
18 subjected to any physical or mental abuse. He was not even in
19 custody until the conclusion of the interview. The entire
20 interview took only 45 minutes, and this includes the portions
21 of the videotape where the defendant is left alone and where he
22 is answering the routine questions being asked by Detective
23 Bohach for purposes of completing the booking/probable cause
24 form.

25 A suspect must be read his constitutional rights prior
26 to questioning only in those situations where the suspect is

1 being subjected to "custodial interrogation." Miranda v.
2 Arizona, 384 U.S. 436 (1966); Berkemer v. McCarty, 468 U.S.
3 4209 (1984).

4 The defendant went down to the police station
5 voluntarily and was not under arrest. At the beginning of the
6 videotaped interview Stegmaier explained to the defendant that
7 he was free to leave at any time. Toward the end of the
8 interview Stegmaier read the defendant his constitutional
9 rights. Stegmaier did this because he had heard so many
10 admissions from the defendant that he was beginning to think
11 about arresting him. The defendant replied that he did not
12 want to talk any further and the detectives stopped questioning
13 him about the Menees case. Stegmaier and Bohach then left the
14 interview room. While alone in the room, the defendant then
15 made the various spontaneous admissions of guilt summarized in
16 the "FACTS" section, supra. The defendant later made
17 additional spontaneous admissions while being asked routine
18 booking questions by Detective Bohach. These admissions were
19 not in response to any questions asked by Bohach. Indeed,
20 these admissions had nothing to do with the routine questions
21 regarding date of birth, social security number, etc., which
22 were being asked by Bohach.

23 CONCLUSION

24 Based upon the foregoing, the State respectfully
25 requests that the entire contents of the videotaped interview
26 of the defendant be deemed admissible in evidence at trial,

1 following the motion hearing in this matter presently scheduled
2 for March 11, 1994. The State is requesting that this
3 determination be made well in advance of trial, so that if any
4 deletions are required by the Court they can be made in a
5 timely manner without causing any delay of the scheduled trial
6 date.

7 DATED this 3rd day of March, 1994.

8 DOROTHY NASH HOLMES
9 District Attorney

10 By 
11 DANIEL J. GRECO
12 Deputy District Attorney

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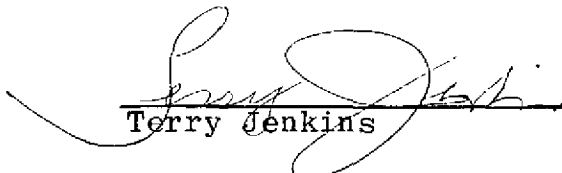
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3 **CERTIFICATE OF FORWARDING**

4 I hereby certify that I am an employee of the Washoe County District Attorney's
5 Office, Reno, Washoe County, Nevada, and that, on this date, I forwarded a true copy of the
6 foregoing document, through the Washoe County Interagency mail, addressed to:

7 Janet Schmuck

8 Deputy Public Defender

9
10 DATED this 4th day of March, 1994.

11
12 
13 Terry Jenkins

DC-990039406-047
CR94-0345 JOSEPH MAKI 9 Pages
STATE VS CHARLES JOSEPH MAKI 03/04/1994 08 10 AM
District Court Washoe County NVDC 2490

FILED

No. CR94-0345

'94 MAR -4 18:10

Dept. No. 8

Jack
DEPUTY

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

CHARLES JOSEPH MAKI,

Defendant.

MOTION TO DETERMINE
ADMISSIBILITY OF
OUT-OF-COURT STATEMENTS
OF CHILD SEX VICTIM
NRS 51.385

COMES NOW, the State of Nevada, by and through DOROTHY NASH HOLMES, District Attorney of Washoe County, and DANIEL J. GRECO, Deputy District Attorney, and offers its Motion to Detemine Admissibility of Out-of-court Statements of Child Sex Victim.

This motion is based upon the attached Points and Authorities, and the pleadings and papers on file herein.

DATED this 3rd day of February^{month}, 1994.

DOROTHY NASH HOLMES
District Attorney

By *Daniel J. Greco*
DANIEL J. GRECO
Deputy District Attorney

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1 began moving it in and out. A short time later Summer walked
2 back into the room and the defendant once again pulled his
3 penis out of Desiree. The above events occurred in the
4 defendant's apartment.

5 After the defendant penetrated Desiree for the second
6 time, she left his apartment and went to her own apartment,
7 which was next door. A short time later the defendant entered
8 the apartment where Desiree lived and went into her bedroom.
9 He lifted her nightgown up and pulled her panties down. He
10 then inserted his penis a short distance into her vagina and
11 began moving it in and out.

12 The defendant also inserted his finger into Desiree's
13 vagina while he was still at the Menees' apartment. The
14 defendant moved his finger in and out of Desiree's vagina using
15 his index finger on his right hand. According to Desiree this
16 penetration "hurt."

17 The defendant also made Desiree touch and fondle his
18 penis and testicles during the day in question.

19 Several times during the same day the defendant was
20 also alone with Desiree's sister, Summer. At one point during
21 the day the defendant began rubbing and fondling the exterior
22 of Summer's vagina. The defendant asked Summer to touch his
23 "privates" but she said "no."

24 At one point the defendant laid Summer down, removed
25 her panties, and inserted his penis a short distance into her
26 vagina. He began moving his penis in and out of Summer's

1 vagina. Summer asked the defendant to "please stop" but the
2 defendant would not stop. According to Summer, the defendant's
3 penis "hurt" her. She told him to stop several times during
4 the ordeal.

5 The defendant also rubbed and fondled the exterior of
6 Summer's vagina for a period of time. On a number of occasions
7 the defendant also asked Summer to touch his "privates" but
8 Summer refused to do so.

9 During the day the defendant instructed both girls not
10 to tell anyone or else he would "go to jail."

11 Several weeks after the above-described events
12 occurred, the girls disclosed to their father exactly what had
13 happened to them. The police were immediately contacted and
14 the case was assigned to Reno Police Department Detective James
15 Stegmaier.

16 Detective Stegmaier interviewed the girls at the Reno
17 Police Department on January 19, 1994. The interview of the
18 girls was conducted in a non-leading manner and was
19 videotaped. Detective Stegmaier had no previous discussions
20 with the girls about what had happened to them prior to the
21 commencement of the videotaped interviews. During the
22 interviews the two girls freely discussed all of the above-
23 described acts in great detail.

24 Later that same day Stegmaier contacted the defendant,
25 Charles Joseph Maki. Maki voluntarily went with Stegmaier to
26

///

1 the Reno Police Department for the purposes of an interview.
2 The entire interview was videotaped.

3 During the first ten minutes of the interview the
4 defendant denied having any improper sexual contact with either
5 Desiree or Summer. During the next five minutes of the
6 interview, the defendant began making statements like "I don't
7 know what happened" and "I don't really remember what
8 happened."

9 A short time later the defendant began to make
10 inculpatory statements. The defendant admitted that he had
11 Desiree wash his back while he took a shower at his
12 residence. The defendant admitted that he had her wash around
13 his genitals and that she "might have" washed his testicles. A
14 short time later, the defendant began making many more
15 admissions. The defendant admitted that he pulled Desiree's
16 panties off and rubbed his penis on her vagina.

17 When Stegmaier asked the defendant to tell him exactly
18 what happened, the defendant replied "probably what Desiree
19 told you." The defendant also admitted "[he] was guilty"
20 regarding Desiree. The defendant made numerous other general
21 admissions of guilt such as "I should have known better."

22 Detective Stegmaier and his partner left the interview
23 room for a period of time. The defendant was left alone in the
24 room during this time. While alone, the defendant made a
25 number of spontaneous admissions of guilt. The defendant made
26 statements like "Why ... the stupidist thing," and "Why, why

1 ... I don't believe I did that." While making these admissions
2 the defendant would alternatively place his head in his hands
3 or look skyward.

4 At the conclusion of the interview the defendant was
5 placed under arrest. While Detective John Bohach asked the
6 defendant the routine questions necessary to fill out the
7 booking/probable cause form, the defendant spontaneously
8 blurted out "I had to get this off my chest ... I did something
9 wrong ... I've never done this before ... I hope it never
10 happens again." This was not in response to any questioning by
11 Bohach. After Bohach completed the booking/probable cause
12 form, he placed handcuffs on the defendant. A short time later
13 the defendant spontaneously blurted out "My lawsuit with
14 S.I.I.S. just went down the drain ... why, why ...". This
15 admission was also not made in response to any question asked
16 by Bohach. The defendant did in fact have a worker's
17 compensation case pending at the time of the interview. The
18 defendant was then taken into custody.

19 Later that day, while still in custody, the defendant
20 telephoned the girls' father, Gary Menees. The defendant
21 apologized to Menees for what he had done to Desiree and
22 Summer. He told Menees that he "couldn't explain why it
23 happened, it just happened." He also told Menees that he was
24 sorry he had "messed up" their friendship and told Menees not
25 to blame the girls.

26 ///

1 The preliminary hearing was held on February 3, 1994,
2 and the defendant was bound over on the ten counts of Sexual
3 Assault and Lewdness alleged in the Information.

4 ARGUMENT

5 NRS 51.385 provides:

6 1. In addition to any other provision for
7 admissibility made by statute or rule of court,
8 a statement made by a child under the age of
9 ten years describing any act of sexual conduct
performed with or on the child is admissible
in a criminal proceeding regarding that sexual
conduct if the:

10 (a) Court finds, in a hearing out of the
presence of the jury, that the time, content
and circumstances of the statement provides
11 sufficient circumstantial guarantees of
trustworthiness; and

12 (b) [the] Child either testifies at the
proceeding or is unavailable or unable to
13 testify.

14 In the case at bar, the State seeks to introduce the
15 videotaped interview of Summer Menees pursuant to NRS 51.385.
16 Summer was seven years old at the time of the interview by
17 Detective Stegmaier. The State will not be seeking a finding
18 that Summer is "unavailable to testify" pursuant to NRS
19 51.385(1)(b). Rather, the State will call Summer to the stand
20 to testify during its case-in-chief at trial. This will allow
21 defense counsel to fully and vigorously cross-examine Summer
22 regarding both her trial testimony and out-of-court statements
23 allowed into evidence by the Court pursuant to this motion.

24 The State is not seeking to introduce Desiree's
25 videotaped interview within the context of this motion because
26 Desiree was ten years and six days old on the date she was

1 interviewed by Detective Stegmaier. Therefore, she was
2 technically six days beyond the age limit set forth in NRS
3 51.385. Of course, if the credibility of Desiree is attacked
4 by the defense at trial, then the State may seek to introduce
5 the videotaped interview of Desiree as a prior consistent
6 statement, as allowed by law.

7 CONCLUSION

8 Based upon the foregoing, the State respectfully
9 requests that a hearing be held pursuant to NRS 51.385(1)(a),
10 and that at the conclusion of the hearing the Court grant the
11 instant motion, and allow into evidence the videotaped
12 interview of Summer Menees.

13 DATED this 3rd day of March, 1994.

14 DOROTHY NASH HOLMES
15 District Attorney

16 By 
17 DANIEL J. GRECO
18 Deputy District Attorney
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0228-6893

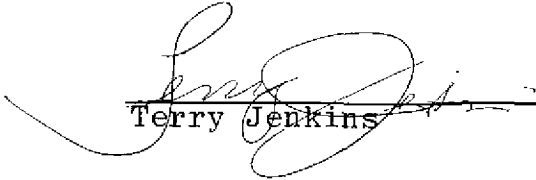
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3 **CERTIFICATE OF FORWARDING**

4 I hereby certify that I am an employee of the Washoe County District Attorney's
5 Office, Reno, Washoe County, Nevada, and that, on this date, I forwarded a true copy of the
6 foregoing document, through the Washoe County Interagency mail, addressed to:

7 Janet Schmuck

8 Deputy Public Defender

9
10 DATED this 4th day of MARCH, 19 94.

11
12 
13 Terry Jenkins

CR94-0345
DC-9900039406-049
STATE VS CHARLES JOSEPH MAKI 5 Pages
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No. CR94-0345

Dept. No. 8



IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,

vs.
CHARLES JOSEPH MAKI,
Defendant.

OPPOSITION TO STATE'S MOTION
TO DETERMINE ADMISSIBILITY OF
OUT-OF-COURT STATEMENTS OF CHILD
SEX VICTIM

COMES NOW, CHARLES JOSEPH MAKI, by and through his
counsel, JANET COBB SCHMUCK, Deputy Public Defender, and opposes
the above entitled motion by the State. Mr. Maki's opposition
is based upon the attached Points and Authorities, records
cited, and any argument regarding the issue.

DATED this 10th day of March, 1994.

MICHAEL R. SPECCHIO
Washoe County Public Defender

By Janet Cobb Schmuck
JANET COBB SCHMUCK
Deputy Public Defender

1 POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO
2 STATE'S MOTION TO DETERMINE ADMISSIBILITY
3 OF OUT-OF-COURT STATEMENTS OF CHILD SEX VICTIM

4 STATEMENT OF THE FACTS

5 A preliminary hearing was conducted in this case on
6 February 3, 1994. At that hearing, three witnesses provided
7 testimony: Desiree M., Summer M., and Detective James
8 Stegmaier.

9 Desiree, age ten, testified that in December, prior to
10 Christmas, her father asked their neighbor, Charles Maki, to
11 babysit her. Preliminary Hearing Transcript, hereinafter,
12 "PHT", p. 9, 24, 25, 26. Mr. Maki babysat Desiree on a regular
13 basis, particularly on Mondays and Tuesdays when she would stay
14 at his apartment after school until her father came home from
15 work at 6:30 p.m. PHT, pp. 31-32.

16 On this particular Monday, Desiree said she went to
17 Mr. Maki's apartment around 9:00 a.m. PHT, p. 26. It was a
18 holiday. Id. She was accompanied by her younger sister,
19 Summer. PHT, p. 13. She testified that Mr. Maki asked Summer
20 to go get some milk from their apartment. PHT, p. 15. While
21 Summer was gone, Mr. Maki rubbed his finger on her vagina, then
22 he removed her underwear, laid on top of her and put his penis
23 inside of her. PHT, pp. 14-17. Summer returned without the
24 milk, stayed a few seconds and left again. PHT, p. 18. Accord-
25 ing to Desiree's testimony, Mr. Maki laid down on top of her
26 again and put his penis inside of her. Id. He stopped when
 Summer returned once more. PHT, p. 19.

1 That same morning, according to Desiree, Mr. Maki came
2 to her apartment where he penetrated her vagina with his penis,
3 his finger and sucked her right breast. PHT, pp. 20-21. Mr.
4 Maki also made her touch his penis. PHT, p. 22.

5 Summer M., age 7-1/2, testified that Mr. Maki placed
6 his private on her private but she was not sure about penetra-
7 tion. PHT, p. 42. She also stated that Mr. Maki licked his
8 finger and put it on her private but not inside of her. PHT,
9 pp. 44-46. Summer recalled speaking with the police about Mr.
10 Maki and stated that she told them the truth which included that
11 Mr. Maki had put his private inside her private. PHT, pp. 42-
12 43. Over the objection of Mr. Maki, the State was allowed to
13 play and enter into evidence Summer's taped interview by the
14 police. PHT, p. 61, 68.

15 Detective James Stegmaier of the Reno Police
16 Department testified that he interviewed Desiree and Summer M.
17 on January 19, 1994. PHT, pp. 54-55. The interviews were con-
18 ducted at 11:45 a.m. PHT, p. 55. The detective subsequently
19 interviewed Mr. Maki that same day. PHT, p. 64. The interview
20 lasted about one half hour and resulted in Mr. Maki being placed
21 under arrest.

22 ARGUMENT

23 NRS 51.385 allows for the admissibility of an out-of-
24 court statement made by a child under ten years of age describ-
25 ing acts of a sexual nature done with or to the child. This
26 admissibility must satisfy three requirements. First, the

1 child's statements must be found to be trustworthy by the court
2 in a hearing outside the presence of the jury; second, the child
3 must either testify at the proceeding, or, a determination has
4 to be made that the child is unavailable or unable to testify;
5 and third, the child must be under the age of 10 years.

6 In the instant case, the State has indicated that the
7 child in question, Summer M., will testify during its case in
8 chief at trial. According to the record at preliminary hearing,
9 the child was 7-1/2 years old on February 3, 1993 and therefore
10 meets the statute's age requirement. This leaves the question
11 of the trustworthiness of the child's statement to be determined
12 by this Court and thereby, the admissibility of the statement.

13 **The State Has Not Shown The Statement To Be Trustworthy**

14 In Felix v. State, 109 Nev.Adv.Op. 26, ____ P.2d ____
15 1993, the Nevada Supreme Court considered at length the question
16 of the reliability of a child's hearsay statement. The Court
17 observed that "the totality of evidence must indicate that the
18 incriminating hearsay statements are particularly
19 trustworthy." Id. at p. 26. Citing to Idaho v. Wright, 497
20 U.S. 805 (1990), the Supreme Court provided a non-exclusive list
21 of factors to be used in determining trustworthiness:

22 (1) whether the statements were spontane-
23 ous; (2) whether the child was subjected
24 to repetitive questioning; (3) whether the
25 child had a motive to fabricate; (4)
26 whether the child used terminology
unexpected of a child of similar age; and
(5) whether the child was in a stable
mental state. Id. at 821-26.

1 Further, as noted by the Nevada Supreme Court, Wright, supra,
2 held that as the proponent of hearsay evidence, the State must
3 bear the burden of "affirmatively rebutting the presumptive
4 unreliability of a child's hearsay statements." Id. at p. 821.

5 The statement made by Summer M. to the Reno Police and
6 offered to this court is hearsay. Because of the inherent unre-
7 liability of statements by children under the age of ten years,
8 the Nevada Legislature passed NRS 51.385 requiring that such
9 statements be deemed trustworthy through a determination that
10 "the time, content and circumstances of the statement provide
11 sufficient circumstantial guarantees of trustworthiness."

12 In its motion to determine the admissibility of the
13 out-of-court statements of Summer M., the State has provided no
14 factual basis for its motion other than the interview was con-
15 ducted in a nonleading fashion, no previous discussions were
16 held with the child regarding the subject of the interview and
17 the interview was videotaped. This is not sufficient to estab-
18 lish the trustworthiness of the statement and therefore Mr. Maki
19 opposes it.

20 DATED this 10th day of March, 1994.

21 MICHAEL R. SPECCHIO
22 Washoe County Public Defender

23 By Janet Cobb Schmuck
24 JAMET COBB SCHMUCK
25 Deputy Public Defender
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STATE VS CHARLES JOSEPH MAKI 4 Pages
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No. CR94-0345

Dept. No. 8

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JUDICIAL CLERK
81 *[Signature]*

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

THE STATE OF NEVADA,
Plaintiff,

vs.
CHARLES JOSEPH MAKI,
Defendant.

OPPOSITION TO STATE'S MOTION
TO DETERMINE ADMISSIBILITY OF
VIDEOTAPED INTERVIEW OF
DEFENDANT'S CONFESSION

COMES NOW, CHARLES JOSEPH MAKI, by and through his
counsel, JANET COBB SCHMUCK, Deputy Public Defender, and opposes
the above entitled motion by the State. Mr. Maki's opposition
is based upon the attached Points and Authorities, records
cited, and any argument regarding the issue.

DATED this 10th day of March, 1994.

MICHAEL R. SPECCHIO
Washoe County Public Defender

By *Janet Cobb Schmuck*
JANET COBB SCHMUCK
Deputy Public Defender

1 POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO
2 STATE'S MOTION TO DETERMINE ADMISSIBILITY
3 OF VIDEOTAPED INTERVIEW OF DEFENDANT'S CONFESSION

4 STATEMENT OF THE FACTS

5 A preliminary hearing was conducted in this case on
6 February 3, 1994. At that hearing, three witnesses provided
7 testimony: Desiree M., Summer M., and Detective James
8 Stegmaier.

9 Desiree, age ten, testified that in December, prior to
10 Christmas, her father asked their neighbor, Charles Maki, to
11 babysit her. Preliminary Hearing Transcript, hereinafter,
12 "PHT", p. 9, 24, 25, 26. Mr. Maki babysat Desiree on a regular
13 basis, particularly on Mondays and Tuesdays when she would stay
14 at his apartment after school until her father came home from
15 work at 6:30 p.m. PHT, pp. 31-32.

16 On this particular Monday, Desiree said she went to
17 Mr. Maki's apartment around 9:00 a.m. PHT, p. 26. It was a
18 holiday. Id. She was accompanied by her younger sister,
19 Summer. PHT, p. 13. She testified that Mr. Maki asked Summer
20 to go get some milk from their apartment. PHT, p. 15. While
21 Summer was gone, Mr. Maki rubbed his finger on her vagina, then
22 he removed her underwear, laid on top of her and put his penis
23 inside of her. PHT, pp. 14-17. Summer returned without the
24 milk, stayed a few seconds and left again. PHT, p. 18. Accord-
25 ing to Desiree's testimony, Mr. Maki laid down on top of her
26 again and put his penis inside of her. Id. He stopped when
Summer returned once more. PHT, p. 19.

1 That same morning, according to Desiree, Mr. Maki came
2 to her apartment where he penetrated her vagina with his penis,
3 his finger and sucked her right breast. PHT, pp. 20-21. Mr.
4 Maki also made her touch his penis. PHT, p. 22.

5 Summer M., age 7-1/2, testified that Mr. Maki placed
6 his private on her private but she was not sure about penetra-
7 tion. PHT, p. 42. She also stated that Mr. Maki licked his
8 finger and put it on her private but not inside of her. PHT,
9 pp. 44-46. Summer recalled speaking with the police about Mr.
10 Maki and stated that she told them the truth which included that
11 Mr. Maki had put his private inside her private. PHT, pp. 42-
12 43. Over the objection of Mr. Maki, the State was allowed to
13 play and enter into evidence Summer's taped interview by the
14 police. PHT, p. 61, 68.

15 Detective James Stegmaier of the Reno Police
16 Department testified that he interviewed Desiree and Summer M.
17 on January 19, 1994. PHT, pp. 54-55. The interviews were con-
18 ducted at 11:45 a.m. PHT, p. 55. The detective subsequently
19 interviewed Mr. Maki that same day. PHT, p. 64. The interview
20 lasted about one half hour and resulted in Mr. Maki being placed
21 under arrest.

22 ARGUMENT

23 The State moves this Court to allow the admission of
24 Mr. Maki's videotaped interview by the Reno Police on January
25 19, 1994. The State argues that Mr. Maki's statement was
26 voluntary and it cites Jackson v. Denno, 378 U.S. 137 (1964) and

1 State v. Passama, 103 Nev. 212, 735 P.2d 321 (1987).

2 With all due respect to the State's eagerness to have
3 this issue decided by the Court, Mr. Maki will be filing a
4 Motion to Suppress which is the appropriate procedural mechanism
5 to present this matter for the Court's consideration. See Cook
6 v. State, 85 Nev. 642, 462 P.2d 523 (1969). Further, NRS
7 174.125 (3)(a) provides that a motion to suppress must be made
8 not less than 15 days before the date set for trial. Mr. Maki's
9 trial is currently scheduled for April 11, 1994 which allows him
10 until March 28 to file motions under NRS 174.125. Therefore,
11 Mr. Maki respectfully requests that this Court deny the State's
12 motion, or, in the alternative, delay its decision until it
13 hears Mr. Maki's motion to suppress.

14 DATED this 10th day of March, 1994.

15 MICHAEL R. SPECCHIO
16 Washoe County Public Defender

17 By Janet Cobb Schmuck
18 JANET COBB SCHMUCK
19 Deputy Public Defender

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES - HEARING

CONT'D TO

03/11/94

EVIDENTIARY MOTIONS

HONORABLE

STEVEN R.

KOSACH

DEPT. NO. 8

S. Hopper

(Clerk)

I. Zihn

(Reporter)

Deputy District Attorney Dan Greco was present for the State. Defendant present with counsel, Deputy Public Defender Janet Cobb Schmuck. Counsel Greco addressed the Court and reviewed the contents of the video tape for the evidentiary motion.

Detective James Stegmaire was called by Counsel Greco, sworn and testified.

State's Exhibit A was marked for identification; offered and ordered admitted.

The video tape was played for the Court.

Witness was further direct examined; cross examined; re-direct examined.

Counsel Greco presented arguments for the allowance of the video tape.

Counsel Schmuck presented arguments to not allow the video tape.

COURT ORDERED: Motion to allow the video tape into evidence during trial is granted.

Counsel Greco moved to release State's Exhibit A to the District Attorney's office; no objections; SO ORDERED.

Counsel Schmuck addressed the Court regarding discovery of the Saint's examination; COURT ORDERED GRANTED. Defendant was remanded to the custody of the Sheriff.

04/01/94

9:00 a.m.

Motion to
confirm

04/11/94

10:00 a.m.

Jury Trial

CR94-0345
STATE VS CHARLES JOSEPH MAKI 1 Page
District Court 03/11/1994 02 12 PM
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CR94-0345
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STATE VS CHARLES JOSEPH MAKI 3 Pages
District Court 03/18/1994 03:16 PM
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No. *CR 94-0345*

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Dept. No. *8*

JUDICIAL CLERK

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

STATE OF NEVADA,

Plaintiff,

vs.

Charles Joseph Maki

Defendant.

STIPULATION AND ORDER FOR
RECIPROCAL DISCOVERY

IT IS HEREBY STIPULATED by and between the parties:

1. The State shall provide Defendant with copies of
all police reports and witness statements within the
possession, custody and control of the State as of the date of
the execution of said Stipulation. Work product in the form of
memorandums, notes and other internal documents shall not be
included.

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1 2. In addition, the State shall permit the
2 inspection and copying of all discovery materials provided in
3 NRS 174.235 and NRS 174.245, as well as all exculpatory
4 materials pursuant to Brady v. Maryland, 373 U.S. 83 (1963).

5 3. Upon the execution by the Defendant of a Consent
6 to Release of Criminal History, Defendant's criminal records as
7 known by the Washoe County District Attorney's Office shall be
8 provided.

9 4. Pursuant to the discovery to be provided herein
10 by the State, the Washoe County District Attorney's Office
11 shall be entitled to inspect and copy all discovery materials
12 provided for in NRS 174.255 as well as the names, addresses and
13 telephone numbers of all prospective witnesses including all
14 expert witnesses. By this Stipulation the Defendant further
15 waives the requirement of any showing of materiality underlying
16 this production.

17 5. The discovery stipulated to and ordered herein is
18 to be furnished to the respective parties forthwith or as soon
19 as practicable thereafter upon its receipt, but in any case
20 before the commencement of trial. Both parties shall be under
21 a continuing duty to disclose said materials as they become
22 known or through the exercise of due diligence may become
23 known, including materials or information discovered during the
24 course of trial.

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STATE VS CHARLES JOSEPH MAKI 2 Pages
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No. CR94-0345

Dept No. 8

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WID BAILLY : ENK
BY *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Appellant,

vs.
CHARLES JOSEPH MAKI,
Respondent.

MOTION TO COMPEL
PRODUCTION OF DISCOVERY

COMES NOW, CHARLES JOSEPH MAKI, by and through counsel,
JANET COBB SCHMUCK, Deputy Public Defender, and respectfully
moves this Court to order the Washoe County District Attorney's
Office to produce the following in accord with the discovery
ordered by this Court on March 11, 1994:

1. Any results or reports of the physical examination
of Desiree M.;
2. Any results or reports of the physical examination
of Summer M.;
3. Any results or reports of the examination of Desiree
M. by a S.A.I.N.T.S. representative;
4. Any results or reports of the examination of Summer
M. by a S.A.I.N.T.S. representative;
5. Any audio recordings or transcriptions of such of
911 phone calls made by Gary Menees;

1 6. Any results or reports of scientific tests done on
2 blood or semen in connection with this case;

3 7. Any results or reports of scientific tests done in
4 connection with this case with regard to any forensic
5 investigation.

6 DATED this 21st day of March, 1994.

7 MICHAEL R. SPECCHIO
8 Washoe County Public Defender

9 By Janet Cobb Schmuck
10 JANET COBB SCHMUCK
11 Deputy Public Defender

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CR94-0345
STATE VS CHARLES JOSEPH MAKI
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Case No. CR94-0345

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34 MAR 25 1994

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
HONORABLE STEVEN R. KOSACH

THE STATE OF NEVADA,
Plaintiff,

vs.

Evidentiary motions

CHARLES JOSEPH MAKI,
Defendant.

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TRANSCRIPT OF PROCEEDINGS

March 11, 1994

Reno, Nevada

APPEARANCES:

For the State:

Dan Greco
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant:

Janet Schmuck
Deputy Public Defender
195 South Sierra Street
Reno, Nevada

Reported by:

Isolde Zihn, CCR #87

INDEX

STATE'S WITNESSES: Direct Cross Redirect Recross

James Stegmaier 5 13 14

STATE'S EXHIBITS: For identification In evidence

A 10 11

1 RENO, NEVADA, FRIDAY, MARCH 11, 1994, 1:25 P.M.

2 THE COURT: I want to thank everybody for coming in
3 a little early. I appreciate it.

4 Okay. We're here on the record in case number
5 CR94-0345, State of Nevada versus Charles Maki.

6 Mr. Maki is present with counsel, Ms. Janet
7 Schmuck. The State is represented by Mr. Dan Greco.

8 This is a hearing pursuant to statute regarding the
9 statement of the youngest child. Is that right, the
10 youngest child?

11 MR. GRECO: That's correct, your Honor.

12 THE COURT: And seven-and-a-half years old?

13 MR. GRECO: She was approximately seven-and-a-half
14 at the time of the interview, your Honor. Her name is
15 Summer.

16 THE COURT: Okay. Why don't we go ahead and do a
17 brief statement first, if you desire to do so, both of you,
18 and then we'll go ahead with the videotape.

19 MR. GRECO: Yes, your Honor.

20 In terms of the summary of the facts that are going
21 to be presented in support of the motion, I'm going to
22 present Detective Jim Stegmaier, who in terms of this little
23 girl, Summer, was the first and only police officer to
24 interview her. You'll see that this interview occurred on

1 January 19th, and that Summer had not been talked to
2 previously by the police.

3 You'll see also that her sister, Desiree, who is
4 over 10, had been very briefly for a few minutes talked to
5 by the police the day before. This is the child's first
6 contact with the police. You will hear Detective Stegmaier
7 simply brought her in the room. Everything that was said
8 between them is on the tape. There was no conversation
9 between the two of them that's not on the tape. And he'll
10 testify to that, your Honor.

11 THE COURT: Okay.

12 MR. GRECO: Then, your Honor, she will simply give
13 statements that relate to the counts in the Information
14 charge that apply to her. She makes statements regarding
15 all of those on the videotape.

16 And you'll also hear about the officer's
17 qualifications and experience in dealing with child victims
18 in sex cases.

19 THE COURT: Okay. Thank you.

20 MS. SCHMUCK: Your Honor, I will reserve any
21 statements until our final arguments.

22 Thank you.

23 THE COURT: Thank you.

24 Do you plan on calling Detective Stegmaier as a

1 witness at this time?

2 MR. GRECO: Yes, your Honor. I would like him
3 called.

4 THE COURT: Detective, why don't you come on up,
5 please, sir.

6 THE WITNESS: Yes, your Honor.

7 THE COURT: Go ahead and face the clerk, raise your
8 right hand to be sworn, please.

9 (Witness sworn.)

10 THE COURT: Please have a seat.

11 THE WITNESS: Thank you, your Honor.

12 JAMES STEGMAIER,
13 called as a witness on behalf of the State,
14 first having been duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. GRECO:

18 Q. Detective Stegmaier, I am going to try to speak in
19 a fairly loud tone. The defendant has a bit of a hearing
20 problem. Okay?

21 A. Okay.

22 Q. Would you please state your name and spell your
23 last name.

24 A. It's James Stegmaier. Spell the last name

1 S-t-e-g-m-a-i-e-r.

2 Q. Who are you employed by?

3 A. I'm employed with the City of Reno as a police
4 detective.

5 Q. What is your current rank or capacity?

6 A. It's a detective assigned to the Youth Services Sex
7 Crimes Unit with the Reno Police Department.

8 Q. How long have you been employed by the Reno Police
9 Department?

10 A. Approximately five-and-a-half years.

11 Q. And have you received any specialized training in
12 interviewing child sex victims?

13 A. Yes, I have.

14 Q. And briefly describe that training for the Court.

15 A. I've graduated from three POST-certified academies,
16 which are each approximately four months in length. Prior
17 to this I was a police officer in the City of Westminster in
18 Orange County, California.

19 I have an associate's degree in criminal justice,
20 which contained a portion of classes that did touch on the
21 aspect of dealing with people who--or crimes involving
22 victims that are possibly sensitive to questioning, such as
23 children and/or female adults or rape victims and that
24 nature.

1 Also prior--excuse me--after that I was assigned to
2 the Youth Services Section of RPD. I attended a 40-hour San
3 Jose College course involving sexual assault. Part of that
4 course involved the interview of children. How to ask
5 proper questions that are both non-leading, and basically
6 allow the children to tell you what happened without giving
7 them any type of direction at all.

8 Q. And using the last six months as a reference point,
9 approximately how many interviews of children under 16 who
10 have allegedly been the victims of some type of sex crime
11 would you say you have interviewed?

12 A. I would say in the last six months 25.

13 Q. Detective Stegmaier, are you assigned to the case
14 of State of Nevada versus Charles Joseph Maki?

15 A. Yes, I am.

16 Q. And can you recall on what date you were first
17 assigned that case?

18 A. The case originally came into the police department
19 on January 18th. It was placed on my desk on the morning of
20 January 19th, 1994.

21 Q. And did you conduct an interview of a child or
22 children as a result of your being assigned that case?

23 A. Yes, I did.

24 Q. What date did you conduct your interview or

1 interviews?

2 A. Upon receiving report on January 19th I contacted
3 the children's father, Gary Menees, and introduced myself as
4 the detective assigned to that case. I asked Mr. Menees if
5 he would be willing to bring the girls in for an interview
6 with me, which would have been the first time I met the
7 girls. We agreed upon 11:00 o'clock that morning for the
8 interview to be conducted.

9 Q. And did they arrive at that time, 11:00 o'clock?

10 A. Yes, they did.

11 Q. Did you conduct an interview of both children?

12 A. Yes, I did.

13 Q. Where did you conduct the interview of the
14 children?

15 A. The Reno Police Department has an interview room
16 which is specifically assigned to the Sex Crimes Unit. And
17 the interview of each girl individually was completed in
18 that room.

19 Q. And can you recall which of the little girls you
20 interviewed first?

21 A. Yes.

22 Q. Which one?

23 A. Desiree was interviewed first at approximately
24 11:45 in the morning.

1 Q. And how did you decide to interview Desiree first,
2 as opposed to Summer?

3 A. Both girls were placed in the briefing room that we
4 use for the patrol officers so that I could speak to their
5 father alone for a while and basically just inform him how I
6 was going to go about talking to the girls and see if he had
7 any questions that he wanted me to hit on prior to going in
8 there.

9 When I approached the girls, I asked which one
10 wanted to go first. Both of them kind of pointed to each
11 other. So I flipped a coin, and Desiree called it, and she
12 lost, so she was the first one to go.

13 Q. And how long did your interview last with
14 Desiree ?

15 A. Approximately 20 minutes.

16 Q. And did you then interview Summer?

17 A. Yes, I did.

18 Q. At approximately what time did the interview of
19 Summer commence?

20 A. I would say roughly at probably 12:15.

21 Q. And how old was Desiree on this date, January
22 19th?

23 A. She was seven and a few months. I don't know--

24 Q. I am talking about Desiree, not Summer.

1 A. I'm sorry. Desiree was 10 years old.
2 Q. How old was Summer on January 19th of this year?
3 A. She was approximately seven years of age and a few
4 months.
5 Q. Did you talk with Summer at all about the facts of
6 this case prior to bringing her into the interview room?
7 A. Not at all.
8 Q. To your knowledge, had any police officer talked to
9 Summer prior to your interviewing her?
10 A. No. I was the first one to speak with her in
11 reference to it.
12 Q. Now, when you completed all of your interviewing
13 that day, did you remove a videotape from a machine?
14 A. Yes, I did.
15 Q. Did you check it to see if it had accurately
16 recorded the interviews?
17 A. Yes, I did.
18 THE CLERK: State's Exhibit A for identification.
19 (State's Exhibit A was marked
20 for identification.)
21 BY MR. GRECO:
22 Q. Detective Stegmaier, I'm showing you a videotape
23 cassette box and a videotape cassette which have both been
24 marked State's Exhibit A. Would you take a look at the

1 writing on those items.

2 A. It's my writing.

3 Q. Do you recognize that box and the writing and the
4 cassette?

5 A. Yes, I do.

6 Q. Where do you recognize those items from?

7 A. Upon removing the tape from the recorder on January
8 19th, I marked the--I labeled them, both sides of this
9 cassette, and marked them with my writing, the date, and
10 exactly what was on the tape.

11 MS. SCHMUCK: Your Honor, at this point, for the
12 purposes of this hearing only, I would move for admission of
13 State's Exhibit A and ask that the tape be played at this
14 point.

15 THE COURT: Okay. Any objection?

16 MS. SCHMUCK: No objections, your Honor, for
17 purposes of this hearing.

18 THE COURT: Okay. For the purposes of this hearing
19 we'll admit A.

20 (State's Exhibit A was
21 admitted into evidence.)

22 MR. GRECO: And, your Honor, the record should also
23 reflect that I have fast-forwarded the tape to 24 minutes
24 and 10 seconds to skip the portion of Desiree's interview

1 and go right to Summer's interview.

2 THE COURT: Okay. Thank you.

3 (The videotape was played.)

4 THE COURT: Hang on a second. Let's get the--

5 MR. GRECO: Can you hear okay up there, Judge?

6 THE COURT: No. It's coming out not real clear.

7 MR. GRECO: Judge, there should be a volume control
8 on this machine. Let me turn this back on, see if you can--

9 THE COURT: Okay.

10 (The videotape was played.)

11 BY MR. GRECO:

12 Q. Detective Stegmaier, at any time during that
13 interview did Summer seem to be to you to be upset at any
14 point?

15 A. No.

16 Q. Did she seem fairly calm throughout the interview?

17 A. Yes.

18 Q. Would you describe her emotional state as being
19 calm during that interview?

20 A. Yeah. I'd say emotionally she was calm, yet
21 visibly embarrassed at times.

22 Q. As the two of you left that room, once she was
23 outside, did she go into any emotional tantrums?

24 A. No.

1 MR. GRECO: That's all I have, your Honor.

2 THE COURT: Thank you.

3 Miss Schmuck.

4 MS. SCHMUCK: Thank you, your Honor

5 CROSS-EXAMINATION

6 BY MS. SCHMUCK:

7 Q. Officer Stegmaier, did you talk to Desiree--I mean,
8 to Summer's teacher about any discussions that Summer would
9 have had with her teacher?

10 A. No, I didn't.

11 Q. Did you talk to a school--her school counselor
12 about any discussions that she would have with the school
13 counselor?

14 A. No, ma'am.

15 Q. Did you talk to the neighbors who lived downstairs
16 from them about any discussion she would have had with them
17 about this?

18 A. No, ma'am.

19 Q. Did you talk to her father about any discussions?

20 A. Yes.

21 Q. Did you talk with anyone with respect to whether or
22 not the child may have had a reason to fabricate a story
23 about this?

24 A. No, ma'am, I did not.

1 MS. SCHMUCK: I have nothing further, your Honor.

2 THE COURT: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. GRECO:

5 Q. When you spoke with her father, Gary Menees, about
6 talking to her, did Gary tell you how many times he had sat
7 down and talked with Summer?

8 A. When I spoke to Mr. Menees, he told me that his
9 daughters had confronted him with what had occurred and that
10 he had immediately called the police. And it wasn't later
11 that night; it wasn't the following day; he called the
12 police immediately.

13 Q. And was that on or around the 18th of January, if
14 you know?

15 A. It was on the 18th of January.

16 MR. GRECO: Thank you. That's all I have.

17 THE COURT: Thank you, Detective. You can step
18 down.

19 THE WITNESS: Thank you, your Honor.

20 (Witness excused.)

21 MR. GRECO: Your Honor, that concludes my
22 presentation of the evidence on the motion. The rest I have
23 would be by way of argument.

24 THE COURT: Okay. Do you have anything, Miss

1 Schmuck?

2 MS. SCHMUCK: I have nothing further, your Honor.

3 THE COURT: Thank you.

4 Go ahead, Mr. Greco.

5 MR. GRECO: Your Honor, the statutory language is
6 very clear. NRS 51.385 states that: In addition to any
7 other provision for admissibility made by statute or rule of
8 court, a statement made by a child under the age of 10 years
9 describing any act of sexual conduct performed with or on
10 the child is admissible in a criminal proceeding regarding
11 that sexual conduct if the Court finds in a hearing outside
12 of the presence of the jury the time, content and
13 circumstances of the statement provides sufficient
14 circumstantial guarantees of trustworthiness, and the child
15 either testifies at the proceeding, or is unavailable or
16 unable to testify.

17 And then, your Honor, Miss Schmuck correctly points
18 out the factors that our State Supreme Court has set forth
19 in determining whether or not that there is
20 trustworthiness. The Court says you should look to, one,
21 whether the statements were spontaneous; two, whether the
22 child was subjected to repetitive questioning; three,
23 whether the child has a motive to fabricate; four, whether
24 the child used terminology unexpected of a child of similar

1 age; and, five, whether the child was in a stable mental
2 state.

3 Judge, I think, given that we have a
4 seven-year-old, that interview was conducted in as
5 non-leading a fashion as possible. You heard about the
6 officer's training. And I think he did an excellent job of
7 not leading her. I think her answers to just about every
8 question you saw were spontaneous. She did not have to
9 search long minutes for answers. She gave immediate answers
10 in each case.

11 Your Honor, in terms of factor number two, whether
12 the child was subjected to repetitive questioning, she was
13 not. For a child sex case, this case is fairly unique in
14 that at least in the evidence you heard today there was
15 almost no questioning before this point. The police did not
16 talk to Summer at all, and they talked to Desiree only
17 briefly the day before. And you heard in the testimony,
18 your Honor, that Gary Menees, when he heard these
19 allegations, immediately called the police. That occurred
20 on the 18th. And the first officer arrived on the 18th,
21 talked to Desiree only briefly, and then Stegmaier comes
22 into the case the next day.

23 Whether the child has a motive to fabricate.
24 Nothing presented here showing that, your Honor.

1 Whether the child used terminology unexpected of a
2 child of similar age. She did not. She used terminology
3 exactly as you would expect a seven-year-old to use. Of
4 course, she was a little uncomfortable talking to these men
5 that to her seemed quite a bit older. But she used words
6 exactly as you would expect a child her age to.

7 Finally, your Honor, whether the child was in
8 stable mental state. The only evidence presented here both
9 in the testimony and on the videotape was that she was calm,
10 collected. She was not upset or excited. You heard
11 Detective Stegmaier tell you that after she left the room
12 there were no type of outbursts.

13 So, Judge, even using the factors presented by Miss
14 Schmuck, I think this tape is about as good as it gets in a
15 child sex case. But the key is: The words were clearly
16 coming from Summer's mouth and from Summer's thought
17 process. The answers she gave clearly were not coming from
18 Detective Stegmaier. I think the evidence shows that the
19 tape is clearly trustworthy, your Honor, and I think it
20 should be admitted.

21 THE COURT: Thank you.

22 Miss Schmuck.

23 MS. SCHMUCK: Thank you, your Honor.

24 Your Honor, first of all, let me say that I, in

1 terms of the officer's questioning of the child, I think
2 that he did an excellent job, and I am not questioning that
3 in terms of the nature of the questioning and his training.
4 That I think that that was an excellent job.

5 Why I'm taking issue, we are taking issue, of the
6 trustworthiness of this is that according to Summer's
7 testimony at the preliminary hearing, she had spoken
8 previously to her sister, Desiree. She had talked to her
9 teacher at her school. She had talked to the school
10 counselor. She said she talked to a doctor--

11 MR. GRECO: Your Honor, I'm going to object to
12 argument at this point because we are talking about evidence
13 that was not presented at this hearing. This is the motion
14 hearing for presentation of evidence. There was no motion
15 to have the prelim transcript admitted.

16 THE COURT: I will overrule the objection. One of
17 the parameters is whether or not the child was subjected to
18 repetitive questioning. I think that's what Miss Schmuck is
19 saying. As an officer of the court, if she's telling me
20 that was said at the prelim, so be it.

21 MS. SCHMUCK: I would add, your Honor, that I did
22 in my facts for my opposition, I did cite to the preliminary
23 hearing.

24 THE COURT: And I accept that.

1 MS. SCHMUCK: Thank you, your Honor.

2 She had talked to--she also testified that she had
3 talked to a doctor. So there were a number of people that
4 the child talked to prior to talking to the police. I think
5 that she also testified that she talked to the neighbors
6 downstairs.

7 My concern at this point, and from the officer's
8 testimony just now, is that no one talked to the people that
9 the child had talked to to determine whether or not there
10 was any sort of consistency with the statements.

11 I think that just viewing this tape in the vacuum
12 of the tape itself, the tape looks trustworthy in the way it
13 was made. I'm not saying there's any splicing, that there's
14 anything going on. We don't know what sort of statements
15 that the child had made previously from who she had talked
16 to. That's my very real concern with this. Obviously the
17 courts have real concerns with that, too, since the Supreme
18 Court addressed that in Felix.

19 I would direct the Court's attention again to the
20 Felix case on page 26. And if I may quote, it says that,
21 "In assessing the reliability--speaking of the child's
22 statement of the hearsay statement--the Court should examine
23 the earliest statements made by the child-declarant, and
24 look for continuity in subsequent statements."

1 That I think is a real issue here, your Honor, is
2 to look for some sort of continuity with the statements.

3 Your Honor, I would also ask this Court to consider
4 one other question here in terms of the admissibility of the
5 videotape. If the Court deems the videotape trustworthy, I
6 believe that there's another question that must be answered,
7 and that is how the tape would be used at the particular
8 trial.

9 I'm bringing this up now because I have given some
10 thought just this morning in terms of what we're talking
11 about here. If the child comes into court, and if she
12 testifies differently than what appears on this tape, I can
13 understand the State desiring to use the tape basically to
14 rehabilitate their witness.

15 If the child comes into court and testifies
16 consistently with what is in the tape, I am obviously going
17 to raise an objection to the cumulative nature, as well as
18 the prejudicial nature of the tape. I'm just raising this
19 now because I do believe that we need to decide--or the
20 Court needs to decide as far as the trustworthiness of this
21 tape.

22 If the Court deems the tape trustworthy, the Court
23 needs to also consider how the tape will be used at trial.

24 Thank you.

1 THE COURT: Thank you.

2 And from your motion, Mr. Greco, you're going to
3 call Summer to the stand at the trial.

4 MR. GRECO: Yes, your Honor.

5 THE COURT: And you also, based on this call today,
6 desire to use the tape at the trial.

7 MR. GRECO: That's what we're asking, your Honor.
8 And the reason for that, your Honor, is this: Because the
9 statute expressly and clearly allows that to happen.
10 Subsection B of the statute says if you make the
11 trustworthiness finding, then the tape--I'm sorry--hearsay
12 statement comes in whether the child either testifies at the
13 proceeding, or is unavailable, or unable to testify. So we
14 can present the tape if she testifies or if she's
15 unavailable.

16 I would submit it's much, much fairer to the
17 defendant and to counsel to do it in this situation; that
18 is, to seek the admission of it when I'm going to put the
19 child on the stand, and, therefore, allow Miss Schmuck to
20 cross-examine the child regarding her trial testimony and
21 the tape, than to do it where the child is not available.
22 It's much fairer because she's subjected to
23 cross-examination.

24 But, your Honor, the cumulative point I think is

1 not an issue. The statute clearly answers that question.
2 The tape can come in if the child testifies at the
3 proceeding. It's right there in the statute.

4 Your Honor, this statute is, of course, for little
5 children because little children, being what they are, they
6 do not have the memory capacity or the ability to relay the
7 way adults do. So you want to be able to look at the
8 hearsay statements that are much closer in time because, of
9 course, they are the most reliable statements.

10 These events occurred in December. You heard her
11 say it on the tape. That's what is alleged in the
12 Information. This interview occurred in January. This
13 trial won't be happening until April. So children have
14 special--there are special issues relating to children and
15 their memory. That is the reason why these types of
16 statutes have been adopted. Nothing unusual about this
17 procedure, your Honor, of introducing both the tape and
18 putting the child on the stand.

19 Again, I would submit the fairer method is to do it
20 this way rather than me relying on the last prong of that
21 section, which is the child is unable to testify or
22 unavailable because it allows them full cross-examination.

23 THE COURT: Thank you.

24 The tape will be admitted for trial.

1 You can go ahead and reserve the objection if you
2 wish as far as cumulative. As a matter of fact, I was
3 discussing this this morning in anticipation of what it
4 would be used for. And the very issue that I was
5 discussing, the very issue that you brought up, Miss
6 Schmuck.

7 Realistically, because of me being a former trial
8 attorney, it's a very interesting concept. The concept is:
9 If you effectively cross-examine the witness at the case,
10 then the State brings it on for rehabilitative purposes, but
11 before the very people that you have destroyed--destroyed is
12 not the word--but you've effectively cross-examined, that is
13 an effective point.

14 The flip side is: If you have not cross-examined
15 effectively, why would the State use it?

16 So, you know, I'm on the same wave length as both
17 of you are, I'm sure. As far as what I saw today, there's
18 no question in my mind that the statements were
19 spontaneous. The child certainly was not subjected to any
20 repetitive questioning in this particular tape. You bring
21 up a point, but also it could very well be construed--and I
22 suspect both of you will certainly take a look at this in
23 discovery--as to when the answer was given at the prelim,
24 she may very well have been truthful as far as talking to

1 somebody, but at what time?

2 This is close enough after the incident, one of the
3 first times that it came across, to make it trustworthy.

4 We don't know anything about motive. So that's a
5 negative--excuse me--that's just nothing to me as far as the
6 parameters.

7 And terminology. I'm smiling. I guess that is the
8 terminology that children use. But, I mean, it's
9 certainly-- I guess you can use "dick" in the same context
10 as "Charlie" or "thing" or "private parts," or whatever.
11 But that's the only thing. I'm smiling because she's a
12 young child, and she uses that term, and she knows what it
13 is. So I think it's consistent.

14 And I think she's very clearly under stable mental
15 state.

16 So it can be admitted, and it will be.

17 MR. GRECO: Your Honor, may the tape be released to
18 the State pending trial in the matter?

19 THE COURT: Do you have any objection?

20 MS. SCHMUCK: I don't have any objection.

21 THE COURT: It was admitted for this purpose. But,
22 sure, if you've got to use it for your investigation,
23 further investigation, go ahead.

24 MR. GRECO: Thank you, your Honor.

1 MS. SCHMUCK: Your Honor I had just one other order
2 of business. That is this: that according to the
3 Information that was filed in this case at the arraignment,
4 the State has designated a physician and a representative of
5 the Saints team as witnesses in this case. To date I do not
6 have any discovery with respect to the physician's report or
7 the Saints report.

8 I would ask this Court to order that discovery so
9 that I can make use of that just as soon as possible.

10 MR. GRECO: May I have a moment with Detective
11 Stegmaier, your Honor?

12 THE COURT: Now, I want to turn it over-- Excuse
13 me, Mr. Greco. Excuse me. I'm sorry to interrupt. But
14 along those lines, we have got to get that information to
15 the defense as quickly as possible.

16 MR. GRECO: Yes, your Honor. I think I may have an
17 answer for you in one second.

18 Your Honor, I have the answer to that. She did
19 apparently see a Saints examiner, which is the nurse
20 practitioners that examine child sexual assault victims.
21 They are experts. And Detective Stegmaier, the report's out
22 there somewhere, your Honor. We'll have it Monday or
23 Tuesday. As soon as I have it, I'll provide a copy to Miss
24 Schmuck.

1 THE COURT: That's fine.

2 MR. GRECO: I think that's the doctor she was
3 referring to. I think she means Saints examiner. I don't
4 think there was any separate examination by a regular
5 medical doctor.

6 THE COURT: Is that your understanding, Detective?

7 DETECTIVE STEGMAIER: Yes, sir.

8 THE COURT: Well, then, given those facts, then
9 Monday or Tuesday. That's fine.

10 MS. SCHMUCK: Thank you, your Honor.

11 THE COURT: Thank you.

12 We'll be in recess.

13 (Recess.)

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1 STATE OF NEVADA)

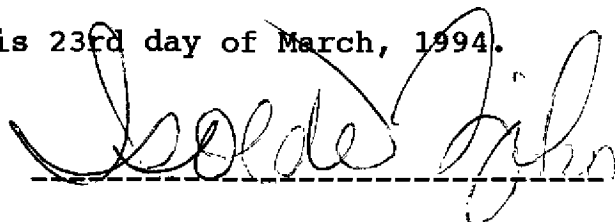
2 COUNTY OF WASHOE)

3
4 I, ISOLDE ZIHN, a Certified Shorthand Reporter of
5 the Second Judicial District Court of the State of Nevada,
6 in and for the County of Washoe, do hereby certify:

7 That I was present in Department 8 of the
8 above-entitled court on Friday, the 11th day of March, 1994,
9 at the hour of 9:00 a.m. Of said day, and took verbatim
10 stenotype notes of the proceedings had upon the matter of
11 THE STATE OF NEVADA, Plaintiff, versus CHARLES JOSEPH MAKI,
12 Defendant, Case No. CR94-0345, and thereafter reduced to
13 writing by means of computer-assisted transcription as
14 herein appears;

15 That the foregoing transcript, consisting of pages,
16 1 through 27, all inclusive, contains a full, true and
17 complete transcript of my said stenotype notes, and is a
18 full, true and correct record of the proceedings had at said
19 time and place.

20
21 Dated at Reno, Nevada this 23rd day of March, 1994.

22
23 

24 Isolde Zihn, CSR #87

FILED

'94 MAR 25 P3:39

[Handwritten signature]

No. CR94-0345

Dept. No. 8

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,

vs.
CHARLES JOSEPH MAKI,
Defendant.

MOTION TO SUPPRESS STATEMENT
PURSUANT TO JACKSON V. DENNO,
378 U.S. 368 (1964); MIRANDA V.
ARIZONA, 384 U.S. 436 (1966)

COMES NOW, CHARLES JOSEPH MAKI, by and through counsel
his counsel, JANET COBB SCHMUCK, Deputy Washoe County Public
Defender, and hereby moves this Court for an Order suppressing
any and all statements allegedly made by Charles Joseph Maki to
the Reno Police Department or to any other law enforcement
agency.

This Motion is made and based upon the authority of the
Fourth, Fifth and Sixth Amendments of the United States
Constitution, as applied to the states through the Fourteenth

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1 Amendment. It is further based upon NRS 47.090, Jackson v.
2 Denno, 378 U.S. 368 (1964) and Miranda v. Arizona, 384 U.S. 436
3 (1966) and their progeny.

4 DATED this 25th day of March, 1994.

5 MICHAEL R. SPECCHIO
6 Washoe County Public Defender

7 By Janet Cobb Schmuck
8 JANET COBB SCHMUCK
9 Deputy Public Defender

1 POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SUPPRESS
2 STATEMENT PURSUANT TO JACKSON V. DENNO, 378 U.S. 368 (1964);
3 MIRANDA V. ARIZONA, 384 U.S. 436 (1966)

4 FACTS

5 On January 19, 1994, Detective James Stegmaier of the
6 Reno Police Department interviewed Desiree M. and Summer M. at
7 11:45 in the morning. Preliminary Hearing Transcript,
8 hereinafter, "PHT", p. 55. Both girls identified Charles Maki
9 and alleged that he had committed the offenses of sexual assault
10 and lewdness with them. (videotaped interviews) Immediately
11 following the interviews, Detectives Stegmaier and Bohach went to
12 Mr. Maki's residence at 1015 Nevada Street. PHT, p. 61. They
13 found Mr. Maki at the rear of the residence working on his vehi-
14 cle. PHT, p. 62.

15 Detective Stegmaier showed Mr. Maki his badge and asked
16 to speak with him. Id. Mr. Maki agreed and the detective told
17 him that he was investigating a case where his name had come
18 up. He asked Mr. Maki if he would voluntarily come to the Reno
19 Police Department to talk with him. Id. Mr. Maki agreed and was
20 allowed to sit, unhandcuffed, in the front seat of the patrol
21 vehicle. PHT, p. 63. At the police station, Mr. Maki was
22 "placed in an interview room" and an interview began. Id. A
23 videotaped recording of this interview had already been started
24 when Detective Stegmaier entered the room. Id.

25 At the beginning of the videotaped interview with Mr.
26 Maki, Detective Stegmaier asked him if he understood the reason
 he was at the police station; that he, Stegmaier, was investigat-

1 ing a crime, that he had spoken with some people and Mr. Maki's
2 name came up. In response to this, Mr. Maki stated that he had
3 been to prison before, that he was a violent person, and that he
4 thought he was at the police station because of an incident where
5 he beat a guy up and the guy had to go to the hospital.

6 Detective Stegmaier had to explain to Mr. Maki that the
7 reason he was at the police station had nothing to do with the
8 beating up of some guy. He had spoken to Desiree and Summer.
9 Mr. Maki indicated that he did not know what the officer was
10 talking about. The detective told Mr. Maki that the children had
11 accused him of molesting them, other investigations had been done
12 and that the only reason Mr. Maki was there was to give his side
13 of the story. In the following few minutes of the interview,
14 Detective Stegmaier made a series of statements indicating that
15 they knew the girls were not lying, that they were not interested
16 in if something happened but in Mr. Maki's side of the story.
17 This culminated in the detective telling Mr. Maki that they had
18 enough information to arrest him in the field. Following this,
19 Mr. Maki made a series of incriminating statements describing two
20 incidents with Desiree and Summer.

21 At that point, Detective Stegmaier advised Mr. Maki of
22 his rights per Miranda. Mr. Maki immediately invoked by saying
23 that he did not want to talk to the police anymore. The police
24 continued to question Mr. Maki with respect to anything else he
25 would want to tell them and requested that he consent to a search
26 of his apartment and vehicle. Finally the officer placed Mr.

1 Maki under arrest and told him the charges being lodged against
2 him. At that point, Mr. Maki was left alone in the interview
3 room with the videotape still recording. Mr. Maki talked to
4 himself outloud making several more incriminating statements.

5 ARGUMENT

6 Prior to evidence of an accused alleged confession being
7 introduced to a jury, two legal hurdles must be cleared. First,
8 the trial court must determine that the statements made by the
9 accused were voluntary. Jackson v. Denno, 378 U.S. 137 (1964).
10 Second, the trial court must determine that any incriminating
11 statements made by the accused were not made as a result of coer-
12 cion. Miranda v. Arizona, 384 U.S. 436 (1966). NRS 47.090 pro-
13 vides that a preliminary hearing to challenge the lawfulness of
14 the manner in which an accused's confession or statement was
15 obtained must be conducted outside the hearing of the jury.

16 In this motion, Mr. Maki challenges the admission of any
17 incriminating statements made by him to the police prior to
18 receiving the Miranda warning, as well as any incriminating
19 statements made after the Miranda warning.

20 1. Statements Made Prior To The Miranda Warning

21 As related in the facts, Mr. Maki made certain incrimi-
22 nating statements to the police prior to receiving the admonition
23 embodied in Miranda. These statements involved his description
24 of an incident where he was showering and he allowed Summer M. to
25 wash his lower back and genital area. A second incident involved
26 Mr. Maki's description of an incident with Desiree M. in which he

1 pulled her underwear down and rubbed his penis on her.

2 The State has previously argued that these statements by
3 Mr. Maki should be admitted because he came to the police station
4 on a voluntary basis and that the statements were not coerced.
5 In other words, the State proposes that Mr. Maki was not subject
6 to custodial interrogation.

7 Contrary to the State's argument and to the efforts of
8 the police to operate outside constitutional and statutory guide-
9 lines, Mr. Maki was subject to custodial interrogation. This is
10 clearly demonstrated by two factors. Mr. Maki did accompany the
11 police to the station voluntarily, and maybe he even believed
12 that he was free to leave when Detective Stegmaier said he was.
13 However, Mr. Maki thought he was at the police station talking to
14 the police about a matter totally unrelated to anything the
15 police were prepared to question him about.

16 The question that the trial court must ask at this point
17 is this: What would Mr. Maki have done if the police had
18 informed him in back of his apartment about the real reason they
19 wished to speak with him at the police station? Would Mr. Maki
20 have so willingly gone down to the police station and tried to
21 answer the questions posed to him. The answer to these questions
22 are clearly no and Mr. Maki suggests that the police detectives
23 knew this.

24 Further, Mr. Maki was subject to custodial interrogation
25 simply because the police had probable cause to arrest him when
26 they first spoke with him behind his apartment. Detective

1 Stegmaier admits this several times on the tape during his ques-
2 tioning of Mr. Maki. The two young girls had identified Mr. Maki
3 as their molester. Neither of them mentioned any other perpetra-
4 tor or equivocated about the identity of the offender. Contrary
5 to what the Detective told Mr. Maki during the interview, he had
6 not done any investigation. There was no time since the girls
7 were interviewed at 11:45 a.m. and by 1:07 p.m. Mr. Maki was
8 seated before a video camera at the police station.

9 Clearly, the detectives believed Mr. Maki was the cul-
10 prit. They knew they had sufficient probable cause to arrest
11 him. So, why didn't they? The answer to this is obvious. The
12 police wanted to give the appearance that Mr. Maki was at the
13 police station voluntarily, that he was free to leave at anytime
14 and that he was not the object of their investigation. Fortun-
15 ately, the testimony of Detective Stegmaier at Mr. Maki's prelim-
16 inary hearing and the videotape itself undermine the appearance
17 put forward by the police. The question that the trial court
18 must ask itself at this juncture is this: What would the police
19 have done if Mr. Maki had refused to speak with them or accompany
20 them to the police station? Would the detectives have allowed
21 him to walk away at that point? Obviously the answer is, that
22 upon Mr. Maki's refusal to cooperate, the police would have
23 arrested him.

24 The statements made by Mr. Maki to the police prior to
25 receiving the Miranda warning were not voluntary because he
26 agreed to accompany the police and speak with them based on a

1 mistaken belief that they were investigating a battery. Second,
2 the statements were not made voluntarily because Mr. Maki was not
3 free to leave. The police had probable cause to arrest him and
4 he was the single object of their investigation and interrogation
5 even if Mr. Maki was not informed of that fact.

6 In Passama v. State, 103 Nev. 212, 735 P.2d 321 (1987),
7 the Nevada Supreme Court provides an in depth discussion of the
8 constitutional law with respect to the issue of voluntariness of
9 an accused's confession:

10 A confession is admissible only if it is
11 made freely and voluntarily, without com-
12 pulsion or inducement. Franklin v. State,
13 96 Nev. 417, 421, 610 P.2d 732, 734-735
14 (1980); see also Crew v. State, 100 Nev.
15 38, 675 P.2d 986 (1984). A criminal
16 defendant is deprived of due process of
17 law if his conviction is based, in whole
18 or in part, upon an involuntary confes-
19 sion, and even if there is ample evidence
20 aside from the confession to support the
conviction. Jackson v. Denno, 378 U.S.
368, 376 (1964). In order to be volun-
tary, a confession must be the product of
a "rational intellect and a free will."
Blackburn v. Alabama, 361 U.S. 199, 208
(1960). A confession is involuntary
whether coerced by physical intimidation
or psychological pressure. Townsend v.
Sain, 372 U.S. 293, 307 (1963).

21 Id. at pp. 213-214.

22 In the instant case, it is clear that Mr. Maki's confession was
23 not in anyway the outcome of rational choice or free will.

24 Further, Mr. Maki's statements were the outcome of coer-
25 cive questioning by the police without any benefit of the Miranda
26 warning. Mr. Maki was told by the detective that he knew what

1 had happened already and they merely wished to hear his side of
2 the story; that if he were not interested in hearing Mr. Maki's
3 side of the story, he would have been placed under arrest.

4 [24, 25] At the outset, if a person in
5 custody is to be subjected to interroga-
6 tion, he must first be informed in clear
7 and unequivocal terms that he has the
8 right to remain silent. For those unaware
9 of the privilege, the warning is needed
10 simply to make them aware of it--the
11 threshold requirement for an intelligent
12 decision as to its exercise. More impor-
13 tant, such a warning is an absolute prere-
14 quisite in overcoming the inherent pres-
15 sures of the interrogation atmosphere. It
is not just the subnormal or woefully
ignorant who succumb to an interrogator's
imprecations, whether implied or expressly
stated, that the interrogation will con-
tinue until a confession is obtained or
that silence in the face of accusation is
itself damning and will bode ill when
presented to a jury. Further, the warning
will show the individual that his interro-
gators are prepared to recognize his priv-
ilege should he choose to exercise it.

16 Miranda v. Arizona, 384 U.S. 436, 467-468 (1966). Mr. Maki's
17 interrogator gave him no indication that he recognized his right
18 not to incriminate himself, much less a choice as to exercising
19 that right.

20 2. Statements Made After The Miranda Warning

21 At Mr. Maki's preliminary hearing, Detective Stegmaier
22 testified that he mirandized Mr. Maki about two thirds of the way
23 through the taped interview. PHT, p. 67. He did this because
24 "[a]t that particular point I felt Mr. Maki was no longer free to
25 leave, and I wanted him to stay there and answer further
26 questioning." Id. In response to a question as to why Mr. Maki

1 was not free to leave, he said "[b]ecause in my mind I had enough
2 to place him under arrest." Id.

3 Even though, by his own statements, Detective Stegmaier
4 thought he had enough to place Mr. Maki under arrest from the
5 time he met him, he did not place him under arrest until sometime
6 later. In the meantime, even though Mr. Maki invoked immediately
7 upon hearing the Miranda admonition, the detective continued to
8 question Mr. Maki about searching his apartment and vehicle.
9 Finally, Mr. Maki was placed under arrest and informed that this
10 could not have been any worse even if he had said he did not want
11 to talk.

12 During this portion of the videotape, after the Miranda
13 warning, the police detective left Mr. Maki alone in the inter-
14 view room. However, the videotape continued to run capturing Mr.
15 Maki talking to himself. Certain of Mr. Maki's ruminations at
16 that point could be incriminating in light of the circumstances.

17 None of the statements made by Mr. Maki following his
18 indication to the police officers that he did not wish to speak
19 to them anymore should be heard by the jury at his trial. While
20 the state may argue that Mr. Maki did not actually invoke to the
21 extent that he requested a lawyer, he clearly indicated he did
22 not wish to speak further with the police. In Sechrest v. State,
23 101 Nev. 360, 365, 705 P.2d 626 (1985), the Nevada Supreme Court
24 held:

25 [e]ven an equivocal request for counsel by
26 an accused requires that law enforcement
officials must cease the interrogation

1 unless they ask the suspect further
2 questions to clarify whether the suspect
3 wants to consult with an attorney before
4 continuing with the interrogation.

5 United States v. Cherry, 733 F.2d 1124, 1130 (5th Cir.
6 1984) (citing Nash v. Estelle, 597 F.2d 513, 517 (5th Cir. 1979
7 (en bano)).

8 In the instant case, the police officers did not ask Mr.
9 Maki questions in an effort to clarify whether or not he wished
10 to speak with counsel. They questioned him about if they could
11 search his apartment and what they would find if they did so.
12 While Mr. Maki did not agree to a search of his apartment, he did
13 respond to the officer's questions. When left alone, Mr. Maki
14 talked out loud to himself. Clearly, he thought he was alone and
15 that the interview had been concluded since he had expressed his
16 desire to exercise his Fifth Amendment privilege.

17 CONCLUSION

18 Based upon the above, Mr. Maki requests a hearing
19 pursuant to NRS 47.090, outside the presence of the jury. At
20 that hearing Mr. Maki will move to have this court suppress any
21 unlawfully obtained statements.

22 DATED this 25th day of March, 1994.

23 MICHAEL R. SPECCHIO
24 Washoe County Public Defender

25 By Janet Cobb Schmuck
26 JANET COBB SCHMUCK
Deputy Public Defender

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CR94-0345 JOSEPH MAKI 13 Pages
STATE VS CHARLES JOSEPH MAKI 10:42 AM
District Court 03/31/1994 2645
Washoe County JYOS
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FILED

No. CR94-0345

'94 MAR 31 A10:42

Dept. No. 8

JUDICIAL DISTRICT COURT
BY *[Signature]*
CLERK

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

* * *

THE STATE OF NEVADA,
Plaintiff,

v.

OPPOSITION TO MOTION
TO SUPPRESS STATEMENT

CHARLES JOSEPH MAKI,
Defendant.

COMES NOW, the State of Nevada, by and through DOROTHY
NASH HOLMES, District Attorney of Washoe County, and DANIEL J.
GRECO, Deputy District Attorney, and offers its Opposition to
Motion to Suppress Statement.

This Opposition is based upon the attached Points and
Authorities, the pleadings and papers on file herein, and any
testimonial or documentary evidence received at the hearing in
this matter.

DATED this 31st day of March, 1994.

DOROTHY NASH HOLMES
District Attorney

By *[Signature]*
DANIEL J. GRECO
Deputy District Attorney

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1 began moving it in and out. A short time later Summer walked
2 back into the room and the defendant once again pulled his
3 penis out of Desiree. The above events occurred in the
4 defendant's apartment.

5 After the defendant penetrated Desiree for the second
6 time, she left his apartment and went to her own apartment,
7 which was next door. A short time later the defendant entered
8 the apartment where Desiree lived and went into her bedroom.
9 He lifted her nightgown up and pulled her panties down. He
10 then inserted his penis a short distance into her vagina and
11 began moving it in and out.

12 The defendant also inserted his finger into Desiree's
13 vagina while he was still at the Menees' apartment. The
14 defendant moved his finger in and out of Desiree's vagina using
15 his index finger on his right hand. According to Desiree this
16 penetration "hurt."

17 The defendant also made Desiree touch and fondle his
18 penis and testicles during the day in question.

19 Several times during the same day the defendant was
20 also alone with Desiree's sister, Summer. At one point during
21 the day the defendant began rubbing and fondling the exterior
22 of Summer's vagina. The defendant asked Summer to touch his
23 "privates" but she said "no."

24 At one point the defendant laid Summer down, removed
25 her panties, and inserted his penis a short distance into her
26 vagina. He began moving his penis in and out of Summer's

1 vagina. Summer asked the defendant to "please stop" but the
2 defendant would not stop. According to Summer, the defendant's
3 penis "hurt" her. She told him to stop several times during
4 the ordeal.

5 The defendant also rubbed and fondled the exterior of
6 Summer's vagina for a period of time. On a number of occasions
7 the defendant also asked Summer to touch his "privates" but
8 Summer refused to do so.

9 During the day the defendant instructed both girls not
10 to tell anyone or else he would "go to jail."

11 Several weeks after the above-described events
12 occurred, the girls disclosed to their father exactly what had
13 happened to them. The police were immediately contacted and
14 the case was assigned to Reno Police Department Detective James
15 Stegmaier.

16 Detective Stegmaier interviewed the girls at the Reno
17 Police Department on January 19, 1994. The interview of the
18 girls was conducted in a non-leading manner and was
19 videotaped. Detective Stegmaier had no previous discussions
20 with the girls about what had happened to them prior to the
21 commencement of the videotaped interviews. During the
22 interviews the two girls freely discussed all of the above-
23 described acts in great detail.

24 Later that same day Stegmaier contacted the defendant,
25 Charles Joseph Maki, at his residence in Reno. Stegmaier told
26 Maki that his name had come up as a suspect in an ongoing

1 criminal investigation. Stegmaier asked the defendant if he
2 would be willing to answer a few questions. Stegmaier clearly
3 told the defendant he was not under arrest and did not have to
4 answer any questions if he did not want to. The defendant
5 agreed to submit to an interview at the Reno Police
6 Department. Since the defendant was working on his truck when
7 Stegmaier arrived, Stegmaier offered him a ride in his
8 vehicle. The defendant readily agreed and got into Stegmaier's
9 vehicle. He was not handcuffed or restrained in any way and
10 absolutely no show of force or intimidation was utilized by
11 Stegmaier.

12 Maki voluntarily went with Stegmaier to the Reno
13 Police Department for the purposes of an interview. The entire
14 interview was videotaped. At the beginning of the videotaped
15 interview, Stegmaier reminded Maki that he was not under arrest
16 and was free to leave at any time. Stegmaier was joined in the
17 interview by Detective John Bohach.

18 During the first ten minutes of the interview the
19 defendant denied having any improper sexual contact with either
20 Desiree or Summer. During the next five minutes of the
21 interview, the defendant began making statements like "I don't
22 know what happened," and, "I don't really remember what
23 happened."

24 A short time later the defendant began to make
25 inculpatory statements. The defendant admitted that he had
26 Desiree wash his back while he took a shower at his

1 residence. The defendant admitted that he had her wash around
2 his genitals and that she "might have" washed his testicles. A
3 short time later, the defendant began making many more
4 admissions. The defendant admitted that he pulled Desiree's
5 panties off and rubbed his penis on her vagina.

6 When Stegmaier asked the defendant to tell him exactly
7 what happened, the defendant replied, "Probably what Desiree
8 told you." The defendant also admitted "[he] was guilty"
9 regarding Desiree. The defendant made numerous other general
10 admissions of guilt such as "I should have known better." He
11 also provided a significant amount of detail regarding what he
12 and the girls were wearing as well as where and when the
13 assaults occurred. These admissions were corroborated by the
14 girls' interviews.

15 After the defendant made the above-summarized
16 admissions, plus additional admissions, Stegmaier decided to
17 Mirandize the defendant. He did so at this point because he
18 had decided he had heard enough to surpass the probable cause
19 to arrest standard and that from this point forward, the
20 defendant was no longer free to leave. After he was
21 Mirandized, the defendant stated he did not want to talk any
22 further. Stegmaier and Bohach stopped asking the defendant
23 questions about Desiree and Summer. They did briefly ask the
24 defendant about an unrelated offense, namely, his failure to
25 register as an ex-felon.

26 ///

1 Detective Stegmaier and Detective Bohach then left the
2 interview room for a period of time. The defendant was left
3 alone in the room during this time. While alone, the defendant
4 made a number of spontaneous admissions of guilt. The
5 defendant made statements like "Why ... the stupidist thing,"
6 and "Why, why ... I don't believe I did that." While making
7 these admissions the defendant would alternatively place his
8 head in his hands or look skyward.

9 When the detectives subsequently returned to the room,
10 the defendant was placed under arrest. Detective Stegmaier
11 briefly discussed searching the defendant's apartment and asked
12 the defendant whether he would consent to a search. Shortly
13 thereafter, Stegmaier left the room. Detective John Bohach
14 then asked the defendant the routine questions necessary to
15 fill out the booking/probable cause form. While this process
16 was ongoing, the defendant spontaneously blurted out "I had to
17 get this off my chest ... I did something wrong ... I've never
18 done this before ... I hope it never happens again." This was
19 not in response to the routine booking questions asked by
20 Bohach. After Bohach completed the booking/probable cause
21 form, he placed handcuffs on the defendant. A short time later
22 the defendant spontaneously blurted out "My lawsuit with
23 S.I.I.S. just went down the drain ... why, why" This
24 admission was also not made in response to any question asked
25 by Bohach. The defendant did in fact have a worker's

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1 compensation case pending at the time of the interview. The
2 defendant was then taken into custody.

3 Later that day, while still in custody, the defendant
4 telephoned the girls' father, Gary Menees. The defendant
5 apologized to Menees for what he had done to Desiree and
6 Summer. He told Menees that he "couldn't explain why it
7 happened, it just happened." He also told Menees that he was
8 sorry he had "messed up" their friendship and told Menees not
9 to blame the girls.

10 The preliminary hearing was held on February 3, 1994,
11 and the defendant was bound over on the ten counts of Sexual
12 Assault and Lewdness alleged in the Information.

13 ARGUMENT

14 The defendant's confession was completely voluntary in
15 nature. Jackson v. Denno, 378 U.S. 137 (1964); see also State
16 v. Passama, 103 Nev. 212 (1987). When Detective Stegmaier
17 contacted the defendant at his residence, he told the defendant
18 he was not under arrest and did not have to answer any
19 questions if he did not want to. When Detective Stegmaier
20 asked the defendant to accompany him to the police station the
21 defendant immediately agreed. Absolutely no pressure or
22 coercion was implied in order to get the defendant to come down
23 to the police station. Additionally, the videotape which will
24 be played at the Motion Hearing in this matter clearly shows
25 that no coercion or intimidation was utilized by the police.

26 ///

1 Indeed, the interview was remarkably calm and polite, given the
2 seriousness of the allegations discussed.

3 The defendant was not subjected to repeated
4 questioning, nor was he deprived of food or sleep. He was not
5 subjected to any physical or mental abuse. He was not even in
6 custody until the conclusion of the interview. The entire
7 interview took only 45 minutes, and this includes the portions
8 of the videotape where the defendant is left alone and where he
9 is answering the routine questions being asked by Detective
10 Bohach for purposes of completing the booking/probable cause
11 form.

12 In Miranda v. Arizona, the United States Supreme Court
13 announced that certain prophylactic warnings must be given by
14 police whenever a person is subjected to custodial
15 interrogation. Miranda v. Arizona, 384 U.S. 436, 16 L.Ed 2d
16 694, (1966).

17 [P]olice officers are not required to
18 administer Miranda warnings to everyone whom
19 they question. Nor is the requirement of
20 warnings to be imposed simply because the
21 questioning takes place at the station house,
22 or because the questioned person is one whom
23 the police suspect. Miranda warnings are
24 required only where there has been such a
25 restriction on the person's freedom as to
26 render him 'in custody.' It was that sort of
coercive environment to which Miranda by its
terms was made applicable, and to which it is
limited. Oregon v. Mathiason, 429 U.S. 492,
495, 50 L.Ed. 2d 714, 719 (1977).

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1 Miranda warnings are not required simply because the
2 police have "focused" on a particular suspect. Beckwith v.
3 United States, 425 U.S. 341, 347, 48 L.Ed 2d 1, 8 (1976).

4 Furthermore, it is irrelevant to the Fifth Amendment
5 analysis that the police were consciously seeking incriminating
6 evidence when they questioned the particular suspect.
7 Minnesota v. Murphy, 465 U.S. 420, 428-431, 79 L.Ed. 2d 409,
8 419-422 (1984). In Murphy, the Supreme Court noted that "it
9 has long been recognized that '[t]he Constitution does not
10 forbid the asking of criminative questions.'" Murphy, id., 79
11 L.Ed. 2d at pp. 419-420.

12 When Stegmaier first contacted the defendant at his
13 residence, he explained to the defendant that he was not under
14 arrest and did not have to answer any questions if he did not
15 want to. The defendant went down to the police station
16 voluntarily and was not handcuffed or restrained in any
17 manner. At the beginning of the videotaped interview Stegmaier
18 explained to the defendant that he was free to leave at any
19 time. Toward the end of the interview Stegmaier read the
20 defendant his constitutional rights. Stegmaier did this
21 because he had heard so many admissions from the defendant that
22 he was beginning to think about arresting him. The defendant
23 replied that he did not want to talk any further and the
24 detectives stopped questioning him with the exception of a very
25 brief discussion regarding searching the defendant's residence
26 and regarding defendant's failure to register as an ex-felon.

1 No incriminating statements or evidence was gathered as a
2 result of this brief discussion.

3 Stegmaier and Bohach then left the interview room.
4 While alone in the room, the defendant then made the various
5 spontaneous admissions of guilt summarized in the "FACTS"
6 section, supra. Voluntary and spontaneous statements made by
7 an accused, even after his Miranda rights have been asserted,
8 are admissible in evidence if the comments were not made in
9 response to government questioning. Miranda v. Arizona, 384
10 U.S. 436, 477-478 (1966); Cannady v. Dugger, 931 F.2d 752, 654
11 (11th Cir. 1991); United States v. Paskett, 950 F.2d 705, 707
12 (11th Cir. 1992). Not only were defendants' incriminating
13 admissions of guilt in response to police questioning, the
14 police weren't even in the room when they were made. The
15 defendant was simply talking to himself.

16 The defendant later made additional spontaneous
17 admissions while being asked routine booking questions by
18 Detective Bohach. See "FACTS" section, supra. These
19 admissions were not in response to any questions asked by
20 Bohach. Indeed, these admissions had nothing to do with the
21 routine questions regarding date of birth, social security
22 number, etc., which were being asked by Bohach. Even if these
23 statements were somehow determined to be responses to the
24 routine booking questions being asked (and they were not), they
25 would still nonetheless be admissible. A police officer's
26 request for routine information for booking purposes is not

1 custodial interrogation pursuant to Miranda, even if the
2 answers turn out to be incriminating. United States v.
3 Sweeting, 933 F.2d 962, 965 (11th Cir. 1991).

4 CONCLUSION

5 Based upon the foregoing, the State respectfully
6 requests that the Motion to Suppress be denied and the entire
7 contents of the videotaped interview of the defendant be deemed
8 admissible in evidence at trial, following the motion hearing
9 in this matter.

10 DATED this 31st day of March, 1994.

11 DOROTHY NASH HOLMES
12 District Attorney

13 By *Daniel J. Greco*
14 DANIEL J. GRECO
15 Deputy District Attorney

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25 0330-0001
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3 **CERTIFICATE OF FORWARDING**

4 I hereby certify that I am an employee of the Washoe County District Attorney's
5 Office, Reno, Washoe County, Nevada, and that, on this date, I forwarded a true copy of the
6 foregoing document, through the Washoe County Interagency mail, addressed to:

7 Janet Schmuck

8 Deputy Public Defender

9
10 DATED this 31st day of MARCH, 1994.

11
12 
13 Terry Jenkins

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES - HEARING

CONT'D TO

4/1/94

MOTION TO CONFIRM TRIAL DATE/MOTION TO SUPPRESS

HONORABLE

Deputy District Attorney Dan Greco was present

STEVEN R.

for the State. Defendant present with counsel,

4/11/94

KOSACH

Deputy Public Defender, Janet Schmuck. James

Jury

DEPT. NO. 8

Roundtree was present for the State Division of

Trial

L. Romero

Parole and Probation.

(Clerk)

Respective counsel addressed the Court.

I. Zihn

Counsel for the defendant addressed the Court

(Reporter)

and moved to withdraw the defendant's former

plea of Not Guilty to Sexual Assault On A Child

Under The Age of Fourteen Years and Lewdness

With A Child Under the Age of Fourteen Years as

charged in Counts I, V, VI, & IX of the

Information and enter pleas of Guilty. Counsel

for the defendant stated the negotiations.

The defendant addressed the Court and stated

that he was innocent. The Court interrogated

the Defendant and did not accept his pleas of

guilty.

COURT ORDERED: Trial date of 4/11/94 confirmed.

At 9:50 a.m. Court ordered recess.

At 10:15 a.m. Court reconvened with all parties

present.

Counsel for the defendant presented argument for

her motion to suppress.

Counsel for the State presented arguments

against the defendant's motion.

Tape of the defendant's confession played for

the Court.

COURT ORDERED: Motion to suppress denied.

Defendant was remanded to the custody of the

sheriff.

CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court
Washoe County
MIN
DC-9900039406-058
Page
04/01/1994 02:13 PM
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CR94-0345
DC-9900039406-066
STATE VS CHARLES JOSEPH MAKI 7 Pages
District Court 04/04/1994 02:52 PM
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Washoe County
Washoe County

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No. CR94-0345

'94 APR -4 P2:52

Dept. No. 8

JUDICIAL CLERK
BY *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,

MOTION IN LIMINE RE;
UNCHARGED COLLATERAL OR BAD ACTS

vs.
CHARLES JOSEPH MAKI,
Defendant.

COMES NOW the above-named Defendant, by and through
the Washoe County Public Defender's Office, counsel of record,
and moves this Honorable Court for the entry of its Order
excluding from introduction into evidence in the trial of this
matter, by direct or indirect assertion, statements, presenta-
tion or offering of any nature; any reference to any evidence of
other crimes, wrongs or bad acts.

This Motion is supported by the Points and Authorities
submitted herewith.

DATED this 4th day of April, 1994.

MICHAEL R. SPECCHIO
Washoe County Public Defender

By *[Signature]*
JANET COBB SCHMUCK
Deputy Public Defender

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **MOTION IN LIMINE RE: UNCHARGED COLLATERAL OR BAD ACTS**

3 I.

4 **STATEMENT OF THE CASE**

5 On February 16, 1994, Charles Joseph Maki was
6 arraigned on charges of Sexual Assault on a Child Under the Age
7 of Fourteen Years (Counts I-V) and Lewdness With a Child Under
8 the Age of Fourteen Years (Counts VI-X). He entered not guilty
9 pleas to all charges.

10 II.

11 **ARGUMENT**

12 A. **DISCLOSURE OF INTENTION TO USE EVIDENCE OF**
13 **OTHER CRIMES, WRONGS OR COUNTS SHOULD PRE-**
14 **CEDE JURY SELECTION**

15 NRS 50.115 states in part the "[t]he judge shall exer-
16 cise reasonable control over the mode and order of interrogating
17 witnesses and presenting evidence [.]". NRS 47.060 provides
18 "[p]reliminary questions concerning the qualifications of a
19 person to be a witness [or] the admissibility of evidence shall
20 be determined by the judge [.]". Finally, NRS 47.080 mandates
21 that "[i]n jury cases, hearings on preliminary questions of
22 admissibility . . . shall to the extent practicable, . . . be
23 conducted out of the hearing of the jury, to prevent the sugges-
tion of inadmissible evidence."

24 NRS 48.045(2) prohibits the use of evidence of other
25 crimes, wrongs or acts of an accused to prove that he acted in
26 conformity therewith. The statute does, however, allow the use

1 of such evidence for other purposes. Before such evidence may
2 be presented to a jury, the Court must apply the standards of
3 NRS 48.015 and NRS 48.035 to ascertain the relevancy of the
4 evidence and its relative prejudicial effect. This considera-
5 tion affects the fundamental fairness of a criminal trial. See
6 e.g., Nester v. State, 75 Nev. 41, 334 P.2d 524 (1959); Cirillo
7 v. State, 96 Nev. 489, 611 P.2d 1093 (1980).

8 In the case of Petrocelli v. State, 101 Nev. 46, 692
9 P.2d 503 (1985), the Nevada Supreme Court summarized procedures
10 that should be followed prior to the admission of evidence of
11 other crimes, wrongs or acts. The Court noted that: (1) the
12 State must first bring the matter before the trial court in a
13 hearing outside the presence of the jury; (2) the State must
14 present its reasons for the admission of the evidence under one
15 of the exceptions in the statute and provide an offer of proof
16 showing the quantum and quality of the evidence; (3) the evi-
17 dence offered must be plain, clear and convincing; and (4) the
18 trial court must weigh the probative value of the evidence
19 against its prejudicial effect.

20 Inasmuch as the State must first present the evidence
21 to the Court out of the presence of the jury, common sense would
22 indicate that such hearing take place prior to the call of the
23 jury. This would allow the Court ample time to consider the
24 arguments and authorities of counsel before rendering a
25 ruling. Additionally, it would eliminate many delays during the
26 course of the trial; and, it would eliminate a situation where a

1 jury is impaneled but then waits in the jury room with little or
2 nothing to do.

3 Moreover, inasmuch as the State must first present its
4 evidence to the Court out of the presence of the jury, funda-
5 mental fairness requires that the Defendant have notice of such
6 evidence and the opportunity to review it. The right to effec-
7 tive assistance of counsel requires prior review by counsel in
8 order to determine the probative value and prejudicial effect.
9 Only in this way may counsel adequately assist his client and
10 the trial court in the balancing of these factors. By avoiding
11 surprise and by allowing counsel to adequately prepare to meet
12 the potential tendering of such evidence, the Court will insure
13 "reasonable control over the mode and order of . . . presenting
14 evidence [.]". NRS 50.115.

15 B. EVIDENCE OF UNCHARGED BAD ACTS SHOULD BE
16 RECEIVED WITH EXTREME CAUTION

17 The term "uncharged misconduct" refers to all wrongs
18 or acts that are not contained in the charging document. NRS
19 48.045(2) excludes such evidence if offered to prove "the char-
20 acter of a person in order to show that he acted in conformity
21 therewith." NRS 48.045(2). However, such evidence is admis-
22 sible to prove such things as motive, opportunity, intent, prep-
23 aration, plan, knowledge, identity or absence of mistake or
24 accident. Id. As noticed above, the Supreme Court in
25 Petrocelli, supra, summarized the proper procedure for the
26 admission of this type of evidence.

1 The first two components of the Petrocelli approach
2 are self-explanatory. However, the third component is extremely
3 important as it brings into play other statutes and rules. The
4 appraisal of the judge of the quantum and quality of the prof-
5 fered evidence presents a preliminary question of admissibil-
6 ity. See NRS 47.060. This statute requires that NRS 47.070
7 determine the issue. NRS 47.070(1) states that when the rele-
8 vance of evidence depends on the fulfillment of a condition of
9 fact, there must be sufficient evidence of that condition pre-
10 sented. In the case of uncharged misconduct, the trial court
11 must review the evidence and determine that the evidence is
12 plain, clear and convincing of the accused's commission of the
13 uncharged or collateral act. Tucker v. State, 82 Nev. 127, 131,
14 412 P.2d 970 (1966); Petrocelli v. State, supra. Moreover, this
15 must occur before the court goes on to the next step, i.e., the
16 balancing under NRS 48.035(1) (legal relevance).

17 Even if the quantum and quality of the evidence meets
18 the clear and convincing test, it must still be relevant to an
19 "issue of consequence" in the trial. Viperman v. State, 96
20 Nev. 592, 295, 614 P.2d 532 (1980); and see NRS 48.015.

21 The fourth component, balancing the probative value
22 against the prejudicial effect, requires the trial judge to make
23 a specific ruling or finding that the probative value outweighs
24 the prejudicial impact of such evidence. Cirillo v. State,
25 supra, 96 Nev. at 492, n. 2 (citations omitted). The reason for
26 the rule is to prevent improper consideration by the jury of

1 matters not charged in the information or indictment. As the
2 Court in Nester v. State, supra, observed regarding the trial
3 judge's discretion to exclude otherwise relevant evidence if the
4 prejudicial effect outweighs its probative value:

5 [t]he trial judge should be recognized to
6 have a discretion to decide whether the
7 probative weight of the evidence outweighs
8 its mere prejudice. . . .he should be
9 allowed to say. . . whether it is the peg
10 of relevance or the dirty linen hung
11 thereon, upon which the jury is going to
12 concentrate and if in his opinion, the peg
13 is so small and the linen so bulky and
14 dirty that a jury will never see the peg,
15 but merely yield to indignation at that
16 dirt, he should be allowed to exclude it.

12 Nester v. State, supra, 75 Nev. at 55 (citation omitted). The
13 trial court has a "grave duty imposed upon it to strike a bal-
14 ance." Brown v. State, 81 Nev. 397, 400 404 P.2d 428 (1965).
15 Evidence of uncharged misconduct "should be received with
16 extreme caution, and if its relevancy is not clear, the evidence
17 should be excluded." McMichael v. State, 94 Nev. 184, 190, 577
18 P.2d 398 (1978); Shultz v. State, 96 Nev. 742, 616 P.2d 388
19 (1980). The importance of resolving before jury selection, the
20 issue of admissibility of alleged uncharged misconduct is read-
21 ily apparent. The effect that such evidence will produce if
22 admitted is tha the Defendant will have to defend against
23 charges not pled in the Indictment and for which he is not on
24 trial. Cirillo, supra; Nester, supra. The admission of
25 uncharged evidence exposes the Defendant to the risk that the
26 jury will be diverted from the charge at hand and will convict

1 on an improper basis. Nester, supra.

2 III.

3 CONCLUSION

4 For the foregoing reasons, authorities and arguments
5 it is respectfully requested that this Court enter its Order
6 granting Defendant's Motion.

7 DATED this 4th day of April, 1994.

8 MICHAEL R. SPECCHIO
9 Washoe County Public Defender

10 By Janet Cobb Schmuck
11 JANET COBB SCHMUCK
12 Deputy Public Defender
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STATE VS CHARLES JOSEPH MAKI 3 Pages
District Court 04/04/1994 02:52 PM
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JUDITH BAILEY, CLERK

BY

DEPUTY

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

7 IN AND FOR THE COUNTY OF WASHOE

8 THE STATE OF NEVADA,
9 Plaintiff,

MOTION IN LIMINE RE;
PRIOR CONVICTIONS

10 vs.

11 CHARLES JOSEPH MAKI,
12 Defendant.

13 COMES NOW the above-named Defendant, by and through
14 the Washoe County Public Defender's Office, counsel of record,
15 and moves this Honorable Court for the entry of its Order
16 excluding from introduction into evidence in the trial of this
17 matter, by direct or indirect assertion, statements, presenta-
18 tion or offering of any nature; any reference to any felony or
19 other criminal conviction of said Defendant unless such convic-
20 tions are documented by conforming with provisions of NRS
21 50.095; 48.035; 48,045, and Petrocelli v. State, 101 Nev. 46
(1985).

22 DATED this 4th day of April, 1994.

23 MICHAEL R. SPECCHIO
24 Washoe County Public Defender

25 By

Janet Cobb Schmuck
26 JANET COBB SCHMUCK
Deputy Public Defender

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WASHOE COUNTY CLERK

BY

DEPUTY

No. CR94-0345

Dept. No. 8

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

M O T I O N

CHARLES JOSEPH MAKI,

Defendant.

COMES NOW, THE STATE OF NEVADA by and through DOROTHY
NASH HOLMES, District Attorney of Washoe County, Nevada, by
DANIEL J. GRECO, Deputy District Attorney, and moves this
Honorable Court for an Order as follows:

That the Information heretofore filed herein be
amended to add the following name as witness:

KATHY PEELE, R.N., C.P.N.P.
Washoe County Medical Center
Reno, Nevada

Endorsement of the above name is respectfully
requested for the reason that at the time of filing the
Information the identity of the Washoe County Child Sexual
Abuse Investigation Team (W.C.C.S.A.I.N.T.) member who examined

V2.218

204

1 the victims was unknown and thus was generally listed as
2 "S.A.I.N.T.S. Examiner." On or about March 30, 1994, the
3 W.C.C.S.A.I.N.T. examination report was received which
4 indicated that Kathy Peele, R.P., C.P.N.P., was in fact the
5 person who examined both victims. Copies of the
6 W.C.C.S.A.I.N.T.'s exam report have been provided to defense
7 counsel. Said witness is required for the successful
8 prosecution of the case.

9 DATED this 24 day of April, 1994.

10 DOROTHY NASH HOLMES
11 District Attorney

12
13 By 

14 DANIEL J. GRECO
15 Deputy District Attorney
16
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26

CR94-0345
STATE VS CHARLES JOSEPH MAKI 29 Pages
District Court 04/06/1994 03:15 PM
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No. CR94-0345

Dept. No. 8

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JUDICIAL CLERK

BY

DEPT

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

* * *

THE STATE OF NEVADA,
Plaintiff,

v.

STIPULATION

CHARLES JOSEPH MAKI,
Defendant.

It is hereby stipulated between DANIEL J. GRECO,
counsel for the State, and JANET COBB-SCHMUCK, counsel for the
defendant, that the video taped interview of Charles Joseph
Maki be admissible in the State's case-in-chief at trial,
subject to the deletion of the portions highlighted in yellow
on the attached transcript. The State shall prepare a redacted

///

///

///

///

///

///

1 version of the original videotape which deletes all of the
2 statements highlighted in yellow on the attached transcript.

3 DATED this 5th day of April, 1994.

4 DOROTHY NASH HOLMES
5 District Attorney

MICHAEL R. SPECCHIO
Public Defender

6
7 By

Daniel J. Greco
8 DANIEL J. GRECO
9 Deputy District Attorney

Janet Cobb Schmock
10 JANET COBB-SCHMUCK
11 Deputy Public Defender

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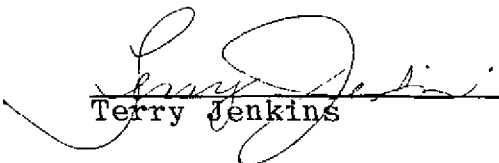
1
2
3 **CERTIFICATE OF FORWARDING**

4 I hereby certify that I am an employee of the Washoe County District Attorney's
5 Office, Reno, Washoe County, Nevada, and that, on this date, I forwarded a true copy of the
6 foregoing document, through the Washoe County Interagency mail, addressed to:

7 Janet Schmuck,

8 Deputy Public Defender
9 _____
10 _____

11 DATED this 6th day of APRIL, 1994.

12 
13 Terry Jenkins
14
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**RENO POLICE DEPARTMENT
TRANSCRIPT**

CASE # 16248-94

1. **PERSON GIVING STATEMENT:** **MAKI, CHARLES JOSEPH**
SEX/RACE/DOB: **WMA, 2-11-55, SS**
 2. **RESIDENCE ADDRESS:** **1015 NEVADA STREET #8 RENO**
 3. **EMPLOYMENT:** **N/A**
 4. **TAKEN BY:** **DET. JIM STEGMAIER**
 5. **ON: 1-19-94** **FROM: 1307 HOURS** **TO:**
 6. **IN THE PRESENCE OF:** **DET. JOHN BOHACH**
-

1 A. *Damn. These are some uncomfortable damn chairs, man.*

2
3 Q. *Are you anxiously awaiting ti hear what the hell this is all about, or what?*

4
5 A. *I don't know. Inaudible.....*

6
7 Q. *Okay. First off, let me tell you, January 19th, okay? It's uh, about 7 minutes after 1:00.*
8 *and, do you understand why I have you here, Chuck? At all? Have we discussed*
9 *anything at all?*

10
11 A. *No.*

12
13 Q. *Okay. Do you understand that you're here totally voluntarily?*

14
15 A. *Yeah.*

16
17 Q. *And I'm gonna tell you, you're basically here to hear what it's all about.*

18
19 A. *Right.*

20
21 Q. *But, we didn't drag you here? Arrest you or anything?*

22
23 A. *No.*

1 Q. You understand that you're not under arrest at all?

2
3 A. I am?

4
5 Q. You're not under arrest.

6
7 A. Oh, no, no, no, no.

8
9 Q. You understand that any time you want to you can tell me to take a hike and you're out
10 of here?

11
12 A. Okay. That's fine.

13
14 Q. I just want to get your I.D. update. Put it in one of these pockers.

15
16 A. Well, I've got nothing to hide that I know of.

17
18 Q. So, you're here voluntarily?

19
20 A. Yeah.

21
22 Q. Okay. This is Det. John Bohach, and I'm Det. Stegmaier. The reason we asked you to
23 come here,....do you go by Chuck or Charles?

24
25 A. I like Chuck.

26
27 Q. Alright Chuck. The reason we asked you to come here today, is uh, we're investigating
28 a crime.

29
30 A. Uh huh.

31
32 Q. We have uh, obviously talked to a couple of people, and your name came up, okay?

33
34 A. Yeah.

35
36 Q. So, that's why you're here today. We wanted to bring you down here providing you were
37 willing to come, to talk to you about those charges, and see what you had to say about
38 them, or even if you're involved, okay?

39
40 A. I...

1 Q. Do you have any idea what this is about?

2
3 A. ~~I tell you that I'm nervous. I've been in prison. I did things back then. I haven't done~~
4 ~~nothing wrong now. But, hey I get this flashback. You bare with me on this.~~

5
6 Q. Sure.

7
8 A. I'm involved. I've got wide pride, and.....

9
10 Q. ~~Do you have any idea what this is about?~~

11
12 A. ~~Well apparently some,.... the only thing I know, I beat up a guy. We got in a fight, like~~
13 ~~I say. It's a violent crime. And all them flash-laws, that you guys are gonna through~~
14 ~~something on me, that he's pressing charges. You know, and, that's, that's the only~~
15 ~~thing I can think of. That's the only thing I've done wrong that I know of. You know,~~
16 ~~and uh he might have pressed charges against me maybe for that.~~

17
18 Q. Okay.

19
20 A. Cuz he had to go to the hospital. It wasn't on the job so, you know,....

21
22 Q. Okay. It has nothing to do with that, okay? This has to do with Desiree and Summer,
23 your next door neighbors.

24
25 A. What? For what?

26
27 Q. Okay, both of them told us what occurred while you were babysitting them.

28
29 A. Occurred? What babysitting? What do you mean? I babysit them, but what are you
30 talking about?

31
32 Q. Okay, they both accused you of molesting them.

33
34 A. Well I owe their father \$400.00 bucks. Is he saying this, or.....

35
36 Q. Well, we didn't stop there. We did some other investigating. We had the girls checked³
37 out this morning. They didn't go to school.

38
39 A. Yeah.

1 ~~Q. And uh, to be honest with you, the reason that you're here today, Chuck? The only~~
2 ~~reason we just didn't come down there and place you under arrest is cuz we want to give~~
3 ~~you the opportunity to tell us your side of the story about what occurred, okay? Now~~
4 ~~listen Chuck, I know you've been around the block a million times.~~

5
6 ~~A. Yeah.~~

7
8 ~~Q. I know you've been around the block.~~

9
10 ~~A. Many times. Many times.~~

11
12 Q. But, when I lay out everything that we have for you, okay? And, then you decide that
13 you're gonna be truthful with us, and tell us everything that occurred,....

14
15 A. Uh huh.

16
17 Q. Then it's gonna be to late then, okay? And, that's why you're here right now. I've
18 explained to you that you're not under arrest, okay? You understand that, right?

19
20 A. Uh, yeah. But, then you're gonna place me under arrest.

21
22 Q. No, that's not true at all. That's not true at all.

23
24 A. But I don't,....

25
26 Q. The thing is, if we weren't interested in letting you give your side of the story about what
27 occurred, we would have came and placed you under arrest. Do you understand that?

28
29 A. Not really. I mean inaudible.....shame but,....

30
31 Q. Chuck, we interviewed both girls separately, okay?

32
33 A. Yeah.

34
35 Q. Okay?

36
37 A. Okay.

38
39 Q. Both girls gave testimony about what occurred at your apartment and at their house
40 individually. They're not lying, they're telling the truth.

- 1 A. Okay, then let's see what they're saying.
- 2
- 3 Q. Okay. Both girls claim that you placed your penis in their vaginas and were humping
- 4 them.
- 5
- 6 A. No way.
- 7
- 8 Q. Well, that's what they both said. And Chuck, I do this for a living. Det. Bohach does
- 9 this for a living. We do nothing else but se crime cases, okay? Now, I taped the girls
- 10 interviews. Now, we wanna play those interviews for people, and we'll let them decide
- 11 if you're lying, okay? Cuz I'll tell you what, we do this for a living. We know how to
- 12 catch the girls when they're lying. And the girls aren't lying. Chuck, I'm telling you,
- 13 they aren't lying. I'm telling you straight out, they are not lying. The reason you're
- 14 here right now, is so you can give your story about what happened. I don't know if you
- 15 were drinking that day. I don't know what occurred. But, I'm not here to ask you if it
- 16 happened. If that's what you're thinking I'm here to do, you're totally long. That's not
- 17 even a question in my mind. I'm here to let you tell me what happened. Why it
- 18 happened.
- 19
- 20 A. Okay, let's continue with what ya got. Go ahead.
- 21
- 22 Q. Well, I'm gonna tell you right now, I just told you the allegations. As far as the evidence
- 23 that we have,.....
- 24
- 25 A. I'm having a hard time comprehending these allegations, but,....
- 26
- 27 Q. I don't think you are, bud. You're having a hard time comprehending that two Police
- 28 Officers are sitting in front of you right now,.....
- 29
- 30 A. That's true.
- 31
- 32 Q. who specialize in this field.
- 33
- 34 A. True.
- 35
- 36 Q. And, who are confronting you with these allegations.
- 37
- 38 A. That's true.
- 39
- 40 Q. But, you're not having a hard time comprehending the allegations themselves, because

1 you remember them. Very clearly what happened.

2
3 A. Okay.

4
5 Q. And, neither one of these girls, Chuck, are saying that you hurt them or forced them into
6 doing anything. Neither one of them said that. Otherwise, uh, there would have been no
7 talking.

8
9 A. Yeah.

10
11 Q. Okay. Det. Bohach and I depending on what happened, have a lot options. Some of
12 those options, obviously, are arrest. But, then that's not the only way you can go. If we
13 wanted to make an arrest, we had our opportunity when we were out with you in the
14 field.

15
16 A. Inaudible.....

17
18 Q. There are reports that can be written about what occurred and submitted to the District
19 Attorney's Office and let them decide whether or not charges are going to be filed. But
20 we have two young girls here , right now, that told us what occurred. They're taking
21 apart of the blame it themselves. But, they're not by any stretch of the imagination
22 saying they were kidnapped, forced, threatened,none of those words even came into
23 play.

24
25 A. I was uh,.....

26
27 Q. What happened?

28
29 A. I don't know.

30
31 Q. Yeah you do.

32
33 A. Who?

34
35 Q. Yeah you do. You know what happened.

36
37 A. I,.....

38
39 Q. Chuck. Chuck, let me tell you this. Maybe this might make you feel a little bit better.
40 If we weren't interested and giving you the opportunity of telling us what happened,

1 okay? Let me tell you, we had enough right out there in the field just to say, hey Chuck,
2 turn around and put your hands behind your back. But, we're, we're not about that.
3 We're too busy to be about that. We gotta hear. And, we owe it to you. We owe it to
4 everybody. To give everybody the opportunity to find out. Make sure that those same
5 people do not have contact with those kids again. That's our main priority, obviously.
6

7 A. I told Gary I didn't wanna babysit them anymore. Um, I borrowed money from Gary
8 alot and uh, the kids and I drove. Uh, what exactly do you want me to say?
9

10 Q. I want you to tell me what happened. The truth. Tell you what. This is what's gonna
11 happen. So, this is what you have to understand. Is that right now it's a quarter after
12 1:00, and the only thing we're doing again, is here to get the truth out. We know what
13 occurred. And, when we interview people Chuck, who are in your position and it ends
14 up taking up sometimes one minute, sometimes it takes them 3 to 4 hours. But, the thing
15 is, it always comes around to what happened. And, I'm asking you to work with us this,
16 okay? Cuz, if you weren't working with us Chuck, and we weren't working with you, we
17 wouldn't even be here right now. We would have ended this out there, okay? But, the
18 thing is, if you aren't working with us, you, you,.....
19

20 A. So,.....
21

22 Q. and tell us your side of the story.
23

24 A. Okay. Alright.
25

26 Q. and, and your side of the story Chuck, has to be the truth.
27

28 A. Okay, so now you're saying if I tell you my supposed side of the side story, you,.....
29

30 Q. No, no, no Chuck, if you tell the truth. That's what I want.
31

32 A. Okay, if I tell the truth to you as you want to hear it, and it comes out like uh, like some
33 kind of confession or something, is that what you wanna hear?
34

35 Q. No. I don't wanna hear nothing from you Chuck, except the truth. Okay, now look it,
36 we can end this real quick.
37

38 ~~A. Well,.....~~
39

40 ~~Q. Okay, no, no, Chuck, let me explain this, okay?—Like I said, you've-been-around-the~~

1 ~~block, okay?~~

2 0

3 ~~A. Yeah.~~

4
5 ~~Q. But, so have we. So, what we're gonna do is, if you don't have nothing to say. Chuck,~~
6 ~~and if these girls are so way off, if these girls, listen to me now,~~

7
8 ~~A. I am.~~

9
10 Q. If these girls are just out of their minds, then tell me that, okay? Tell me that they're out
11 of their minds, and then we have nothing more to talk about, okay? We have nothing
12 more to talk about. This is your opportunity. The reason you were brought here was to
13 tell me what occurred.

14
15 A. You know what? I can't lie to you. I just can't do that. Not to those girls, I can't.
16 I was buzzed.

17
18 Q. What happened.

19
20 A. I'm gonna hate myself for this. It's, uh, ... I don't really know. I swear to God I don't
21 really know. I was, ... I had a buzz on that morning. And, I'm ashamed of it no doubt.

22
23
24 Q. Your head is not clear that morning. Is that right?

25
26 A. Not really. I mean, I was drinking fucking alcohol. I was drinking tequila and Jack
27 Daniels the night before. And, I inaudible, ... the same morning. Gary come over and
28 he wanted me to watch his girls for 20 bucks or something. Uh, it was after school or
29 something. And, I'm not really sure. Then I know, I know uh, uh, Desiree, ... I don't
30 know if it was Summer.

31
32 Q. What happened?

33
34 A. I did touch her. Uh, I didn't actually touch her, she touched me.

35
36 Q. How did she touch you?

37
38 A. Well she said, ... I was telling her I was gonna take a shower. And she was watching
39 t.v. on my couch, and she just some how or another, she mentioned something about how
40 she gave her dad a shower and washed his back or something. And, I just jokingly said

1 something about uh, do wanna wash my back. You know, just as a joke. She came back
2 with yeah, yeah inaudible.....but, don't tell my sister or something. And, I said
3 whatever, and I went in the shower. And she come in and washed my legs and uh, my
4 back.

5
6 Q. Did it give you an erection when she did that?

7
8 A. No. No, she did not give me an erection. She did not. Um, it wasn't her fault. I'm an
9 adult, and I should have known better. The girl should have,...she's only like 7 or 8
10 years old. I know,....it's never happened. I don't know why I even did it. I'm not that
11 kind of person. I,.....honest to fucking God am not that kind of person.

12
13 Q. So, when you said that she was washing you? Was she washing your, your genitals?

14
15 A. No. Well, she washed around there. She didn't actually wash them. Well yeah she
16 might have. She grabbed everything. She might of washed around my balls or
17 something. Basically she washed my legs right here and here. And she washed my back.
18 My lower back. Uh, she probably, she might of,....yeah she might of even given me a
19 hard on. I don't think so. But, yeah she possibly could have. Inaudible.....

20
21 A. She was not. No. No she was not. She was standing by outside. And, it was probably
22 for about 15 seconds give or take. I don't know. But, yeah. Yeah, she did.

23
24 Q. But, it didn't arouse you at all?

25
26 A. No it did not.

27
28 Q. Why do think, why do you think it happened?

29
30 A. You know, to be honest, I really don't know. I ask myself that question in my own mind
31 that too. I've had ta,...I've felt guilty. I don't even know why. You know, I've had two
32 daughters of my own. I, I enjoy women, you know. Um, I don't,....I have no answer.
33 I've asked myself that too. Because, I am not that type of person. I, I'm not. I never
34 have been. I've never even thought about shit like that. You know, I mean I beaten
35 dudes up when I was in the joint for shit-like that. I've kicked guy's ass for doing that.
36 You know, you know, I really couldn't tell you though. Because this has never happened
37 you know. When it did happen, it wasn't you know, uh, it wasn't satisfactory in no way.
38 So, don't even think that. I mean professionally, okay fine be professional. I don't know
39 how to clue you in on something that you know, that has never happened, and I hope to
40 God never fucking happens again because I have no answer for it. I don't know. You

1 know. And, you can believe what you think. And I have no,....I don't know.

2
3 Q. What were you drinking that morning? Were you drinking?

4
5 A. No. Not really drinking. I just had a beer to get rid of the hangover. I had a bad
6 hangover. I was hot and I had some tequila and Jack Daniels and probably a couple of
7 other beers. And uh, I, I, don't work so I get an occasion,.....occasional I get a buzz.
8 I drink with their dad next door you know, occasionally. Um,

9
10 Q. Look here Chuck, I, I appreciate you sharing that with us, alright? Because, I'm telling
11 you, we weren't here to ask you if it happened. We were here to hear your side of the
12 story and give us an explanation basically what you just did.

13
14 A. No I can't. That, inaudible.....I don't know what the fuck that is you know, but, with
15 Summer I was guilty. You know, I had, you know, I, I, couldn't,...it's hard for me to
16 even face her. You know, and she looks at me and she still has that happy smile you
17 now.

18
19 Q. The only thing is,....

20
21 A. It wasn't her that did nothing wrong.

22
23 Q. Chuck? There's some more stuff that happened.

24
25 A. What?

26
27 Q. There's some more stuff that happened between you and Summer.

28
29 A. There's no way.

30
31 Q. There's some more stuff that happened between you and Summer. Think about it.

32
33 A. What? There's nothing that I know of that could of happened. I mean it.

34
35 Q. There's not. And uh uh,....

36
37 A. I, I, uh, uh, you, uh,.....

38
39 Q. Something. It's out bud. It's out. Lay it out and uh,....
40

- 1 A. She went back to the front room. That's what happened.
2
3 Q. No, not, not,...inaudible.....on that day. More happened.
4
5 A. On that day,...
6
7 Q. There's more that happened. I don't know if it happened that day. But, I know what
8 occurred, okay? And, I know that uh, you had an incident with you and Summer and you
9 and Desiree. Not together, but you had incidents with each of them separately where you
10 had their panties down, and you were placing your penis in their vagina.
11
12 A. How can, how can I, how can a man do that?
13
14 Q. Just rubbing it against their vagina.
15
16 A. You see okay.
17
18 ~~JB We're just as common wise as you are.~~
19
20 ~~A. Well yeah. Yeah.~~
21
22 JB So, you, you can stop the game.
23
24 A. Oh, I'm trying. I'm trying sir, I really am.
25
26 JB It's just better you know, to just get, to get it over with man. Just tell us the truth
27 so we can all go about our business. But, this well, yeah I don't know,....
28
29 A. Well, I do know. I know I'm playing it out man. I don know,...I had a fucking buzz
30 man. It's all the same trip. I'm trying to explain to myself why I did something. I just
31 know I did something wrong.
32
33 JB We've got plenty of time for that.
34
35 A. I don't. I don't.
36
37 JB What we want to do is hear your version of the story, about what happened.
38 Without, without the uh, you know the bullshit.
39
40 A. Yeah I know. You think I'm bullshiting? You think I;m going through the dramatics.

1 I know, I've been through this too. It's hard to get it right out. Cuz I'm just sitting here
2 fucking around. It had to come out sooner or later. Yeah, it was all in the same day.

3
4 Q. What happened Chuck?

5
6 A. The two girls were talking about it and wouldn't let each other know about it. And, I
7 don't know exactly what happened. Then said something to me. I bent over and I just,
8 I don't know. Goddamn it.

9
10 Q. Where were you at when it happened?

11
12 A. It was in her house.

13
14 Q. What happened?

15
16 A. Probably what she told you. With Desiree, yes.

17
18 Q. What happened?

19
20 A. I did take her panties off. And, I did rub my penis on her. Yes I did.

21
22 Q. And, do you remember when that was roughly?

23
24 A. I know it was in the same period, time period. Uh, I don't know exactly what day.

25
26 Q. Do you remember what month?

27
28 A. It was sometime last month I think. Um,....

29
30 Q. I mean what month? December?

31
32 A. I, I think it was sometime in December.

33
34 Q. Okay.

35
36 A. Uh, uh, oh yeah. I mean I can't live with the bullshit. I don't know,....

37
38 Q. What did you say to her when you were doing it?

39
40 A. I, I, I, don't know. I don't really remember saying anything. Um, she said something

1 to me. I said something to her I guess. I, I, really don't know.

2
3 Q. How did you take her panties off?

4
5 A. Uh, I think I just took them off.

6
7 Q. Okay. Do you remember what she was wearing?

8
9 A. No.

10
11 Q. What do you think she was wearing? Was she wearing clothes? Was she wearing
12 pajamas?

13
14 A. Uh, probably. Fuck I don't know. To answer that, I don't know. I really don't know.
15 They um, they uh, I don't know. I don't know what them girls were wearing.

16
17 Q. Okay.

18
19 A. I only babysat them a couple of times.

20
21 Q. Right. So, you take her panties down. What, what were you wearing?

22
23 A. My robe. I was wearing my robe.

24
25 Q. Were you wearing anything underneath?

26
27 A. Um, probably, probably my drawers. It was anything it would be my underwear I'm
28 sure. It might even of been my pants.

29
30 Q. So, what, what part of the house were you in, in her house?

31
32 A. Her bedroom.

33
34 Q. Okay, and what piece of furniture in her bedroom?

35
36 A. Uh, she had a bed there.

37
38 Q. Okay. Were they bunk beds type beds?

39
40 A. Oh of course.

1 Q. Okay. And so what happened?

2
3 A. I don't know. I don't know. I just uh, I guess it just happened. I don't know what
4 happened. I walked in her bedroom and I guess uh, I don't know.

5
6 JB You pulled her pants down? Or her panties?

7
8 A. Yeah.

9
10 JB Then you lifted up whatever she was wearing on top?

11
12 A. I guess. I don't know if she was wearing something on top or not. I really don't know.
13 I don't think so. Um,....

14
15 Q. Do you remember kissing her chest?

16
17 A. No.

18
19 Q. You don't remember kissing Desiree's chest?

20
21 A. Not at all.

22
23 JB Come on Chuck.

24
25 A. Why would I kiss her chest? What would I do to her chest?

26
27 Q. Did you uh, did you end up ejaculating?

28
29 A. No, not that I can recall.

30
31 Q. So uh, did you put your penis in her mouth?

32
33 A. No.

34
35 Q. On that one?

36
37 A. On that one? No. No.

38
39 Q. Okay.

40

1 A. No. By all means, no.

2

3 Q. Okay.

4

5 A. Not at all, no, no.

6

7 Q. I believe you.

8

9 A. No.

10

11 Q. I believe you. I'll tell you what, I believe you cuz I know what happened. And, that's
12 and that's not one of the things that happened. I'm just telling you so you have no idea,
13 so you can realize what about what I'm telling you, sitting here saying that I know what
14 happened.

15

16 A. Yeah.

17

18 Q. That's not one of the things that happened.

19

20 A. No. No. No.

21

22 Q. Okay. Uh, here's the deal, is uh, I need for you to be totally honest about everything.

23

24 A. Well I've been as honest as I can fucking be now. Jesus Christ.

25

26 Q. Well, let me tell you this though. Because uh, Summer and uh, Desiree made some
27 allegations, uh, concerning you, we wanted to come to you to get your side of the story,
28 okay? And, we asked you to come here and you came here. And, you're sitting in front
29 of me Chuck, and I appreciate you're being honest. But, now you're being honest,.....

30

31 A. Now, I'm under arrest?

32

33 Q. No, not at all. Now that you're being honest, we appreciate you're being honest, I have
34 to advise you of your rights.

35

36 A. Yeah, I know. I'm under arrest, I know.

37

38 Q. Just,...no.....that's not true at all.

39

40 JB You're not under arrest man.

1 Q. If you're under arrest, we could end this here.

2
3 A. Okay.

4
5 Q. You're not under arrest at all. The only reason I have to do that Chuck, is for,...the
6 laws of the land say that when it comes to a point where you have told me that in fact,
7 there is some validity to these things, I have to make sure that you understand your
8 rights.

9
10 A. Okay.

11
12 Q. It doesn't change. It doesn't mean that I've changed. It just means that I have to advise
13 you of your rights. I think it's a good thing. But, it goes like this,...you have the right
14 to remain silent. Anything you say, can and will be used against you in a court of law.

15
16 A. Yeah.

17
18 Q. You have the right to consult an attorney. If you cannot afford an attorney, one will be
19 appointed free of charge to represent you before any further questioning if you so desire.
20 Do you understand these rights?

21
22 A. Uh huh.

23
24 Q. Having those rights in mind, do you want to talk to John and I about what happened?

25
26 A. No. I don't wanna talk anymore.

27
28 Q. Okay. That's your right bud. That's your right. You know, if you don't wanna talk,
29 that's fine. Uh, what are you doing that for? I haven't even talked to my partner here.
30 I haven't even talked to my partner here yet.

31
32 JB. I think you're thinking about the worse man.

33
34 A. Well what I wanna do is not really humanly supposed to be done. I'm guilty. I'm
35 ashamed. I don't know why. I, I, I.....inaudible.....you know what I mean?

36
37 JB. Well, if the worse was gonna happen, don't you think we would have just
38 snatched you right off your porch?

39
40 A. I don't know. I've never been through something like this, you now.

1 Q. ~~Wait, Chuck? As far as I'm concerned, you gave us, you gave your decision. You just~~
2 ~~told us you didn't wanna talk to us no more. I respect the hell out of that. No problem.~~
3 ~~So, we're done. Okay, I'm gonna go talk to my partner, and I'll let you know what's~~
4 ~~going on. Is that fair?~~

5
6 A. ~~That's fair enough.~~

7
8 Q. ~~Okay. Do you have any questions for me?~~

9
10 A. ~~No. No.~~

11
12 Q. ~~How come you haven't registered with us? You're an ex-felon. How come you haven't~~
13 ~~registered your new address?~~

14
15 A. ~~Um, why?~~

16
17 Q. ~~You have to register with us when you live in our city and you're an ex-felon. You're~~
18 ~~required.~~

19
20 A. ~~Well, this is why I became an ex-felon.~~

21
22 JB ~~You still have to register with us.~~

23
24 A. ~~Oh? I didn't know that. No. No.~~

25
26 Q. ~~I'll get you a thing that tells you what you have to do.~~

27
28 A. ~~Well oh yeah, I didn't know that.~~

29
30 Q. ~~Yeah. It's an arrestable offense. Okay? I'll be back in a minute. If you have any~~
31 ~~questions, let me know. I'll be back in a minute. You can ask them.~~

32
33 (Sitting alone in interview room, talking to himself).....

34
35 A. Alright. Shit. I don't know why I got even in the first place. Why did I do that? I can't
36 believe this whole fucking thing. Stupid fuck. Boy....oh damn. I don't believe that I
37 did that. Why? Why? Why? Why? Why?

38
39 Q. ~~You know, we were just talking. We're not gonna ask you anymore questions about what~~
40 ~~occurred. But, I did wanna ask you,....if we were to check your apartment over there,~~

1 are-we-gonna-find-anything-inside-there?—And, I'm-not-talking-about-narcotics. I-could
2 care-less-about-narcotics. That's-not-what-I'm-involved-in. But, anything-as-far-as-uh,
3 child-pornography?

4
5 A. No-way. No way. No. No. No. You'll find Four-Wheel Drive. You'll find Hunting
6 magazines. You-will-find-uh, uh, a car-magazine. No-way. I-know-it-ain't,.....my-God
7 man. I-mean, no.

8
9 JB Well, we're not gonna ask you anymore questions. Is there anything else you
10 wanna tell us?

11
12 A. Do-me-a-favor.

13
14 JB What's that?

15
16 A. Um,...look-man, this-ain't, this-is-no-joke. The tears I'm holding back are for real man.
17 Do-I-have-a-fucking-problem-with-this? I-mean, this-is-the-first-time. I'm-almost-40
18 years-old. I've-never-done-nothing-like-this-in-my-life. You-look-at-my-fucking-record
19 man.....

20
21 Q. I-know, I-did.

22
23 A. I've-never-done-this-in-my-life. I'd-beat-a-mother-fucker-to-death. I-have-no-problem
24 with-that. You-know, I'm-a-violent-person. I-have-a-problem-with-violence. I've-lived
25 with-it-for-a-month-ro-whatever-it's-been. I've-never-in-my-entire-life-done,.....dude,
26 you're-a-man. You've-taken-pussy. You-know-if-a-woman-wants-to-fuck, you-wanna
27 fuck, she-says-oh-hey,.....you-know-you-roll-overt-and-you-wanna-get-a-piece-of-ass-at
28 3:00-o'clock-in-the-morning-or-something-from-your-old-lady. You-know-what-I'm
29 saying? She-might-have-a-headache-or-something-like-that. But, nothing-like-this.
30 Nothing. Do-I-have-a-problem-starting?

31
32 Q. I-don't-know. That's-a-good-question. An-excellent-question. I'm-serious-Chuck, that's
33 a-good-question.

34
35 A. Inaudible.....

36
37 Q. I-don't-know. I-don't-know-man, that's-a-good-question.

38
39 A. You-know-what? The girls are sweet. They, they-did-nothing-to-me. I-love-them-girls.
40 I-protect-them-girls. You-know, I-have-2-daughters-of-my-own. Inaudible.....you-know.

1 Q. ~~Chuck, I'm gonna go talk to several other little girls that are in the,....~~

2
3 A. ~~You talk to all the girls you want. You talk to all the kids. All the boys. All the girls.~~
4 ~~All her, all her neighbors. All her girlfriends. All of them. You do. All of them.~~

5
6 Q. ~~No other problems. No other problems.~~

7
8 A. ~~There's never been one. You go back as many years as you want and you talk to any kid~~
9 ~~in the neighborhood that you want. Anything,.....woooo,....you talk to anybody you want.~~
10 ~~Anybody. Please do. Just, you,....it never happened. It will never happen again. And,~~
11 ~~there was nothing they did. It was, you know, I can't explain it.~~

12
13 Q. ~~Okay, here's, here's the deal then Chuck. John, do you have anything else that you want~~
14 ~~to tell him?~~

15
16 JB ~~Not unless you have anything else you wanna tell me.~~

17
18 Q. ~~Our concern, Chuck, is the girls, obviously. You know, I mean they're only.....~~

19
20 A. ~~I am not gonna confront them on this. I'm gonna confront Gary. But, I'm not gonna~~
21 ~~confront the girls. As far as they know, you never talked to me.~~

22
23 Q. ~~Why do you want to confront Gary?~~

24
25 A. ~~Because I wanna, well,....no, I wanna confront Gary. He seen me last night. He didn't~~
26 ~~say nothing to me.~~

27
28 Q. ~~The little girls told their friends. That's how we found out.~~

29
30 A. ~~Did they?~~

31
32 Q. ~~Yeah. They said that you told them not to tell Gary, so they didn't tell Gary. But, they~~
33 ~~told their friends.~~

34
35 A. ~~Yeah.~~

36
37 JB ~~Would you mind if I just looked into your apartment? Would you have a problem~~
38 ~~with that?~~

39
40 A. ~~As long,.....~~

1 JB Hey look, I ain't worried about if you had some weed in there, I could care less.

2
3 A Are you ion the up-front about that?

4
5 JB Oh yes.

6
7 A Cuz, well shit, ... you know, yeah, I have weed in my apartment. You're more than
8 welcome.

9
10 JB I mean, is it like pounds of it? Or what?

11
12 A Oh fuck, just a joint or two is all there is.

13
14 JB We're not worried about that.

15
16 Q Our concern? Is anything to do with child pornography, any pornography at all?

17
18 A I have a Hustler in there.

19
20 Q Yeah, but I mean no photographs? Old inaudible,

21
22 A No. You could tear that place apart. You could tear it apart.

23
24 JB What apartment do you live in?

25
26 A Number 8. You can come in there day or night. You wanna come right this minute,
27 you're welcome to it. My house is immaculent. I keep a nice home.

28
29 JB Okay. What this is here, is a permission to search. It says the undersigned
30 residing at 1015 Nevada Street, #8, Reno, Nevada, does hereby voluntarily
31 authorize the Reno Police Department and other officers it may designate to assist
32 her in a search of my residence, the real property located at 1015 Nevada Street.
33 Uh, do you wanna look in his car?

34
35 A You can look in the truck too if you want.

36
37 JB What year us that?

38
39 A A 77 Ford pick up.

40

1 Q. ~~Let me clarify something to you though. In case this uh, ... the reason I want to clarify~~
2 ~~this with you on the permission to search, is we're not out looking for weed, okay?~~

3
4 A. ~~Uh huh.~~

5
6 Q. ~~We're out looking for anything to do with child pornography. If we found the weed,~~
7 ~~there, ... that will be a problem because we can't ignore it. We can't ignore it.~~

8
9 A. ~~Well then,~~

10
11 Q. ~~So, then what I'm telling you, and this is your right,~~

12
13 A. ~~Then I don't want you to search then.~~

14
15 Q. ~~Okay, that's your right.~~

16
17 A. ~~I can have you do that.~~

18
19 Q. ~~No, that's fine.~~

20
21 A. ~~No. I mean I've been up front with you.~~

22
23 Q. ~~I agree. That's why I'm telling you up front. What Det. Bohach is saying, is not a lie.~~
24 ~~The last thing we, we could care less about a joint, okay?~~

25
26 A. ~~Right.~~

27
28 Q. ~~Cuz, that's not what this case is about. If that's what the case was about, and we were~~
29 ~~drug guys, then yeah, we'd care. But, we're not about that.~~

30
31 A. ~~Yeah.~~

32
33 Q. ~~But unfortunately we're still cops, and we can't ignore it.~~

34
35 JB ~~I didn't mean to make it sound like I was gonna overlook it.~~

36
37 Q. ~~It would have been taken care of. But, we would've made sure that you weren't charged~~
38 ~~with it. You know, we weren't gonna charge you with it. But, I agree with you one~~
39 ~~hundred percent. Let's, ... if that's a concern of yours? We're Police Officers. Uh, we~~
40 ~~wouldn't be able to ignore it. We would have to do something.~~

1 A. ~~Yeah. Right.~~

2
3 Q. ~~And, so.....~~

4
5 A. ~~Yeah, if that's the case, I'm glad you're not. I have nothing to hide as far as that goes.~~
6 ~~I have absolutely nothing to hide as far as that goes.~~

7
8 Q. ~~Okay, I, I, believe you.~~

9
10 A. ~~Uh,....~~

11
12 Q. ~~Okay, this is where we stand now. Is uh, we're concerned about the girls' welfare.~~
13 ~~We're concerned about dad. We're concerned about a couple of the other neighbor girls~~
14 ~~that live in that area that we have not spoken to.~~

15
16 A. ~~There is nothing to worry about. Absolutely nothing.~~

17
18 Q. ~~Okay, you've been truthful with us. We appreciate that tremendously. But, what we~~
19 ~~have to do, ... see, you are under arrest.~~

20
21 A. ~~I knew I would be.~~

22
23 Q. ~~But, again, it wouldn't have been any, any worse if you had just told us that you didn't~~
24 ~~wanna talk to us from the very beginning. Because, I'll tell you, our case? I didn't even~~
25 ~~lay out everything that we've got. It's pretty extensive Chuck. And, again when we~~
26 ~~talked to you out in the field, it was because we wanted to give you the opportunity to~~
27 ~~seriously talk.~~

28
29 A. ~~I don't need no arrest warrant.~~

30
31 Q. ~~You know, cuz we didn't just wanna book you on it. Just saying he's good for it. Let's~~
32 ~~just believe the girls. We wanted to talk to you. There is some validity to it. We'll have~~
33 ~~to see what happens.~~

34
35 A. ~~Yeah, so, how do I bail out of this thing if ever,.....~~

36
37 Q. ~~That's what the country, ... the deputies up there will explain that stuff.~~

38
39 A. ~~Does that mean that I,....~~

1 Q. ~~What are you gonna do with your dog?~~

2
3 A. ~~Huh?~~

4
5 Q. ~~What are you gonna do with your dog?~~

6
7 A. ~~My sister.~~

8
9 Q. ~~Okay, good.~~

10
11 JB. ~~Does she have a key to the house?~~

12
13 A. ~~Huh?~~

14
15 JB. ~~Does she have a key to your house?~~

16
17 A. ~~No, I'll have to give her the key....~~

18
19 JB. ~~She'll be able to get it up there.~~

20
21 A. ~~Yeah.~~

22
23 JB. ~~Do you have any other animals in the house?~~

24
25 A. ~~Just my dog.~~

26
27 JB. ~~Okay. The dog will be okay for a couple of hours?~~

28
29 A. ~~Yeah. Yeah, if I can call her right now.~~

30
31 Q. ~~We'll get you a phone call shortly. Will give all you want.~~

32
33 A. ~~So what exactly am I under arrest for then?~~

34
35 Q. ~~Sexual Assault and Lewdness with a Child Under the Age of Fourteen Years Old.~~

36
37 A. ~~What does that do?~~

38
39 Q. ~~What do you mean?~~

1 ~~A. If I'm found guilty of this stuff?~~

2
3 ~~Q. That's not up to us bud. That's up to the judge. You uh, like you said, you've never had~~
4 ~~anything like this on your record before.~~

5
6 ~~A. Yeah, I've never even had something like this happen. You now, this is,.....uh, it's~~
7 ~~terrible.~~

8
9 ~~Q. This is the thing we're gonna do though. We're gonna get it handled. I'm serious. Chuck.~~
10 ~~We're gonna get it handled. We'll get it taken care of. Det. Bohach will tell you how~~
11 ~~to get us.~~

12
13 ~~A. Cuz I'm not a goddamn molester and all that bull crap. You know, I mean this is~~
14 ~~ridiculous. You know, it is. It's something that did happen. I have to admit to it. I'll~~
15 ~~never do it again.~~

16
17 ~~Q. John, do you have any other questions you need answered on that form?~~

18
19 ~~JB Just uh,~~

20
21 ~~A. You guys aren't gonna go check my place now are ya?~~

22
23 ~~Q. No. You told us no. You told us no, so we're not going.~~

24
25 JB How long have you lived in Nevada?

26
27 A. Um, oh since May of 1992.

28
29 JB What's your birthdate?

30
31 A. 2-11-55.

32
33 JB And how old does that make you?

34
35 A. 39.

36
37 JB And where were you born?

38
39 A. Um, Inaudible.....California.

1 JB What's your social security number?

2

3 A.

4

5 JB How tall are you?

6

7 A. 6 foot.

8

9 JB How much do you weigh?

10

11 A. 200.

12

13 JB What color are your eyes?

14

15 A. Brown.

16

17 JB Do you have a home phone number?

18

19 A. 324-4558. I knew I had done this. I had to get it off my chest. I did something terribly
20 wrong, and I'm inaudible....for it all. I have no answer for what I did. I've never done
21 such, and I hope to God I never done it again. I don't believe this. Inaudible.....

22

23 JB Okay, if I can get you to stand up. Are you okay?

24

25 A. See, I've got a broken leg. And I've got a broken back.

26

27 JB Can I get you to turn around and put your hand behind your back for me, as soon
28 as you get your feet back.

29

30 A. I had a feeling when I seen them Police cars.

31

32 JB Okay. Can I get you to face that wall there for me? Thank you. Okay, just go
33 ahead and have a seat. Can you sit down alright?

34

35 A. Not really.

36

37 JB Okay, you can stand up of that's more comfortable.

38

39 A. Yeah, it just hard for me to set down and get up. It's very difficult. Boy if could just
40 take it all back. You can talk to all the people you want. This ain't never happened

1 before. Horse shit. Inaudible.....like a nightmare almost. No, I inaudible.....there goes
2 a million dollars. SIIS. I inaudible.....all because of one fucking thing I did wrong.
3 Why I don't know. Why? Why? Man. Man. Fuck.
4

5 JB Okay.
6
7

8 END OF STATEMENT-----
9
10