

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

Electronically Filed
Dec 16 2015 01:53 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

MICHAEL TODD BOTELHO
Petitioner,

vs.

Sup. Ct. Case No. 69046
Case No. CR03-2156
Dept. 3

JAMES BENEDETTI, WARDEN,
STATE OF NEVADA,
Respondents.

_____ /

RECORD ON APPEAL

VOLUME 2 OF 9

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APPELLANT

Michael T Botelho #80837
NNCC
P O Box 7000
Carson City, Nevada 89702

RESPONDENT

Washoe County District Attorney's
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P O Box 11130
Reno, Nevada 89502-3083

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DA # 318167

WCSO WC03-008924

ORIGINAL

CODE 1795

Richard A. Gammick

#001510

P.O. Box 30083

Reno, NV 89520-3083

(775) 328-3200

Attorney for Plaintiff

FILED

10-8-03

RONALD A. LONGTIN, JR., Clerk

By S. Stagnaro Deputy 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.

Case No. **CR03 2156**

Dept. No. 3

MICHAEL TODD BOTELHO,
also known as @154004
"KEVIN",

Defendant.

INDICTMENT

The defendant, MICHAEL TODD BOTELHO, also known as "KEVIN",
is accused by the Grand Jury of Washoe County, State of Nevada, of
the following:

COUNT I. KIDNAPPING IN THE FIRST DEGREE, a violation of
NRS 200.310-1 and NRS 200.320, a felony, (F610) committed as follows:

That the said defendant on the 7th day of August, 2003, or
thereabout, within the County of Washoe, State of Nevada, did
willfully and unlawfully seize and/or confine and/or entice and/or
kidnap and/or carry away the person of JANE DOE, a minor child of the
age of fourteen years having a date of birth of November 8, 1988,

1 with the intent to hold and detain and did hold and detain such
2 person for the purpose of committing sexual assault upon her, and/or
3 with the intent to hold said minor to unlawful service or to
4 perpetrate upon the person of the minor any unlawful act.

5 ^{F110} COUNT II. BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT ON
6 A CHILD, a violation of NRS 200.400, a felony, (F110) committed as
7 follows:

8 That the said defendant on the 7th day of August, 2003, or
9 thereabout, within the County of Washoe, State of Nevada, did
10 willfully and unlawfully use force and violence upon the person of
11 JANE DOE, a minor child of the age of sixteen years having a date of
12 birth of November 8, 1988, at the hills of Washoe Valley, Washoe
13 County, Nevada, with the intent then and there to commit sexual
14 assault upon and/or against JANE DOE, to wit: by applying duct tape
15 over the victim's eyes and/or over the victim's mouth and/or over the
16 victim's hands and/or by punching said victim in the stomach area
17 and/or by pushing said victim down and sitting on her shoulders.

18 ^{F1000} COUNT III. SEXUAL ASSAULT ON A CHILD, a violation of NRS
19 200.366, a felony, (F1000) committed as follows:

20 That the said defendant on the 7th of August, 2003, or
21 thereabout, within the County of Washoe, State of Nevada, did
22 willfully and unlawfully subject JANE DOE, a female child under the
23 age of sixteen years, having a date of birth of November 8, 1988, to
24 sexual penetration, against the victim's will or under conditions in
25 which the defendant knew or should have known that the victim was
26 mentally or physically incapable of resisting or understanding the

1 nature of the defendant's conduct, to wit, said defendant forced the
2 victim to perform fellatio upon him, in the hills of Washoe Valley,
3 Washoe County, Nevada.

4 ^{F1000} COUNT IV. SEXUAL ASSAULT ON A CHILD, a violation of NRS
5 200.366, a felony, (F1000) committed as follows:

6 That the said defendant on the 7th of August, 2003, or
7 thereabout, within the County of Washoe, State of Nevada, did
8 willfully and unlawfully subject JANE DOE, a female child under the
9 age of sixteen years, having a date of birth of November 8, 1988, to
10 sexual penetration, against the victim's will or under conditions in
11 which the defendant knew or should have known that the victim was
12 mentally or physically incapable of resisting or understanding the
13 nature of the defendant's conduct, to wit, said defendant subjected
14 said child to cunnilingus, in the hills of Washoe Valley, Washoe
15 County, Nevada.

16 ^{F1000} COUNT V. SEXUAL ASSAULT ON A CHILD, a violation of NRS
17 200.366, a felony, (F1000) committed as follows:

18 That the said defendant on the 7th of August, 2003, or
19 thereabout, within the County of Washoe, State of Nevada, did
20 willfully and unlawfully subject JANE DOE, a female child under the
21 age of sixteen years, having a date of birth of November 8, 1988, to
22 sexual penetration, against the victim's will or under conditions in
23 which the defendant knew or should have known that the victim was
24 mentally or physically incapable of resisting or understanding the
25 nature of the defendant's conduct, to wit, said defendant subjected
26

1 said child to vaginal intercourse with his penis, in the hills of
2 Washoe Valley, Washoe County, Nevada.

3
4 Dated this 8th day of October, 2003.

5
6 RICHARD A. GAMMICK
7 District Attorney

8
9 By Kelli Anne Vilorio
10 KELLI ANNE VILORIA
11 5872
12 Deputy District Attorney
13
14
15
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25

26 09231924

1 The following are the names of witnesses examined before
2 the Grand Jury:

3 JANE DOE

4 GREG HERRERA

5 ANNIE KNAPIC

6 MARIE NORBERG

7 RENEE ROMERO

8 CUSTODIAN OF RECORDS, VERIZON WIRELESS *CFMc*

9 JERRY PATTISON

10 CUSTODIAN OF RECORDS, CARSON-TAHOE HOSPITAL *CFMc*

11 "A TRUE BILL"

12 *Charles F. ...*
13 FOREMAN

14 "NO TRUE BILL"

15
16
17
18 FOREMAN

DA # 318167

WCSO WC03-008924

CODE 1300

Richard A. Gammick

#001510

P.O. Box 30083

Reno, NV 89520-3083

(775) 328-3200

Attorney for Plaintiff

ORIGINAL

FILED

10-8-03
RONALD A. LONGTIN, JR., ClerkBy S. Diagnaro
Deputy 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.

MICHAEL TODD BOTELHO,
also known as
"KEVIN",

Defendant.

Case No. **CR03 2156**

Dept. No. 3

BENCH WARRANT

STATE OF NEVADA)
):ss.
COUNTY OF WASHOE)

TO ANY SHERIFF, CONSTABLE, MARSHAL, POLICEMAN, OR PEACE
OFFICER IN THIS STATE:

An INDICTMENT having been returned by the Grand Jury of
Washoe County, Nevada, on the 8th day of October, 2003, charging
MICHAEL TODD BOTELHO, also known as "KEVIN", with the crimes of COUNT
I. KIDNAPPING IN THE FIRST DEGREE, a violation of NRS 200.310-1 and
NRS 200.320, a felony; COUNT II. BATTERY WITH INTENT TO COMMIT
SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.400, a felony;

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
10/08/2003 01:27 PM
1300

1 COUNT III. SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.366, a
2 felony; COUNT IV. SEXUAL ASSAULT ON A CHILD, a violation of NRS
3 200.366, a felony; and COUNT V. SEXUAL ASSAULT ON A CHILD, a
4 violation of NRS 200.366, a felony,

5 YOU ARE THEREFORE COMMANDED forthwith to arrest the above-
6 named defendant and bring him before the Court to answer the
7 Indictment; or, if this Court is not in session, that you deliver him
8 into the custody of the Sheriff of Washoe County, Nevada, that he may
9 be taken before this Court at such time as it be in session.

10 BY ORDER OF THE COURT. GIVEN UNDER MY HAND WITH THE SEAL
11 OF THE COURT AFFIXED this 8th day of October, 2003.

12
13
14
15 *Barbara*
16 DISTRICT JUDGE

17 The defendant, MICHAEL TODD BOTELHO, also known as "KEVIN",
18 is to be admitted to bail in the amount of \$ 250,000 cash only B^a.

19 Endorsed this 8th day of October, 2003.

20
21 RONALD A. LONGTIN, JR., Clerk

22
23 By *[Signature]*
24 Deputy
25
26

R E T U R N

I, _____, hereby certify that I have received the attached Bench Warrant on the _____ day of _____, 20____, and served the same on the defendant, MICHAEL TODD BOTELHO, also known as "KEVIN", placing him in the custody of the Sheriff of Washoe County, Nevada, until bail in the sum of \$_____, as set by the Court has been posted.

DATED this _____ day of October, 2003.

RCR 2003-011479

ORIGINAL

CODE 3370
 Richard A. Gammick
 #001510
 P.O. Box 30083
 Reno, NV 89520-3083
 (775) 328-3200
 Attorney for Plaintiff

FILED
 10-8-03
 RONALD A. LONGTIN, JR., Clerk
 By *J. Stagnaro* Deputy 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.

MICHAEL TODD BOTELHO,
 also known as
 "KEVIN",

Defendant.

Case No. **CR03 2156**

Dept. No. 3


ORDER STAYING PROCEEDINGS

An INDICTMENT having been found by the Grand Jury of Washoe County, Nevada, on the 8th of October, 2003, in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, charging MICHAEL TODD BOTELHO, also known as "KEVIN", with the crimes of COUNT I. KIDNAPPING IN THE FIRST DEGREE, a violation of NRS 200.310-1 and NRS 200.320, a felony; COUNT II. BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.400, a felony; COUNT III. SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.366, a felony; COUNT IV. SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.366, a felony; and COUNT V. SEXUAL ASSAULT ON A CHILD, a

1 violation of NRS 200.366, a felony, and it further appearing to the
2 satisfaction of the Court that further proceedings in the Justice
3 Court of Reno Township in connection with a Criminal Complaint
4 charging the said defendant with said offenses is not necessary,

5 IT IS HEREBY ORDERED that all further proceedings on the
6 Criminal Complaint heretofore issued against the said defendant in
7 the Justice Court of Reno Township be, and the same is hereby stayed
8 pending final determination of the aforementioned Indictment and
9 proceedings had thereupon.

10 DONE IN OPEN COURT this 8th day of October, 2003.

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13 _____
14 DISTRICT JUDGE
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DA # 318167

WCSO WC03-008924

CODE 1300

Richard A. Gammick

#001510

P.O. Box 30083

Reno, NV 89520-3083

(775) 328-3200

Attorney for Plaintiff

FILED

2003 OCT 14 PM 3:55

RONALD A. LONGTIN, JR.

BY [Signature]
DEPUTY

FILED

10-8-03
RONALD A. LONGTIN, JR., ClerkBy S. Stagnaro
Deputy 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.

MICHAEL TODD BOTELHO,
also known as
"KEVIN",

Defendant.

Case No. **CRO3 2156**

Dept. No. 3

BENCH WARRANT

STATE OF NEVADA)
):ss.
COUNTY OF WASHOE)

TO ANY SHERIFF, CONSTABLE, MARSHAL, POLICEMAN, OR PEACE
OFFICER IN THIS STATE:

An INDICTMENT having been returned by the Grand Jury of
Washoe County, Nevada, on the 8th day of October, 2003, charging
MICHAEL TODD BOTELHO, also known as "KEVIN", with the crimes of COUNT
I. KIDNAPPING IN THE FIRST DEGREE, a violation of NRS 200.310-1 and
NRS 200.320, a felony; COUNT II. BATTERY WITH INTENT TO COMMIT
SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.400, a felony;

DC-09900071844-013
CR03-2156
STATE VS. MICHAEL TODD BOTELHO 3 Pages
10/14/2003 11:38 AM
District Court
Washoe County

1 COUNT III. SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.366, a
 2 felony; COUNT IV. SEXUAL ASSAULT ON A CHILD, a violation of NRS
 3 200.366, a felony; and COUNT V. SEXUAL ASSAULT ON A CHILD, a
 4 violation of NRS 200.366, a felony,

5 YOU ARE THEREFORE COMMANDED forthwith to arrest the above-
 6 named defendant and bring him before the Court to answer the
 7 Indictment; or, if this Court is not in session, that you deliver him
 8 into the custody of the Sheriff of Washoe County, Nevada, that he may
 9 be taken before this Court at such time as it be in session.

10 BY ORDER OF THE COURT. GIVEN UNDER MY HAND WITH THE SEAL
 11 OF THE COURT AFFIXED this 8th day of October, 2003.

15 Brent Adams

16 DISTRICT JUDGE

17 The defendant, MICHAEL TODD BOTELHO, also known as "KEVIN",
 18 is to be admitted to bail in the amount of \$250,000⁰⁰ Cash only.

19 Endorsed this 8th day of October, 2003.

21 The court has reviewed the information attached to this order and has found it to be true and correct.

22 RONALD A. LONGTIN, JR., Clerk

23 DATE: 10/8/03
 24 BY: S. Stagnaro
 25 Deputy

23 By S. Stagnaro
 24 Deputy

R E T U R N

I, Detective Greg Yerran, hereby certify that I have received the attached Bench Warrant on the 10th day of October, 2003, and served the same on the defendant, MICHAEL TODD BOTELHO, also known as "KEVIN", placing him in the custody of the Sheriff of Washoe County, Nevada, until bail in the sum of \$ 250,000 cash, as set by the Court has been posted.

DATED this 10th day of October, 2003.

Dennis Pabean Sheriff

ORIGINAL

FILED

2003 OCT 15 AM 9:54

ROSEALBA LONGTIN, JR.
BY  DEPUTY

CODE 1250
 Richard A. Gammick
 #001510
 P.O. Box 30083
 Reno, NV 89520-3083
 (775) 328-3200
 Attorney for Plaintiff

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-2156

v.

Dept. No. 3

MICHAEL TODD BOTELHO,

Defendant.

APPLICATION FOR SETTINGTYPE OF ACTION: CRIMINALMATTER TO BE HEARD: ARRAIGNMENT (POST-INDICTMENT)DATE OF APPLICATION: October 14, 2003 MADE BY PLAINTIFFCOUNSEL FOR PLAINTIFF: KELLI ANNE VILORIA, D.D.A.COUNSEL FOR DEFENDANT: PUBLIC DEFENDERCUSTODY STATUS: ___ BAIL ___ O.R. XX IN CUSTODY

10800
 Setting at 8:30 A.M. on the 23RD of OCTOBER, 2003.

ORIGINAL

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

-ooo-

2003 OCT 20 AM 9:14
FILED
RENEALD A. LONGIN, JR.
CLERK OF DISTRICT COURT

CR03-2156
DC-9900027119-012
STATE VS. MICHAEL TODD BOT 112 Pages
District Court 10/20/2003 02:15 PM
Washoe County 4185
DOC RZ10N

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IN THE MATTER OF:
MICHAEL TODD BOTELHO
also known as
"KEVIN"

_____ /

PROCEEDINGS

WEDNESDAY OCTOBER 8, 2003

1:30 P.M.

APPEARANCE:

For the State:

KELLIE ANNE VILORIA, ESQ.
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

Reported by:

JUDITH ANN SCHONLAU, CSR #18
Computer-Aided Transcription

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1 RENO, NEVADA; WEDNESDAY, OCTOBER 8, 3002; 1:30 P.M.

2 -oOo-

3 MS. VILORIA: Good afternoon ladies and gentlemen of
4 the Grand Jury. My name is Kelly Anne Viloría of the Washoe
5 County District Attorney's office. I am a prosecutor. I will
6 be handing or have handed the Foreperson the original proposed
7 Indictment that included copies that can be passed to other
8 members as well.

9 I will be presenting a proposed Indictment on behalf
10 the State today. The proposed charges are:

11 The State of Nevada Plaintiff versus Michael Todd
12 Botelho, also known as Kevin, Defendant. Indictment. The,
13 Defendant, Michael Todd Botelho, also known as Kevin, is
14 accused by the Grand Jury of Washoe County, State of Nevada of
15 the following:

16 Count I, kidnapping in the first degree, a violation
17 of NRS200.310-1 and NRS 200.320, a felony, committed as
18 follows: That the said Defendant, on the 7th day August, 2003
19 or thereabout, in the County of Washoe, State of Nevada, did
20 willfully and unlawfully seize and/or confine and/or entice
21 and/or kidnap and/or carry away the person of Jane Doe, a minor
22 child of the age of fourteen years, having a date of birth of
23 November 8, 1988, with the intent to hold and detain and did
24 hold and detain such person for the purpose of committing

1 sexual assault upon her, and/or with the intent to hold said
2 minor in unlawful service or to perpetrate upon the said minor
3 any unlawful act.

4 Count II, battery with the intent to commit sexual
5 assault on a child, a violation of NRS 200.400, a felony,
6 committed as follows:

7 That the said Defendant on the 7th day of August,
8 2003, or thereabout, within the County of Washoe, State of
9 Nevada, did willfully and unlawfully use force and violence
10 upon the person of Jane Doe, a minor child of the age of
11 sixteen years--that should say under the age of sixteen
12 years--having a date of birth of November 8, 1988, at the hills
13 of Washoe Valley, Washoe County, Nevada, with the intent then
14 and there to commit sexual assault upon and/or against Jane,
15 Doe to wit: By applying duct tape over the victim's eyes
16 and/or over the victim's mouth, and/or over the victim's hands,
17 and/or by punching said victim in the stomach area and/or by
18 pushng said victim down and sitting on her shoulders.

19 Count III, sexual assault on a child, a violation of
20 NRS 200.355, a felony committed as follows: That the said
21 defendant on the 7th day of August, 2003, or thereabout, within
22 the County of Washoe, State of Nevada, did willfully and
23 unlawfully subject Jane Doe, a female child under the age of
24 sixteens years, having a date of birth of November 8, 1988, to

1 sexual penetration against the victim's will or under ,
2 conditions in which the defendant knew or should have known
3 that the victim was mentally or physically incapable of
4 resisting or understanding the nature of the defendant's
5 conduct, to wit: Said defendant forced the victim to perform
6 fellatio upon him in the hills of Washoe Valley, Washoe County,
7 Nevada.

8 Cour IV, sexual assault on a child, a violation of
9 NRS 200.366, a felony, committed as follows: That the said
10 defedant, on the 7th of August, 2003, in the County of Washoe,
11 State of Nevada, did willfully and unlawfully subject Jane Doe,
12 a female child under the age of sixteen years, having a date of
13 birth of November 8, 1988, to sexual penetration against the
14 victim's will or under conditions in which the defendant knew
15 or should have known that the victim was mentally or physically
16 incapable of resisting or understanding the nature of the
17 defendant's conduct, to wit: Said defendant subjected such
18 child to cunnilingus in the hills of Washoe County, Nevada.

19 Count V, sexual assault on a child, a violation of
20 NRS 200.366, a felony committed as follows: The said defendant
21 on the 7th day of August, 2003 in the County of Washoe, State
22 of Nevada, did willfully and unlawfully subject Jane Doe, a
23 female child under the age of sixteen years, having a date of
24 the birth of November 8, 1988 to sexual penetration against the

1 victim's will or under conditions in which the defendant knew
2 or should have known the victim was mentally or physically
3 incapable of resisting or understanding the nature of the
4 defendant's conduct, to wit: Said defendant subjected said
5 child to vaginal intercourse with his penis in the hills of
6 Washoe Valley, Washoe County, Nevada.

7 Mr. Foreperson, if you would can make that correction
8 on I believe it is Count II, line 11 on page 2. It should say
9 a minor child under the age of sixteen years.

10 Ladies and gentlemen, the defendant has been given
11 notice on September 29, 2003, of the meeting of this particular
12 Grand Jury and was invited to testify if he desired. His
13 decision whether or not to decline the invitation to appear
14 cannot in any way be used by any member of the Grand Jury
15 against him.

16 The State is planning to present six witnesses. The
17 victim witness has elected, under Nevada Revised Statutes, to
18 use a pseudonym which is why you are hearing the words Jane
19 Doe. That is pursuant to NRS 200.3772 which victims of sexual
20 assault are allowed to do. So you will not hear her name at
21 any point. You will meet her and she will be here shortly.

22 If there are no further questions, I will be willing
23 to call my first witness.

24 (Whereupon the witness entered the Grand Jury room.)

1 MS. VILORIA: Step forward and raise your right
2 hand.

3 (Whereupon the witness was sworn by the Foreman.)
4

5 JANE DOE

6 called as a witness having been first duly
7 sworn by the Foreman testified as follows:
8

9 EXAMINATION

10 BY MS. VILORIA:

11 Q Jane Doe, it is my duty to inform you that the Grand
12 Jury is here today considering a proposed Indictment on five
13 charges, one kidnapping in the first degree, a count of battery
14 with the intent to commit sexual assault on a child, and three
15 counts of sexual assault on a child.

16 It is my understanding that you have information
17 concerning these charges; is that correct?

18 A Yes.

19 Q I need you to speak up as loud as you can so
20 everybody can hear you, okay?

21 A (Witness nods head.)

22 Q You need to also speak outloud, okay?

23 A All right.

24 THE FOREMAN: Are you aware the Grand Jury is

1 investigating charges of kidnapping and sexual assault on a
2 child and battery with the intent to commit sexual assault?

3 THE WITNESS: Yes.

4 BY MS. VILORIA:

5 Q You have elected to use a pseudonym, a pretend name?

6 A Yes.

7 Q Jane Doe?

8 A Yes.

9 Q For the record, J-A-N-E. D-O-E, right?

10 A Yes.

11 Q When is your birth date?

12 A November 8th.

13 Q What year were you born?

14 A 1988.

15 Q What grade are you in?

16 A 9th.

17 Q How old does that make you?

18 A Fourteen.

19 Q What school do you go to Jane Doe?

20 A Carson High.

21 Q When did you start going to Carson High?

22 A At the beginning of the school year.

23 Q This school year?

24 A Yes.

1 Q August or September of 2003?

2 A Yeah.

3 Q Yes?

4 A Yes.

5 Q Okay. Do you live there in Carson City?

6 A Yes.

7 Q Who do you live there with?

8 A My mother and my father--My mother and brother.

9 Q Do you have any pets?

10 A Yeah, two.

11 Q Tell the Grand Jury what kind of pets.

12 A I have a cocker spaniel and a black tabby cat.

13 Q What is that black tabby cat's name?

14 A BC.

15 Q What do you think about school, Jane Doe?

16 A It is interesting.

17 Q Something you want to do for the rest of your life?

18 A Not really.

19 Q I need to cover some things for the record to make

20 sure you know the difference between telling the truth and a

21 lie. Do you know the difference between telling the truth and

22 telling a lie?

23 A Yes.

24 Q What does it mean to tell the truth?

1 A I don't really know.

2 Q If I told you my outfit I am wearing was bright
3 yellow, am I telling you the truth or a lie?

4 A A lie.

5 Q Why is that?

6 A Because your outfit is really blue.

7 Q If you tell something that is not true, that is a
8 lie?

9 A Yes.

10 Q Is it better to tell the truth or to tell a lie?

11 A Tell the truth.

12 Q What happens if you tell a lie?

13 A You can get in trouble usually.

14 Q Is it a good thing?

15 A No, not really.

16 Q Do you promise to tell the truth here today?

17 A Yes.

18 Q Do you know the difference between something being
19 inside or outside?

20 A Yes.

21 Q If I hold my hand like this and I make a little cup
22 and I take this pen and I place it like this, where have I
23 placed the pen?

24 A Inside in your hand.

1 MS. VILORIA: For the record I did make a cup and I
2 did place the pen inside.

3 BY MS. VILORIA:

4 Q Now if I do this with the pen, where have I taken the
5 pen?

6 A Out.

7 MS. VILORIA: For the record, I did take the pen out
8 of the cup.

9 BY MS. VILORIA:

10 Q Now if I have this pen and put it like that on to the
11 cup, where have I put the pen?

12 A On top of the cup.

13 MS. VILORIA: For the record, I did place the pen on
14 top of the cup.

15 BY MS. VILORIA:

16 Q If I do this with the pen and I place it here, where
17 is the pen?

18 A On the bottom.

19 Q Is it over or under?

20 A Under.

21 MS. VILORIA: For the record, the pen is under. She
22 did correctly reflect that.

23 BY MS. VILORIA:

24 Q Jane Doe, I am showing you what has been marked for

1 identification as Grand Jury Exhibits 1-a, 1-b, 1-c and 1-d.
2 We are going to take 1-a and 1-b first, okay? I am going to
3 ask you to look at it for a minute. Tell me if you recognize
4 or you can describe what is shown in those exhibits?

5 THE FOREMAN: Do I pass these around?

6 MS. VILORIA: That is up to you. You can do it now
7 or at the end of the proceeding.

8 MS. VILORIA: For the record, the Grand Jury
9 Foreperson is handing out Exhibyt 12, a copy of Exhibit 12
10 which is the law in the case.

11 BY MS. VILORIA:

12 Q So, Ms. Jane Doe, if you want to look at Exhibits 1-a
13 and 1-b, tell me what you think you see in those pictures?

14 A A girl.

15 Q What is the girl wearing?

16 A Nothing.

17 Q Is there a different view of the girl?

18 A Yes.

19 Q What is 1-a?

20 A The front.

21 Q And what is 1-b?

22 A The back.

23 Q Okay. I am going to have you place those in front of
24 you. I will ask you to scoot up a little bit, okay? I want

1 you to take this pen. I want to make sure when we talk about
2 body parts we are all talking about the same thing, okay? So I
3 am going to give you the pen. And on Exhibit 1-a I am going to
4 have you circle or just point an arrow to this part of the girl
5 and tell me what it is.

6 A The hair.

7 Q You go ahead and write down your word for it. Now if
8 I take these two things that I am pointing to, what do you call
9 those?

10 A The arms.

11 Q Okay. Go ahead and mark those.

12 MS. VILORIA: For the record, the witness has
13 correctly identified both those things so far.

14 BY MS. VILORIA:

15 Q If I take this area right here, what do you call
16 that?

17 A Her breasts.

18 Q Okay. Go ahead and put an arrow there and write
19 those for me, too.

20 MS. VILORIA: Again, the witness correctly identified
21 that.

22 BY MS. VILORIA:

23 Q What is this area here?

24 A Her belly button.

1 Q Go ahead and mark that.

2 MS. VILORIA: Again she correctly identified that for
3 the record.

4 BY MS. VILORIA:

5 Q What is this whole big area right in here underneath
6 the breasts?

7 A Her stomach.

8 Q Okay. Can you go ahead and just make a circle and
9 then go ahead and call it what you call it.

10 MS. VILORIA: Again the witness has correctly
11 identified that.

12 BY MS. VILORIA:

13 Q Then what do you call this area here?

14 A Vagina.

15 Q Okay. For the record, she's correctly identified
16 that. Go ahead and write down your word for it. Okay. That is
17 on 1-a which is the front.

18 What do you see in 1-b? What do you call this area?

19 A Her back.

20 Q Okay. Go ahead and mark that. What about this area
21 here?

22 A Her butt.

23 MS. VILORIA: Okay. For the record, the witness has
24 identified all of these markings on the exhibit.

1 BY MS. VILORIA:

2 Q Jane Doe, I am going to show you 1-c and 1-d. I
3 would ask you to tell me by looking at that what you think is
4 shown in those pictures?

5 A A guy.

6 Q Is the guy wearing any clothes?

7 A No.

8 Q What kind of views are you seeing of him?

9 A The front and the back side.

10 Q Okay. Which one is the front? Tell me what number
11 by Grand Jury Exhibit?

12 A 1-c.

13 Q So the back is which number?

14 A 1-d.

15 Q Let's start with 1-c. Same type of thing, why don't
16 you go down and name his body parts just like you did on the
17 girl picture in 1-a and 1-b and tell me what you just wrote?

18 A Hair.

19 Q Okay?

20 A And arms.

21 Q Okay.

22 A Chest. Stomach.

23 Q What do you call that part?

24 A His penis.

1 Q Okay. Go ahead and circle that.

2 BY MS. VILORIA: For the record, the witness just
3 wrote all of those on to the Exhibit 1-c.

4 BY MS VILORIA:

5 Q Showing you 1-d, could you go ahead ad go through the
6 same things you did with the girl?

7 A His back. And his butt.

8 Q Okay. I am going to leave these here for you just in
9 case you need them, okay? Answer outloud?

10 A Okay.

11 Q Do you like to babysit?

12 A Yes.

13 Q How come you like to babysit?

14 A It is fun. You see different kinds of kids, what
15 they like to do.

16 Q What is fun about babysitting?

17 A Money.

18 Q Is that your job that you do?

19 A Yes.

20 Q Do you ever advertise to babysit?

21 A Yes, I did.

22 Q Where do you advertise?

23 A In the newspaper.

24 Q There in Carson City?

1 A Yes.

2 Q What did your ad say that you placed?

3 A It said 14 year old girl willing to babysit and then
4 gave my phone number.

5 Q How did you describe yourself in that ad?

6 A I just said I was a 14 year old girl.

7 Q Did you say in there you are reliable, honest or
8 trustworthy?

9 A Yes, I did.

10 Q Did anybody respond to that that turned out to be a
11 bad thing?

12 A Yes.

13 Q What was that person's name?

14 A Michael.

15 Q What did he initially tell you his name was?

16 A Kevin.

17 Q What is the bad thing he did to you? What turned out
18 bad?

19 A He raped me.

20 Q Let's talk a little bit about this Kevin. Did you
21 know Kevin?

22 A No.

23 Q How is it that you got to know him?

24 A He called me, asked me to babysit.

1 Q How many times did he call you?

2 A Three.

3 Q How come it took three times? Did you finally make a
4 plan to babysit for him?

5 A Yes.

6 Q Was that in the third call?

7 A Yes.

8 Q So how come it took so many times?

9 A Because he said he was just calling to make sure I
10 knew what I was doing. The second time he was calling to tell
11 me that he needed me on a Friday and he might need me on
12 Thursday. Then on Thursday, he did call me.

13 Q That is Thursday, August 7, 2003?

14 A Yes.

15 Q You see this lady writing next to you? She's taking
16 down every word we say. Try and let me finish so we don't talk
17 over each other, okay?

18 A Okay.

19 Q Now when he called you, do you have anything at home
20 where you can kind of keep track of the numbers calling?

21 A Yes. We have caller I.D.

22 Q Were you able to keep track of the number that had
23 been calling you?

24 A Yes.

1 Q Do you remember what that number was?

2 A No.

3 Q Did you give that number to the detectives?

4 A Yes.

5 Q When this Kevin person called you, did he tell you
6 where he lived?

7 A No.

8 Q Did he tell you what his last name was?

9 A No.

10 Q Did he tell you how many kids he had?

11 A Yes.

12 Q What did he say?

13 A Two.

14 Q So on Thursday, August 7, 2003, describe for us how
15 you made your final plan for him for you to do some babysitting
16 for him.

17 A He was going to pick me up, and then he said he was
18 at Tires Plus, so I was going to walk there. And I walked to
19 the end of my driveway, and he was there. And he told me to
20 get in the back, so I did.

21 Q Now had you told him where you lived before?

22 A Yes.

23 Q And where you live, is it close to Tires Plus?

24 A Yes.

1 Q That is in Carson City?

2 A Uh-huh.

3 Q So when you came out you walked down the street and
4 you saw him, how did he seem?

5 A A regular guy.

6 Q Describe him to us if you can, best you can remember,
7 his physical description?

8 A He had brown hair. He was a little, I think he was a
9 little buffy. That's about it.

10 Q Now was his hair just brown or were there other
11 colors in it?

12 A It was kind of black, brown and black.

13 Q Do you remember telling detectives it was turning
14 gray?

15 A Yes.

16 Q Was it long or was it short?

17 A It was short.

18 Q Could you describe his ethnicity? Do you know what
19 the word means?

20 A No.

21 Q Did he talk to you about what kind of a person, like
22 what his roots were?

23 A No.

24 Q Do you remember telling detectives he told you he was

1 Indian and French?

2 A Yes. After the incident, yeah.

3 Q What did he tell you? How did he tell you if he was
4 Indian or French?

5 A He asked me if I ever dated an Indian guy. I told
6 him no. He said, "Well, I am Indian and French."

7 Q Did he have any facial hair, any hair on his face?

8 A Yeah. Looked like he didn't shave in a while on his
9 chin.

10 Q How long is a while?

11 A A couple days.

12 Q Now describe for the Grand Jury, if you will, what
13 his car looked like to the best of your memory?

14 A It was a four door. It was kind of red, dark red.

15 Q Dark red?

16 A A little bit. I think so, yeah.

17 Q Where did you sit inside that car?

18 A Passenger side of the back seat.

19 Q Why did you sit there?

20 A Because he said the front seat was full.

21 Q Did you look in the front seat to see that?

22 A I couldn't see the front seat.

23 Q How come?

24 A Cause the car was too high up and I couldn't see over

1 the door.

2 Q By the way, how tall are you?

3 A Five foot.

4 Q How much do you weigh?

5 A Seventy-four pounds.

6 Q When you got in the car with this Kevin, did you know
7 where you were going?

8 A No.

9 Q Did he tell you where you were going?

10 A No.

11 Q Where did you go?

12 A We went by Washoe Lake on East Lake Boulevard.

13 Q Well, let's back up, okay? Are you familiar with the
14 streets and the directions there in Carson City?

15 A Yes.

16 Q Okay. So take us from the point when he picked you
17 up until you got to that East Lake Boulevard area.

18 A We went from my street to Carmine. No--yeah. We
19 went to Carmine, then to Airport Road and then to Carson
20 Street.

21 Q Now have you taken the detectives on that route
22 showing them where you guys went?

23 A Yes.

24 Q You said you went all the way out to East Lake

1 Boulevard in Washoe Valley?

2 A Yes.

3 Q When you got to East Lake Boulevard of Washoe Valley,
4 what happened?

5 A He turned on a dirt road.

6 Q What did you think when he turned on a dirt road?

7 A Probably the way to his house.

8 Q By the way, did your mom--What were you supposed to
9 do when you got to his house in relation to your mom?

10 A To call my mom, give her the phone number and give
11 her the address.

12 Q Did you ever get to do that?

13 A No.

14 Q Let's talk a little bit about the dirt road, okay?
15 What happened when you guys turned off on the dirt road?

16 A He started going on the dirt road and then he stopped
17 and turned around because he said it was ten minutes slower the
18 other way--or faster the other way. And so we turned around
19 and we went on another dirt road.

20 Q Now did you have any idea where you were?

21 A No.

22 Q Other than near Washoe Lake?

23 A Yeah.

24 Q And East Lake Boulevard?

1 A Yes.

2 Q Where did he go from there?

3 A We went on another dirt road.

4 Q What happened on that dirt road?

5 A He turned on another one, like a fork, and he turned
6 on one of the forks and he stopped, and he said he had a flat
7 tire.

8 Q Now at that point, did the two of you ever go up the
9 hill across the hill into Carson City?

10 A I don't think so.

11 Q When he--Let me do this real quick: I am going to
12 show you what has been marked for identification as the 10
13 series, and also the 11 series of exhibits. Let's start with
14 the 10 series. I am going to show you what has been marked for
15 identification as 10-a. Do you recognize what is shown in that
16 picture?

17 A Yes.

18 Q Could you describe it for the record, please, and
19 tell us how you recognize it?

20 A It is a dirt road with a house, and it has a sign
21 that says, "Hay", and the phone number, and it has, hay in the
22 background and some hills.

23 Q Who did you show that dirt road to?

24 A Detective Greg Herrera.

1 Q Why did you show him that?

2 A Because that's the road we went on.

3 Q Where does that road go off of?

4 A East Lake Boulevard.

5 Q Now I am showing you what has been marked as 10-b.

6 That is an aerial photograph. If you don't know what is in it,
7 it is okay to say that. Do you see what is in 10-b?

8 A Yes.

9 Q Can you tell?

10 A Yes.

11 Q What is it that you see in there?

12 A I see the road of East Lake Boulevard, and I think
13 that is the road we went on. Yeah.

14 Q And you are pointing to the road that is up at the
15 base of the green kind of grass stuff?

16 A Yes.

17 Q It follows along around a hill?

18 A Yes.

19 Q Okay. Now I am showing you what has been marked for
20 identification as 10-c. Again, if you don't recognize it, it
21 is okay to say that, okay? Do recognize what is in 10-c?

22 A No.

23 Q If I show you it while looking at 10-b, do you
24 recognize anything in it?

1 A I think so.

2 Q Okay. What is it that you think you recognize?

3 A The road. I think that is the road we went on.

4 Q And is the mountain on the bottom left-hand corner of
5 10-c the same that is in the upper right-hand corner of 10-b, a
6 little hill kind of thing?

7 A Yes, I think so.

8 Q I am showing you 10-d, Exhibit 10-d for
9 identification. Tell me if you recognize anything in that
10 picture?

11 A Yes, I do.

12 Q What is it that you recognize?

13 A East Lake Boulevard and then the road we went on and
14 Washoe Lake.

15 Q Again, for the record, this is a photograph, aerial
16 shot depicting those items the witness just testified to.
17 Showing you 10-e, I would ask you to take a look at that and
18 tell me if you recognize what is in that?

19 A Yes.

20 Q What is shown in that picture?

21 A The end of the grass. I think that is, yeah, the
22 grass. The road we went on.

23 Q What do you see in the background of that picture?

24 A Hills.

1 Q What is past the hill?

2 A Carson City.

3 Q When I asked you the question about cresting the
4 hills and going back that way, is that what you mean by you
5 don't think you went over all that way up?

6 A Yes.

7 Q Now in Exhibit 10-f, again I am showing you a
8 picture. Tell me if you recognize it. If you don't, it is
9 okay.

10 A No.

11 Q Okay. Now I am also showing you what has been marked
12 for identification as 11-a and 11-c. I ask you take a look at
13 both those and tell me if you recognize what is being shown in
14 those pictures?

15 A Yes.

16 Q What is being shown there?

17 A Carson City. The way we went on East Lake Boulevard
18 and then the other one is East Lake Boulevard.

19 Q That is the way that you took detective Herrera?

20 A Yes.

21 Q Okay. We left off when you were talking about Kevin
22 with him getting a flat tire. Tell the Grand Jury what he did
23 when he got a flat tire in his car.

24 A He got out of the the car and he opened the door. I

1 was sitting by the passenger back seat side, and he leaned over
2 me and said he was looking for his gloves. He asked me if I
3 ever changed a flat tire, and I said no.

4 Q Then what happened?

5 A And then he got duct tape and started duct taping my
6 hands together.

7 Q What did you do when that started happening?

8 A I was fighting him.

9 Q What were you doing to fight him?

10 A Just trying to make it difficult for him to duct tape
11 my hands.

12 Q Was he able, successfully, to duct tape your hands?

13 A No.

14 Q Was there any other part of your body he tried to
15 duct tape?

16 A My eyes.

17 Q Was he able to do that?

18 A Yes.

19 Q And describe for the Grand Jury first of all what
20 color was the duct tape?

21 A Gray.

22 Q And how did it go on to your eyes?

23 A Around my head.

24 Q So did it cover both your eyes?

1 A Yes.

2 Q Then wrapped around your head?

3 A Yes.

4 Q Into your hair?

5 A Yes.

6 Q Is that yes?

7 A Yes.

8 Q Where else did he try to duct tape?

9 A My mouth.

10 Q What happened with that?

11 A I couldn't breathe, so he took it off.

12 Q Once he duct taped you, Jane Doe, what happened?

13 A He made me take my clothes off.

14 Q Did he say anything to you about what he wanted to

15 see?

16 A He wanted to see my breasts and my vagina.

17 Q So did you take your clothes off?

18 A Yes.

19 Q What clothes did you have on?

20 A I had a pair of blue jeans and a dark blue shirt.

21 Q When you didn't have anymore clothes on, what did he

22 do to you with his body?

23 A He made me suck his penis and then he told me to lay

24 down, and that's when he raped me.

1 Q You used the word rape. What do you mean? What part
2 of his body touched what part of your body?

3 A His penis went inside my vagina.

4 Q Let's back up a little it. Did he use his hands to
5 touch any part of your body?

6 A Yes.

7 Q What did he touch?

8 A My breasts.

9 Q Were you still fighting him during this whole time?

10 A No, I was too scared.

11 Q When he made you perform--When he made you suck his
12 penis, did you know what you were doing?

13 A No.

14 Q Do you know what ejaculate means?

15 A Yes.

16 Q What does it mean?

17 A Where he comes.

18 Q What comes out? What is letter "It?"

19 A White stuff from--

20 Q A boy?

21 A Yeah.

22 Q Did he ejaculate into your mouth?

23 A No.

24 Q When he put his penis inside your vagina, did he

1 ejaculate?

2 A Yes.

3 Q Was he wearing--Do you know what a condom is?

4 A Yes.

5 Q How is it you know that?

6 A I have seen it on TV. I learned about it in school.

7 Q Was he wearing one of those?

8 A I don't believe so.

9 Q How about his mouth, did he touch you at all with his
10 mouth on your body?

11 A Yes.

12 Q Where did he touch you?

13 A My breasts and my mouth.

14 Q Did he touch any part of your body?

15 A My vagina.

16 Q How did he touch your vagina with his mouth?

17 A He licked it.

18 Q Were you telling him--When he put his penis into you,
19 what were you saying?

20 A I didn't want to do it, to stop and to let me go.

21 Q How did it feel?

22 A Disgusting.

23 Q Did it hurt you?

24 A What do you mean by hurt me?

1 Q Well, did you feel any pain?

2 A In where?

3 Q In your vagina?

4 A Oh, yeah.

5 Q Okay. Did you tell him about that?

6 A Yes.

7 Q What did you say to him?

8 A I just told him to stop, it hurt. And he just told
9 me to shut up.

10 Q Did he know--By the way, have you ever had sexual
11 intercourse prior to that day?

12 A No.

13 Q Did he know that about you?

14 A Yes.

15 Q How did he know that?

16 A He asked me before he raped me that. He asked me and
17 I told him no.

18 Q When you told him stop it hurts and he told you to
19 shut up, what did he do to make you shut up?

20 A Nothing.

21 Q What did he do to your stomach area?

22 A Nothing. I was sitting down. He punched me because
23 I was trying to take the duct tape off my eyes.

24 Q Where did he punch you?

1 A The lower part of my stomach.

2 Q Was there any part of your body that he touched in a
3 hard way or forceful way that made you hurt?

4 A My shoulders.

5 Q Describe that. Tell us how he did that?

6 A When I was--When he made me lay down, he just pushed
7 me by my shoulders.

8 Q What did he push you with?

9 A His hands.

10 Q Where did he push you to?

11 A Inside the seat.

12 Q So where was your back as it relates to the seat?

13 A On the bottom of the seat.

14 Q Was there anything that was on the seat that was
15 causing you pain?

16 A The seat belt.

17 Q What was happening with that?

18 A It was rubbing on my side.

19 Q What did it ultimately cause in fact?

20 A A scratch and little bit of bruising.

21 Q Did you or were you able to scream at all
22 during--while he was attacking you?

23 A No.

24 Q Do you remember telling the officers that you tried

1 to scream and that is when he covered your mouth and told you
2 to shut up?

3 A Yeah. When he punched me, I screamed.

4 Q That was before everything started happening?

5 A Yes.

6 Q Jane Doe, I have to ask you another personal
7 question. Before this happened, had you started menstrating
8 yet?

9 A Menstrating?

10 Q Do you understand what your period is?

11 A Yes.

12 Q Had you started your period?

13 A No.

14 Q Did anything else happen in regards to him attacking
15 you?

16 A I don't believe so.

17 Q How did it come to an end?

18 A When he just took me home.

19 Q How did you get--How did you make him take you home?
20 How did he come to the decision to take you home?

21 A When he was driving, he kept telling me he would
22 either take me to his house--he didn't know if he was going to
23 take me home. He asked me why he should take me home. I told
24 him I had a sick cat.

1 Q The cat you just told us about, your black tabby?

2 A Yes.

3 Q Let's back up just a little it. How did you get your
4 clothes back on?

5 A He told me to put them back on and gave them to me.

6 Q What did you think was going to happen to you?

7 A I thought I was going to die.

8 Q Did he tell you anything about being worried about
9 whether you were going to tell on him?

10 A Yes.

11 Q What did he say?

12 A He told me he didn't know if he was going to take me
13 home because he thought I was going to tell my mom.

14 Q What did you tell him?

15 A That I wouldn't do that. I didn't want to go through
16 everything that was going to happen if I did tell.

17 Q Did you even tell him no one is going to believe me.
18 I am the kind of kid that likes to lie?

19 A No.

20 Q Did you tell him that you do lie?

21 A No.

22 Q Do you remember telling officers you said that you
23 lied?

24 A Yes.

1 Q Tell the jury why you told him that?

2 A I told him that because I knew when I got home I was
3 going to tell my mom anyway. I told him I wouldn't tell so I
4 at least got to go home.

5 Q Were you trying--Were you yelling and screaming or
6 remaining calm?

7 A Remaining calm.

8 Q How were you able to do that?

9 A I have no idea.

10 Q Did he seem relieved when you told him you promise
11 you wouldn't tell anybody? What happened?

12 A Not--not really.

13 Q What was he acting like?

14 A Scared.

15 Q So did you--Where did you stay in the car on the way
16 home?

17 A In the back seat in the passenger side.

18 Q Where was he?

19 A In the front driver's side.

20 Q Do you remember anything going on in the car at the
21 time while you were going home?

22 A No, he was just talking.

23 Q What kind of stuff was he saying?

24 A He was just basically saying that he didn't know if

1 he was going to take me home. He told me that he didn't have
2 kids and that he lived in Gardnerville and he worked in Tahoe.

3 Q How did you feel when you found out he didn't even
4 have kids?

5 A Made me sick.

6 Q Was the story you told him about your cat actually,
7 was it a true story?

8 A Yes.

9 Q What was wrong with your cat?

10 A My cat was having kidney prolems. They were doing--

11 Q How did you tell him? How did you make him think
12 that you had to be home to see that sick cat?

13 A Because I told him he was going to die any minute.

14 Q So did you tell him it was important for you to be
15 there?

16 A Yes.

17 Q That obviously mattered to him, right?

18 A I guess so.

19 Q Where did he take you after that?

20 A He took me home.

21 Q How did he take you home?

22 A He went on Carson Street then turned on Airport Road
23 and then back on Carmine-- no, another street. I don't
24 remembering what it is called. And then at the end of my

1 street on the other side of the street where I don't live on,
2 he dropped me off there.

3 Q So he didn't take you all the way to your individual
4 house?

5 A Right.

6 Q Were you able to get out of the car?

7 A No.

8 Q How did you get out of the car?

9 A He had to get out and open it for me.

10 Q What did he tell you would happen to you if you told
11 anybody?

12 A He would come back and do worse.

13 Q Did he say anything about what he would even do to
14 make sure you wouldn't tell on him?

15 A He said he could take a day off work and just sit
16 upside my house and see if there were cops coming, just sit
17 there for the day and watch my house and see where I go.

18 Q Once you got back to your home, Jane Doe, describe
19 for us what you did.

20 A I went in the bathroom and I started crying.

21 Q Did you take a shower?

22 A No.

23 Q Did you go to the bathroom?

24 A No.

1 Q Did you change your clothes?
2 A No.
3 Q Did you call anybody?
4 A I called my mom.
5 Q Where was your mom?
6 A She was in Mark Twain working.
7 Q How far away is that?
8 A I don't know, a couple of miles.
9 Q So was she able to get home pretty quickly?
10 A Yes.
11 Q When she got home, where did she immediately take
12 you?
13 A To the hospital.
14 Q What happened at the hospital?
15 A I got examined and questioned.
16 Q Let's talk a little bit about your exam. Was the
17 exam a comfortable thing for you?
18 A No.
19 Q Did you want it to happen?
20 A No.
21 Q What happened when they started doing the exam on
22 you?
23 A I just dealt with it, because I knew it had to
24 happen.

1 Q Did you prefer that someone perform the exam and
2 offer someone else? Did you call in your pediatrician?

3 A Yes, I did.

4 Q Why did you guys do that?

5 A Because I was uncomfortable with the guy doctor.

6 Q Your pediatrician is a woman?

7 A Yes.

8 Q Doctor Saad?

9 A Yes.

10 Q How sore were you after all this happened?

11 A I had pain in my shoulders from being pushed.

12 Q How about in your stomach?

13 A I had a little pain there.

14 Q Did you have any photographs taken when you were at
15 the hospital?

16 A Yes, I did.

17 Q I am showing you Exhibit 2. Actually, it is 2-a and
18 2-b. I am going to show you 2-a. Do you recognize who is in
19 that picture?

20 A Yes.

21 Q Who is that?

22 A Me.

23 Q That is when you were being examined at the
24 hospital?

1 A That was the next day.

2 Q Okay. So on August 8th?

3 A Yes.

4 Q Okay. I am showing you Exhibit 2-b. I would ask if
5 you can tell me what you see in that particular picture.

6 A On my side where I got the scratches and bruises.

7 Q Where are those scratches and bruises located on that
8 picture?

9 A Lower part of my rib.

10 Q On what side of your body?

11 A On my left side.

12 MS. VILORIA: For the record, Exhibit 1-a--excuse
13 me--2-a is the witness wearing a yellow sweatshirt and some
14 shorts with a plaid material and she's standing in front of a
15 hospital bed. And Exhibit 2-b is the same witness wearing a
16 hospital gown exposing her back, her left lower portion of her
17 back indicating a bruise.

18 BY MS. VILORIA:

19 Q Tell us about the charm bracelet you were wearing
20 during all of this attack.

21 A My father got that charm bracelet for me when I
22 graduated eighth grade.

23 Q How important was it to you?

24 A It was really important.

1 Q What happened to it?

2 A It got lost in the car.

3 Q Did you say anything about it?

4 A Yes.

5 Q What did you say?

6 A I asked him where it was. He said, "I threw it in
7 the back." And it wasn't back there.

8 Q Him is this Kevin person?

9 A Yes.

10 MS. VILORIA: Thank you. That is all I have for this
11 witness at this time.

12 THE FOREMAN: Do the jurors have any questions?

13 It is my duty to admonish you the proceedings before
14 the Grand Jury are secret.

15 You may not disclose evidence presented to the Grand
16 Jury, any even occurring or statement made in the presence of
17 the Grand Jury, any information obtained by the Grand Jury or
18 the results of the investigation being made by the Grand Jury.

19 However, you may disclose the above information to
20 the District Attorney for use in the performance of her
21 duties.

22 You also may disclose your knowledge concerning the
23 proceedings when directed by a court in connection with
24 judicial proceedings or when otherwise permitted by the court

1 or to your own attorney.

2 The obligation of secrecy applies until the Court
3 allows the matter to become public record.

4 A gross misdemeanor and contempt of court may be
5 pursued if your secrecy is not followed. Do you understand?

6 THE WITNESS: Yes.

7 MS. VILORIA: Members of the Grand Jury, do you wish
8 this witness to remain pending the outcome of your deliberation
9 or may she be excused?

10 THE FOREMAN: Excuse me?

11 MS. VILORIA: Do you wish she remain pending
12 deliberation?

13 THE FOREMAN: No, I don't think so.

14 MS. VILORIA: She may be excused? Okay. You may be
15 excused.

16 (Witness excused.)

17 (Whereupon another witness entered the Grand Jury room.)

18 (Whereupon the witness was sworn by the Foreman.)

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

1 ANNA KNAPIC

2 called as a witness having been first duly
3 sworn by the Foreman testified as follows:
4

5 EXAMINATION

6 BY MS. VILORIA:

7 Q Ma'am, it is my duty to inform you that the Grand
8 Jury is here considering a proposed Indictment on charges of
9 kidnapping in the first degree, battery with the intent to
10 commit sexual assault on a child and three counts of child
11 sexual assault. It is my understanding you have information
12 concerning these charges; is that correct?

13 A That's correct.

14 THE FOREMAN: Are you aware the Grand Jury is
15 investigating charges of kidnapping in the first degree, sexual
16 assault on a child and battery with the intent to commit sexual
17 assault?

18 THE WITNESS: I am.

19 BY MS. VILORIA:

20 Q Ma'am, please state your name and spell it for the
21 record.

22 A Anna, A-N-N-A. Knapic, K-N-A-P-I-C.

23 Q Where do you work, ma'am?

24 A Carson Tahoe Hospital emergency department.

1 Q What do you do in the emergency department?

2 A I am a registered nurse.

3 Q How long have you been a registered nurse?

4 A Fourteen years.

5 Q As a registered nurse, are you trained to perform or
6 observe sexual assault exams?

7 A Yes, I am.

8 Q How is a sexual assault exam completed, just so the
9 Grand Jury knows?

10 A A sexual assault victim is considered top priority.
11 They are escorted immediately to a private exam room so their
12 story remains private. They are assigned one nurse throughout
13 the entire process so that it doesn't become fragmented. And
14 that was the case with Jane Doe that day.

15 I escorted her to the exam room and stayed with her
16 throughout the process.

17 Q Is part of your duties in addition to escorting these
18 witnesses, to take statements, medical history, all those kinds
19 of things for a physician or for yourself for medical diagnosis
20 or treatment?

21 A That's correct.

22 Q Do you recall, ma'am, doing that in this particular
23 case in regards to Jane Doe?

24 A Yes, I did.

1 Q That was on August 7, 2003?

2 A That's correct.

3 Q What statements did the victim, Jane Doe and/or her
4 mother give to you about why she was there?

5 A The victim had said that she was picked up by an
6 unknown person under the pretense of babysitting for him and
7 was then taken to a remote area and sexually assaulted.

8 Q Do you go--When you are taking this history from the
9 individual victim, and especially in the case particularly of
10 Jane Doe, do you ask her--do you go through body parts to find
11 out if she was actually penetrated or touched?

12 A There is a very specific process we do go through and
13 we follow. It is a sexual assault kit. We follow the
14 instructions on that kit step by step, and it does take you
15 through every body part.

16 Q And not to be so intrusive, just so the Grand Jury
17 understands kind of how it works, when you are performing a
18 sexual assault exam on a child-- Let's back up a bit. What
19 kind of penetration allegation did Jane Doe make?

20 A She stated that her assailant did penetrate her
21 vaginal area.

22 Q Did she also describe having to perform fellatio?

23 A Yes, she did.

24 Q Having cunnilingus performed on her?

1 A Yes, she did.

2 Q Is part of the purpose of doing these exams also to
3 preserve any items of evidentiary value that may be located in
4 any of those areas?

5 A That is correct.

6 Q Was that kind of--What kind of protocol do you do to
7 make sure that happens?

8 A Again, we follow the sexual assault kit step by step
9 in order to preserve any evidence that may be available. We
10 document-- There are body grams in the kit. They may be able
11 to pass one around. We document any findings on that diagram
12 as well as put evidence in the kit which is preserved in a
13 chain of custody fashion and then turned it over to the police.

14 Q How about the exam, itself, is it performed both in
15 an external fashion and internal fashion?

16 A That is correct.

17 Q Describe the external part?

18 A The external part starts with basically just an
19 overall view of the patient for bruises, obvious assault. We
20 then go through a process of the patient has to undress. She
21 undresses on blankets so if any debris or dirt, whatever, would
22 fall from her clothing, it is then folded into the blankets and
23 preserved for the police for evidence.

24 Q Describe, if you will, how the internal exam is

1 conducted.

2 A The internal exam was performed by a female doctor,
3 Jane Doe's pediatrician.

4 MS. VILORIA: I am going to ask to strike the child's
5 name.

6 THE WITNESS: I am so sorry.

7 MS. VILORIA: She's using a pseudonym, Jane Doe.

8 THE WITNESS: I apologize.

9 BY MS. VILORIA:

10 Q Her pediatrician is Dr. Saad?

11 A Doctor Saad. It is the policy the nurse be at the
12 foot of the bed to observe, in addition to the doctor, any
13 internal injuries so they can be documented.

14 Q Isn't that the truth also for the external injuries?

15 A Yes.

16 Q How did Doctor Saad or you when you are performing
17 these exams, see internally?

18 A Through a speculum, vaginal, with a light.

19 Q Also a term, isn't there a colposcope that is used?

20 A There is a colposcope.

21 Q How is that different from the speculum?

22 A The speculum is simply a device that opens the
23 vaginal canal. The colposcope is more invasive with pictures
24 and so forth. That was performed the following--

1 Q I will get to that in one second. In this particular
2 exam, you did not do a colposcope examination?

3 A That is correct. We did an internal exam using the
4 vaginal speculum.

5 Q Describe, if you will, the physical observations that
6 you noted on Jane Doe beginning with her demeanor all the way
7 down to the physical things you observed externally on her
8 body.

9 A Obviously, she was distraught, emotionally distraught
10 from the very beginning. And the process, given her age as
11 well as, you know, having been just victimized, certainly I
12 would describe her as distraught. That is the word. It was a
13 very tough day for her.

14 Q How about any redness that you noticed on her body?

15 A She did have bruises. I would have to review my
16 records to see those. I know she was punched in the stomach
17 and that was noted.

18 Q Would looking at your report help you?

19 A Yes, I think that would.

20 Q I am showing you--Do you need the entire report or
21 just the diagram?

22 A I think the diagram page would probably be
23 sufficient.

24 Q I am showing you what has been marked as Grand Jury

1 Exhibit 3. I ask you to look at that and tell me if you
2 recognize that as your diagram page?

3 A I do.

4 Q How do you recognize it?

5 A I recognize my handwriting.

6 Q Is your signature even on there?

7 A And my signature, yes.

8 Q Please continue?

9 A She did describe that she was duct taped and that was
10 observable across her eyes. The redness across her eyes would
11 be consistent with tape being on her then yanked off. Same
12 with her wrist area. She did have pain in several areas of her
13 abdomen where she had described as being punched. And when Dr.
14 Saad did the internal exam and I examined her external
15 genitalia, she had obvious skin tears.

16 Q Where were those skin tears located?

17 A On her labia.

18 Q And how do you classify where they are on the labia?

19 A We simulate it as a clock.

20 Q If you could best put it where it would fit on the
21 clock?

22 A We saw skin tears at 5:00 o'clock and 6:00 o'clock
23 that would be consistent with penetration.

24 Q Were you able to observe, in your part of the

1 observation that you did with the exam, the cervix?

2 A I, myself, did not view the cervix, however, I did
3 document what Dr. Saad told me.

4 Q What was that?

5 A That she did observe blood on the cervix which would
6 be consistent with the hymen breaking, hymenal membrane.

7 Q Why is that significant?

8 A Because Jane Doe did state she was a virgin, and that
9 being the case, the hymen would have been intact. Had it been
10 bloody, the cervix been bloody, that would indicate penetration
11 did occur.

12 Q Were you able to do anything like that in regards to
13 the child's mouth?

14 A We do oral swabs.

15 Q Was that performed here?

16 A That was performed at the same time.

17 Q Do you ask the child whether or not the suspect
18 ejaculated? Is that of evidentiary value?

19 A Yes, we do ask that.

20 Q What was the case here?

21 A No, he did not.

22 Q Okay. Were swabs taken from the vagina of Jane Doe?

23 A Yes.

24 Q What was your--Were you present during the whole time

1 of the process?

2 A Yes.

3 Q When they were collected, describe that process for
4 the Grand Jury if you will.

5 A The swabs are collected. There are I believe four
6 vaginal swabs two of which are from the external vaginal wall
7 and two are from the cervix, and they are immediately put into
8 the rape kit. That, again, remains in my custody at all times
9 until I turn that over to the police in order to maintain chain
10 of custody.

11 Q Is that what you did in this particular case?

12 A Yes.

13 Q You answered a question a moment ago, ejaculation did
14 not occur in her mouth.

15 A Let me clarify that. We were talking about her
16 mouth.

17 Q I apologize. Did it occur anywhere else in her?

18 A It did, yes.

19 Q Where?

20 A Vaginally.

21 Q Okay. When somebody has--When a male has ejaculated
22 into a female's vagina, what is it you are looking for? First
23 of all, how far up are those swabs taken?

24 A As I said, all the way into the cervical os. And

1 they are labeled, and one slide in particular we call it a wet
2 mount, it is put on to a microscopic slide immediately by the
3 physician and I carry that to the laboratory. It never leaves
4 my possession. I hand it to a trained technologist who will
5 observe under the microscope whether there is sperm present or
6 not on the slide. The slide never leaves my sight. I am with
7 the technologist for the entire time he looks at it, he or she
8 looks at it. It is handed back to me and the slide goes into
9 the rape kit then as evidence.

10 Q When you are looking for sperm what kind of
11 descriptions of the sperm or semen do you look for?

12 A They describe it as either motile or nonmotile.

13 Q What does motile mean?

14 A Alive.

15 Q What does nonmotile mean?

16 A Dead.

17 Q What was seen in this particular case?

18 A Nomotile sperm was seen on the slide indicating that
19 the sperm--there was ejaculation, but sperm was not alive.

20 Q You maintain custody of that sample taken from inside
21 Jane Doe's vagina until when?

22 A Until I hand over the entire rape kit to the officer.

23 Q In this case, detective Herrera, the Washoe County
24 Sheriff's Office?

1 A That is correct.

2 MS. VILORIA: Thank you. I have nothing further of
3 this witness.

4 THE FOREMAN: Are there any questions of this
5 witness?

6 A GRAND JUROR: Do you do a DNA match?

7 MS. VILORIA: I am going to instruct the witness not
8 to answer. There will be a witness who does that and will be
9 testifying shortly.

10 Anybody else?

11 THE FOREMAN: It is my duty to admonish you the
12 proceedings before the Grand Jury are secret. You may not
13 disclose evidence presented to the Grand Jury, any event
14 occurring or statement made in the presence of the Grand Jury,
15 any information obtained by the Grand Jury or the results of
16 the investigation being made by the Grand Jury.

17 However, you may disclose the above information to
18 the District Attorney for use in the performance of his
19 duties.

20 You also may disclose your knowledge concerning the
21 proceeding when directed by a court in connection with judicial
22 proceedings or when otherwise permitted by the court or to your
23 own attorney.

24 The obligation of secrecy applies until the court

1 allows the matter to become public record.

2 A gross misdemeanor and contempt of court may be
3 pursued if your obligation of secrecy is not followed. Do you
4 understand?

5 THE WITNESS: I do.

6 MS. VILORIA: May this witness be excused or would
7 you like her to remain pending deliberations?

8 THE FOREMAN: She maybe excused.

9 MS. VILORIA: You are excused, ma'am. Thank you. I
10 need you to leave that. Thank you.

11 (Witness excused.)

12 (Whereupon another witness entered the Grand Jury room.)

13 THE FOREMAN: Please raise your right hand.

14 (Whereupon the witness was sworn by the Foreman.)

15

16 MARIE NORBERG

17 called as a witness having been first duly

18 sworn by the Foreman testified as follows:

19

20 EXAMINATION

21 BY MS. VILORIA:

22 Q Ms. Norberg, it is my duty to inform you that the
23 Grand Jury is here considering proposed charges of kidnapping
24 in the first degree, battery with the intent to commit child

1 sexual assault and three counts of child sexual assault. It is
2 my understanding that you have information pertaining to these
3 charges; is that correct?

4 A That's correct.

5 THE FOREMAN: Are you aware the Grand Jury is
6 investigating charges of kidnapping, sexual assault and battery
7 with the intent to commit sexual assault?

8 THE WITNESS: Yes.

9 BY MS. VILORIA:

10 Q Ma'am, if you will please state your name and spell
11 it for the reporter?

12 A Marie Norberg. M-A-R-I-E. N-O-R-B-E-R-G.

13 Q Where do you work, ma'am?

14 A My full-time position is St. Mary's Regional Medical
15 Center.

16 Q What is your part time position?

17 A Sexual assault nurse examiner on contract.

18 Q Where do you do that?

19 A I do that here in Washoe County.

20 Q How long have you been a sexual assault nurse?

21 A About three, little over three and a half years.

22 Q Prior to that, did you say you are a registered
23 nurse?

24 A Yes, I am.

1 Q How long have you been a registered nurse?

2 A Thirty some years.

3 Q What kind of training and experience have you
4 received relative to performing sexual assault exams?

5 A Prior to assuming the position as a sexual assault
6 nurse examiner, I attended the Rose Heart program which is a 40
7 hour didactic classroom program. I had to do a practicum
8 before I was allowed to do examinations.

9 Q What does didactic mean?

10 A Classroom work, 40 hours of classroom work.

11 Q Were you working in the capacity of sexual assault
12 nurse on August 8, 2003, approximately 7:00 p.m., or so?

13 A Yes.

14 Q Did you have occasion to come into contact with Jane
15 Doe?

16 A Yes.

17 Q A fourteen year old rape victim?

18 A Yes.

19 Q What was your duty as it related to Ms. Jane Doe?

20 A I was to perform a sexual assault exam, follow the
21 protocols of a sexual assault nurse protocol.

22 Q What is the protocol?

23 A The young lady comes in, sits with us, gives us a
24 little bit of a history of why she has come to see us or to see

1 me, and we take a history and we collect the sample according
2 to the sexual assault rape kit that we process. We do a
3 physical examination of the young woman and also an examination
4 of her genitals.

5 Q Inclusive in that is taking statements from her for
6 purposes of medical diagnosis or treatment?

7 A That's correct.

8 Q Would those statements include what happened, what
9 was penetrated, what was touched?

10 A Correct.

11 Q Would you please describe to the members of the Grand
12 Jury what she told you about what was penetrated or what was
13 found?

14 A It would help if I could review my report.

15 Q Absolutely. For the record, I am showing you Grand
16 Jury Exhibit 4. I ask you take a look at it and tell me if you
17 recognize what that is?

18 A Yes.

19 Q What is that?

20 A This is the complete report of the exam with my typed
21 report of findings.

22 Q In addition to that, are there items of photographic
23 value attached also?

24 A Yes, there are.

1 Q If you could please describe those for the record,
2 how many there are and what will they show. You can take it
3 apart.

4 A There are 9 photographs here. And they show the
5 genitalia of this young lady as these pictures are taken with a
6 colposcopy machine which enlarges the area and then allows for
7 production of the picture.

8 Q My question to you is if you would describe the
9 statements she made about what was penetrated or what was
10 touched?

11 A She said that her vagina was penetrated by a penis
12 and a tongue. Her mouth was penetrated by a penis and that her
13 breasts had been licked. Her mouth had been licked and she had
14 been kissed on the mouth.

15 Q Describe, if you will, her demeanor while describing
16 these activities to you?

17 A This young lady was very emotionally upset. She
18 became physically ill while talking to me. She vomited several
19 times. She kept a wash cloth over her face the entire time she
20 was talking with me.

21 Q Now, are you aware a sexual assault exam had actually
22 be partially completed the evening before?

23 A Yes.

24 Q So what was the reason for you conducting another

1 exam on her?

2 A The reason is in my understanding was photographs had
3 not been taken. A colposcopy machine had not been used at the
4 time of the exam.

5 Q Had you seen what their results were?

6 A No, I had not.

7 Q Were you able to perform an examination on this
8 child?

9 A Yes, I was.

10 Q Were you able to reach some conclusions?

11 A Yes, I was.

12 Q What were those conclusions?

13 A Based on this exam, I found two lacerations and
14 redness in her posterior Forchet. The posterior Forchet is a
15 small piece of tissue upon which, when the penis is entering
16 into the vagina, the penis rests against that and allows for
17 entry. There was redness to the inner aspect of her labia
18 minora. I introduced a speculum, and I visualized her vaginal
19 vault and her cervix, and blood was noted to be present on the
20 right side of the vaginal vault.

21 As part of our exam, after we remove the speculum, we
22 then place a dye on the external genitalia, then we wipe that
23 completely off. And where there is injury, the dye adheres.
24 Where there is no injury, the dye leaves. And the previously

1 mentioned injuries to the labia minora and posterior Forchet
2 were enhanced with the dye.

3 Q How do you preserve that evidence right there when
4 you see the dye reacting like that to the injuries?

5 A We take photographs.

6 Q Is that what you have depicted as the 9 photographs
7 there?

8 A Yes. These are photographs that were taken when I
9 first looked at her when the speculum was in and then after the
10 speculum was removed, and the dye was applied, so there are pre
11 and post.

12 Q I am sorry, if you could please walk the Grand Jury
13 through what you are seeing in each one of those pictures since
14 us lay people may not understand what we are seeing there.

15 A Okay. This is this young lady's genitalia. This is
16 her labia minora. Inside this is her hymenal tissue.

17 Q That would be in the first photograph?

18 A That is in the first photograph. In the second
19 photograph, these white marks are my fingers that are gloved.
20 This is the inner aspect of her labia minora with traction
21 placed on it so that we can look deeper into it. And there is
22 redness from 4:00 o'clock to 7:00 o'clock. When you are
23 looking at this picture, this is 12:00 o'clock, this is 6:00
24 o'clock, 3:00 o'clock and 9:00 o'clock.

1 Q For the record, the witness is kind of outlining the
2 face of a clock.

3 A This area here in picture 3 shows her posterior
4 Forchet. To the trained person, you can see two very small
5 lacerations right here between about 4:00 o'clock and 6:00
6 o'clock.

7 Q Ms. Norberg, are those pictures individually marked
8 on the bottome in sequential number?

9 A No. They are marked with her medical record number
10 and my initials.

11 Q I may have to just pause you for a moment.

12 MS. VILORIA: Ms. Clerk, I think for the record, I
13 apologize, we should mark these a little better than we have
14 done at this point. I believe that is the 4 series, 4-a, 4-b.
15 While we are doing that, let's go ahead and call them 4-a,
16 4-b.

17 Let's start over. I apologize.

18 A GRAND JUROR: That's okay.

19 MS VILORIA: Let me put them in the order we did
20 them.

21 A GRAND JUROR: How many are there?

22 MS. VILORIA: Nine, A, B, C, D, E, F, G, H, I.
23 Lawyers don't have to do math. That is why I had to count
24 them. I apologize to you.

1 BY MS. VILORIA:

2 Q Ms. Norberg, I had her mark these exhibits prior, but
3 we did not mark these at the time. Are these in order?

4 A Yeah. This is A, B, C.

5 Q The remaining photographs, this is the order you
6 would like them in?

7 A Yes.

8 Q Ms. Norberg, so the record is very clear, if you
9 could begin very quickly and go through the pictures you just
10 discussed this time giving them a number?

11 A This is Exhibit 4-a. This shows her labia minora and
12 her hymenal tissue.

13 Q The photograph shows your white gloves also in
14 there?

15 A Yes, it does. These two pictures are out of order
16 from when we first spoke about them. This is equivalent to
17 picture 2, now labeled 4-b. This shows two small lacerations
18 and her posterior Forchet. 4-c which previously was picture
19 2-b shows redness of the inner aspect of her labia minora. 4-d
20 is a photograph that shows a speculum in place. The cervix is
21 in the center here, and at about 7:00 o'clock on the vaginal
22 wall, there is fresh blood.

23 This is 4-e which is also a picture of the vaginal
24 wall, and the speculum has been moved slightly. It is a clear

1 plastic so you can see through it. And when I moved it to get
2 a better visualization where bleeding was present, there is
3 more blood present in that area. Those are lacerations to the
4 vaginal wall.

5 This is 4-f. This is where the dye has been applied
6 after the speculum has been removed. The dye is placed on it
7 then wiped out with KY jelly. Where there is no injury, the
8 dye leaves. As you can see in this photo, there is a large
9 amount of dye still present on her labia minora which
10 highlights the redness and bruising and abrasions to that area.

11 4-g is another picture of her labia minora, and you
12 see bruising to her hymenal tissue which is at the vaginal
13 opening.

14 4-i is a picture of the area of the posterior
15 Forchet, and there are lacerations just at about 6:00 o'clock
16 that are highlighted by the dye which is what we saw in the
17 very first picture of the posterior Forchet.

18 Q Ma'am, in addition to the personal observations that
19 you made and the photographs that you just went through, are
20 your findings consistent with the fact that this child was
21 penetrated in the manner that she alleged?

22 A Yes.

23 Q Have you had a chance now to look at the sexual
24 assault exam that was conducted in Carson-Tahoe Hospital?

1 A No, I have not.

2 Q In this particular exam, were you able to try and get
3 DNA samples from the various body parts that had been affected
4 by this defendant?

5 A Yes. That is part of our protocol.

6 Q What was it you found, if anything?

7 A We do a first wet mount which is where when the
8 speculum is in the vaginal vault, after we look at it, we then
9 place a Q-tip in at the opening of the cervix and place the end
10 of the Q-tip into the cervix to try to collect sperm. And on
11 this particular sample, I did not see any motile sperm at that
12 time.

13 Q If I tell you that Carson Tahoe Hospital was able to
14 collect nonmotile sperm, is it unusual that you were not able
15 to almost 24 hours later?

16 A No, it is not.

17 Q Why is that?

18 A Because, depending on the quality of the sperm that
19 were placed there and the acid base balance in the vagina, it
20 is possible that the sperm would not have survived that long.

21 Q Were you able to do any swabs, DNA swabbing for
22 presence of evidence in the child's mouth?

23 A Yes, I did.

24 Q Did you do that in this case?

1 A What we do is do swabbing to collect her DNA as a
2 base line. We do swabs from the mucosa from the mouth, then we
3 do some other swabs. I dry those, box those, send those to the
4 Crime Lab.

5 Q Did you see any red marks or bruising on her this
6 next day?

7 A No, I did not notice any bruising on her at the time
8 that I did my examination.

9 Q Based on your training and experience, is it unusual
10 for red marks to be gone 24 hours after it is inflicted?

11 A It is possible.

12 MS. VILORIA: Thank you. I have nothing further of
13 this witness.

14 THE FOREMAN: Do the jurors have any questions?

15 It is my duty to admonish you the proceedings before
16 th Grand Jury are secret. You may not disclose evidence
17 presented to the Grand Jury, any event occurring or statement
18 made in the presence of the Grand Jury, any information
19 obtained by the Grand Jury or the results of the investigation
20 being made by the Grand Jury.

21 However, you may disclose the above information to
22 the District Attorney for use in the performance of her
23 duties.

24 You also may disclose your knowledge concerning the

1 proceeding when directed by a court in connection with judicial
2 proceedings or when otherwise permitted by the court or to your
3 own attorney.

4 The obligation of secrecy applies until the Court
5 allows the matter to become public record.

6 A gross misdemeanor and contempt of court may be
7 pursued if your obligation of secrecy is not followed. Do you
8 understand?

9 THE WITNESS: Yes.

10 MS VILORIA: Mr. Foreman, may this witness be
11 excused, or do you need her to wait pending deliberations?

12 THE FOREMAN: Anybody anticipate any further
13 questions? She may be excused.

14 (Witness excused.)

15 (Whereupon another witness entered the Grand Jury room.)

16 (Whereupon the witness was sworn by the Foreman.)

17
18 JERRY PATTISON

19 called as a witness having been first duly
20 sworn by the Foreman testified as follows:

21
22 EXAMINATION

23 BY MS. VILORIA:

24 Q Mr. Pattison, it is my duty to inform you the Grand

1 Jury is here considering a proposed Indictment on charges of
2 kidnapping in the first degree, battery with intent to commit
3 sexual assault on a child and three counts of sexual assault on
4 a child. It is my understanding that you have information
5 pertaining to these charges; is that correct?

6 A That's correct.

7 THE FOREMAN: Are you aware the Grand Jury is
8 investigating charges of kidnapping, sexual assault on a child
9 and battery with the intent to commit sexual assault?

10 THE WITNESS: Yes.

11 BY MS. VILORIA:

12 Q Sir, if you will please state your full name and
13 spell it for the record?

14 A Jerry, J-E-R-R-Y. P-A-T-T-I-S-O-N.

15 Q Sir, where are you currently employed?

16 A Lyon County Sheriff's Department.

17 Q What do you do there?

18 A Deputy currently assigned to narcotics.

19 Q Is that the reason for your attire and piercings?

20 A That is the reason for my attire and piercings, yes.

21 Q How long have you been working with Lyon County
22 Sheriff's Office?

23 A I have been employed with the Sheriff's office in
24 Lyon County since July of 1999.

1 Q Your title there?

2 A Currently it is narcotic investigator.

3 Q Did you have occasion back in August of 2003 to
4 assist Washoe County in the serving of a search warrant at a
5 residence there in Lyon County?

6 A Yes, I did.

7 Q Was that residence, sir, at 71 South Rainbow Street,
8 Dayton, Nevada?

9 A That is correct.

10 Q What were you supposed to be doing?

11 A I was a representative of Lyon County. Somebody to
12 be there while they served the search warrant at the
13 residence. At the time, I was on patrol there. I was a patrol
14 unit, marked unit. That is why I was there.

15 Q I am sorry?

16 A That is why I was there.

17 Q I am showing you what has been marked for
18 identification as Grand Jury Exhibit 5 and ask you to take a
19 look at it and tell me if you recognize what is shown in
20 Exhibit 5?

21 A Yes, I do.

22 Q What is it?

23 A That is the residence located at 71 South Rainbow in
24 Dayton.

1 Q Do you know who the owner of this residence is?

2 A Botelho. The Botelho family.

3 Q What did you do to assist other than just be present
4 at that particular search of that residence?

5 A Ultimately, I was there while they were searching the
6 residence. Once we were outside of the residence, I walked
7 around, myself looking around. The area in the back of the
8 house is where I was walking around when I located some stuff.

9 Q What stuff did you locate?

10 A Behind the house is a desert, and there is a huge
11 pile of dirt from excavation or what not. And I just walked
12 around the back looking to see if anybody or anything was back
13 there. I walked up the dirt mound. In the middle of the mound
14 was it looked like discarded wood pallets and stuff. I noticed
15 duct tape, used duct tape that was off the roll. From my
16 understanding prior to that, duct tape was used in the crime.
17 That is when I alerted one of the detectives from Washoe County
18 to come over and observe that.

19 Q Is that the only duct tape you observed on that
20 property?

21 A No, ma'am, it is not.

22 Q What other duct tape did you observe?

23 A As I was leaving and pulled out, I observed duct tape
24 in the dirt. As I was pulled up on it, I almost drove over it,

1 I stopped, looked, observed it was duct tape, went back and got
2 Washoe County again, had them come look at it.

3 Q Showing you what has been marked for identification
4 Grand Jury Exhibit 6-a, I will ask if you would take a look at
5 it and tell me if you recognize what is shown in the picture.
6 If you do, please tell us what is shown in the picture.

7 A Yes, I do recognize. This is the duct tape I located
8 on the dirt mound with the wood and the thickets.

9 Q What is the condition of that duct tape?

10 A It appears to have--It is not on a roll, so it has
11 been pulled off the roll. It appears very dirty and wadded
12 up.

13 Q Showing you Grand Jury Exhibit 6-b, I will ask you to
14 take a look at that and tell me if you recognize what is shown
15 in that picture, if you do?

16 A This is the duct tape I located on my way out of the
17 residence. In fact, my tire tracks is probably one of these
18 you can see on here.

19 Q What, again, is the condition of that particular
20 tape?

21 A Piles of duct tape off the roll wadded up and in the
22 dirt.

23 Q Again, both 6-a and 6-b were located on the Botelho
24 property?

1 A That is correct.

2 MS. VILORIA: Thank you. I have nothing further for
3 this witness.

4 THE FOREMAN: Do the jurors have any questions of
5 this witness?

6 It is my duty to admonish you the proceedings before
7 the Grand Jury are secret.

8 You may not disclose evidence presented to the Grand
9 Jury, any event occurring or statement made in the presence of
10 the Grand Jury, any information obtained by the Grand Jury or
11 the results of the investigation being made by the Grand Jury.

12 However, you may disclose the above information to
13 the District Attorney for use in the performance of his
14 duties.

15 You also may disclose your knowledge concerning the
16 proceedings when directed by a court in connection with
17 judicial proceedings or when otherwise permitted by the Court
18 or to your own attorney.

19 The obligation of secrecy applies until the court
20 allows the matter to become public record.

21 A gross misdemeanor and contempt of court may be
22 pursued if your obligation of secrecy is not followed. Do you
23 understand?

24 THE WITNESS: Yes, I do.

1 MS. VILORIA: Mr. Foreperson, may this witness be
2 excused?

3 THE FOREMAN: Yes.

4 (Witness excused.)

5 (Whereupon another witness entered the Grand Jury room.)

6 (Whereupon the witness was sworn by the Foreman.)///

7

8 GREG J. HERRERA

9 called as a witness having been first duly
10 sworn by the Foreman testified as follows:

11

12 EXAMINATION

13 BY MS. VILORIA:

14 Q Detective Herrera, it is my duty to inform you the
15 Grand Jury is here today considering a proposed Indictment on
16 the charges of kidnapping in the first degree, battery with the
17 intent to commit sexual assault on a child and three counts of
18 sexual assault on a child. It is my understanding that you
19 have information concerning these charges; is that correct?

20 A Yes, ma'am, I do.

21 THE FOREMAN: Are you aware the Grand Jury is
22 investigating charges of kidnapping in the first degree, sexual
23 assault on a child, battery with the intent to commit sexual
24 assault?

1 THE WITNESS: Yes, sir, I am.

2 BY MS. VILORIA:

3 Q Sir, if you will please state your name and spell
4 your name for the record.

5 A Greg J. Herrera, G-R-E-G. H-E-R-R-E-R-A.

6 Q Sir, where are you currently employed?

7 A Employed at the Washoe County Sheriff's Office in
8 Reno, Nevada.

9 Q Which division are you assigned to?

10 A Detective division, specifically the crimes against
11 children unit.

12 Q How long have you been in the crimes against children
13 unit?

14 A Approximately one year.

15 Q How long have you been with Washoe County Sheriff's
16 Office?

17 A Approximately ten years.

18 Q Are you currently the case agent assigned to a case
19 involving a sexual assault on a 14 year old child named Jane
20 Doe?

21 A Yes, I am.

22 Q Detective, is that involving Washoe County case
23 # WCO-3-8924?

24 A Yes, it is.

1 Q Please describe for the ladies and gentlemen of the
2 Grand Jury how you became involved in that particular case?

3 A On August the 7th of this of this year, 2003, I
4 received a phone call from detective sergeant David Nickoley
5 asking I respond to the Carson-Tahoe Hospital on a report of a
6 sexual assault that had just occurred in our jurisdiction. I
7 responded to that location to assist detective Pam Church from
8 the Carson City Sheriff's Office.

9 Q When you responded to that location which is Carson
10 Tahoe Hospital, who did you meet with?

11 A I met with the victim, Jane Doe, and her mother.

12 Q When you go there, what information are you seeking
13 to learn?

14 A Seekig to learn just the basic details of what had
15 happened, get the facts from the victim and any details she can
16 give and where it happened.

17 Q How about the identity of the person who did this to
18 her?

19 A Correct.

20 Q At the very beginning of this case, what identifying
21 information did you have about the person who had attacked this
22 child?

23 A I had a general description and also a cell phone
24 number the victim had captured on her caller I.D, caller

1 identification.

2 Q And using that cell phone number, were you able to
3 track it to an individual?

4 A Yes, I was.

5 Q Who was that individual?

6 A That individual was Marylou Botelho.

7 Q Without telling us anything Marylou Botelho told you,
8 were you able to ascertain, through statements by the person,
9 himself, or any other measures, whether in fact--who in fact
10 was using that particular cell phone?

11 A Yes, I was.

12 Q Please describe that for the Grand Jury if you will.

13 A The phone was in the possession of Michael Botelho.
14 I called that number a number of times, and on the message,
15 Michael Botelho is on the message machine. He also told me the
16 phone does belong to him and he uses that particular cell
17 phone.

18 Q Do you recall off the top of your head what number it
19 was?

20 A I believe it was (775) 781-2054.

21 Q That was the number provided to you by Jane Doe and
22 her mother?

23 A Yes, it was.

24 Q In addition to your other means of tracking down this

1 name?

2 A That's correct.

3 Q When you were able to ascertain that the Botelho
4 family essentially had that telephone number, did you respond
5 to them? Did you try and contact them?

6 A Yes, I did.

7 Q Okay. What did you do with that?

8 A I responded to their address and made contact with
9 the suspect's wife. And upon making contact at that particular
10 address, I came upon a vehicle that the victim had described.

11 Q Do you recall what that vehicle looked like?

12 A Yes, I do.

13 Q What did it look like?

14 A It was a red Ford Explorer.

15 Q Where was that red Ford Explorer located?

16 A Parked in front of the residence, 71 South Rainbow in
17 Dayton.

18 Q Showing you what has been marked for identification
19 Grand Jury 7, I will ask you to take a look at that and tell me
20 if you recognize it. If you do, tell me what is shown in that
21 picture.

22 A Yeah. I recognize this red Ford Explorer as being
23 the same one I saw in front of the residence. The residence
24 appears to be the same, the residence at 71 South Rainbow in

1 Dayton.

2 Q Detective, if I show you Exhibit 5, does that help
3 you determine that even clearer?

4 A Yes, it does. That is the residence at 71 South
5 Rainbow in Dayton.

6 Q When comparing Exhibit 7 to Exhibit 5, are you able
7 to put those two as the same address?

8 A Yes, I am.

9 Q Let's back up a little bit to the Carson Tahoe
10 Hospital. When you made contact with the victim, were you able
11 to get a statement from her about the things that she had
12 reported had happened?

13 A Yes, I was.

14 Q And also as part of your duties there at Carson Tahoe
15 Hospital, is it your duty to collect evidence that had been
16 collected from her?

17 A Yes, it is.

18 Q Did you in fact do that in this case?

19 A I did.

20 Q What evidence is it you collected?

21 A From the RN, Anna Knapic, I received the victim's
22 clothing and a sexual assault kit which included swabs taken
23 from the victim's vagina.

24 Q What did you do with that evidence?

1 A I booked them into the evidence section of the Washoe
2 County Sheriff's Office.

3 Q Based on talking to the victim in this case, how is
4 it you were able to ascertain or figure out where the crime had
5 occurred?

6 A The following day I took the victim--had the victim
7 take me to the area where the crime had occurred, and she took
8 me to the area--to an area up in the hills off of East Lake
9 Boulevard in the south end of East Lake. She took me to the
10 general area where it had taken place. And I had taken the
11 victim there one other time, and she took me to the exact same
12 general area.

13 Q You keep qualifying general area. Why are you doing
14 that?

15 A The victim is not able to pinpoint the exact area.
16 So that is why I use the term general area. She took us to the
17 general area in the hills off 5555 East Lake Boulevard which is
18 in Washoe County.

19 Q What steps have you taken to determine where that
20 crime occurred, whether it occurred in Washoe County or Carson
21 City?

22 A We took the victim to that area, and when we drove--
23 The top of the hill is Carson City. So that was--We took her
24 up into that area and made sure it definitely didn't happen up

1 over the hill. It happened in fact in that area that I
2 referred to which is definitely Washoe County.

3 Q Was she able to give you that, definitely?

4 A Yes, she was.

5 Q I am showing you what has been marked for
6 identification as Exhibits 10 and 11. I would ask you to look
7 at the 10 series first and tell me what that depicts? That
8 would be 10-a?

9 A 10-a depicts the area right in front of 5555 East
10 Lake Boulevard. This is the dirt road that the victim directed
11 us to when she was recalling where the suspect had taken her.
12 This is the entrance of the dirt road they went up.

13 Q Exhibit 10-b?

14 A Exhibit 10-b is an aerial photo of that same road.
15 It shows the beginning and how it curves around into I guess a
16 draw, if you will.

17 Q Can you turn that around as your describe it and show
18 the members of the Grand Jury?

19 A Yes, I can.

20 Q Hold it up.

21 A 10-a. This is the entrance of 5555 East Lake
22 Boulevard, and this is the first dirt road the victim directed
23 us to. And she recalled several things on the entrance that
24 looked familiar to her.

1 Q Now in conjunction with 10-a, where or what is 10-b?

2 A 10-b is an aerial photo of this road. It starts
3 right here and then runs around this draw towards this ranch
4 house up here.

5 Q Before you show it to the members of the Grand Jury,
6 are you able to identify what is depicted there in 10-c?

7 A Yes.

8 Q What is that?

9 A This is the same area, that dirt road. It is just a
10 different shot from an aerial view. It shows further up the
11 dirt road. It also shows the draw a little better.

12 Q Turn it around and describe what you are seeing.

13 A This is the same dirt road that we drove on. Up
14 here, this right here is the back mountain that goes up over
15 into Carson City.

16 Q So far 10-a, b and c what county is that located in?

17 A Washoe County.

18 Q Again, I am showing you another exhibit. You need to
19 identify it for me first. 10-d?

20 A 10-d is the same draw just taken from, it would be
21 the southeast side of the draw looking down. It shows the road
22 from the other way, the dirt road from the other way out toward
23 East Lake Boulevard.

24 Q In fact, in that picture, can't you see Washoe Valley

1 Lake, Washoe Lake?

2 A Yes, you can.

3 Q Turn it around so the Grand Jury can see what we are
4 talk about.

5 A This is the same road. It goes around East Lake,
6 there and there is Washoe Lake right in there.

7 Q In any of these pictures so far, are you able to show
8 us on there the general area where the attack on this child
9 sexually occurred?

10 A Yes, I am.

11 Q If you would tell us which exhibit and show us,
12 please. I have other pictures if you need them still.

13 A I believe we might have a better one.

14 Q Then hold off. I am showing you Exhibit 10-e. I ask
15 you to tell me whether you recognize what is in Exhibit 10-e.
16 If you do, you can go ahead and tell me you do, then turn it
17 around and show the Grand Jury?

18 A I do.

19 Q Okay. Turn it around and explain what you see?

20 A This is the same dirt road except it shows the hill
21 area behind it a little better where we believe that the
22 incident occurred.

23 Q And is that the photograph your were looking for or
24 are you still looking for another one?

1 A I believe this shows it pretty accurately.

2 Q Where in that photograph, 10-e, is the Carson City-
3 Washoe County jurisdiction line?

4 A It is well up on top of the mountain range up here.
5 It is up and over the top. I guess there is a pit area right
6 here to the left. It is a ways back. It kind of runs along
7 the back side up over the top of the hill line and back a
8 ways. So it is quite a ways. It is up over and a little ways
9 back.

10 Q Consistently, where did the victim, Jane Doe, point
11 to you the general area where the assault occurred?

12 A On this picture, consistently a long this dirt road
13 along this hill.

14 Q Again, showing you Exhibit 10-f, I ask you to look at
15 it and tell me if you recognize what is shown in that?

16 A Yes, I do. This shows the same dirt road with the
17 hill. It gives us a little bit better view to the southeast.

18 Q If you could again show that and explain it to the
19 Grand Jury.

20 A This is the same hill. I guess this is the pit area
21 I was referring to. You can see it in this photograph a little
22 bit better. She consistently identified these dirt roads.
23 This hill is where it had taken place.

24 Q Based on your traveling with the victim several

1 times, your doing the aerial shot, just reconstructing the
2 route that the suspect took her on, did you have occasion to
3 create maps that would assist the Grand Jury in seeing the
4 route, or were you involved in that?

5 A I was involved in that, yes.

6 Q Showing you what has been marked for identification
7 11-a and 112-b, I will ask you take a look at those and tell me
8 if you recognize those as the maps you were involved in
9 creating?

10 A Yes, it is.

11 Q For the record, I need you to hold it up and tell me
12 what 11-a shows?

13 A 11-a shows a map this is the route that the victim
14 identified to me that they had taken to get out to where--from
15 where she was picked up to where the incident occurred.

16 Q How is that delineated on that map? Is it a color or
17 anything?

18 A Yes, it is highlighted in yellow.

19 Q In a thick yellow?

20 A Thick yellow, correct.

21 Q In 11-b, sir, please describe that for us?

22 A 11-b provides a map with the approximate location of
23 the incident, and also it shows you the Carson City, Washoe
24 County line.

1 Q Based on the 10 series of photographs that you see,
2 is it clear in those photographs the act occurred in Washoe
3 County?

4 A Yes, it is.

5 Q In the 11 series, is it clear that the act began in
6 Carson City, went to Washoe County, Washoe Valley, hills of
7 Washoe Valley, then back to Carson City?

8 A Yes, it is.

9 Q Let's talk a little bit about Ms. Botelho. How were
10 you able to--If the victim was saying all along the person's
11 name was Kevin, did you find that to be not true?

12 A Yes, I did.

13 Q In fact, based on the cellular telephone records you
14 referenced a moment ago, speaking with Marylou Botelho and
15 contact, yourself, with that individual, what have you learned
16 his name to be, true name?

17 A Learned his true name is Michael Todd Botelho.

18 Q Describe physically what Michael Todd Botelho looks
19 like?

20 A Michael Todd Botelho is--

21 Q Give me a height. Give me a height.

22 A He's roughly six feet tall. He's stocky. He had
23 short hair graying on the sides.

24 Q I show you Exhibit 8. Let me do this a little bit.

1 Showing you Exhibit 8-a, I would ask you take a look at that
2 and tell me if you recognize who is shown in that picture?

3 A Yes, I do.

4 Q If you could turn it around, who is in that picture?

5 A This is Michael Botelho.

6 Q Where does Michael Botelho reside?

7 A 71 South Rainbow, Dayton, Nevada.

8 Q What kind of car does Michael Botelho own?

9 A He owns a 2000 Ford Explorer.

10 Q Exhibit 7 that I showed you, that red Ford Explorer,
11 whose Ford Explorer is that?

12 A That belongs to Michael Botelho and his wife.

13 Q The contact that you had, describe that for the Grand
14 Jury, as far as the telephone conversation you first had with
15 this Michael Botelho.

16 A After attempting to contact Michael Botelho, I
17 received a phone call that was actually a phone message from
18 Michael Botelho stating that he had left his wife and children
19 and he was scared to death.

20 Q Why was he scared to death? What information had you
21 left with his wife?

22 A The only information that I left with his wife was
23 that I was investigating a brutal assault, and that I wanted to
24 talk to him.

1 Q What kind of steps from that point--Were you able to
2 locate-- At that point, were you able to locate Michael Todd
3 Botelho?

4 A No, I was not?

5 Q In fact, Exhibit 8 you just showed the Grand Jury,
6 what did that--what kind of means did you employ to try and
7 find him?

8 A After not being able to locate Michael Botelho, I put
9 out a flyer, we call it an attempt to locate. I sent it to
10 numerous law-enforcement agencies as well as the media in an
11 attempt to receive some assistance in locating Michael Botelho.

12 Q When was that first phone call he made to you and
13 left on your voice mail message?

14 A I believe it was the 16th of the month, or the--yeah,
15 the 16th of August I believe.

16 Q Of 2003?

17 A Of 2003, yes.

18 Q How long from that point did it take you to find this
19 defendant?

20 A Roughly one month.

21 Q Did the tips to the media, did the media coverage of
22 this defendant and attempt to locate prove successful?

23 A Yes, it did.

24 Q In what way?

1 A I received a call from a citizen in Susanville,
2 California, saying that she had seen the media coverage. She
3 had seen the media coverage the previous night and saw Michael
4 Botelho in Susanville and his vehicle and his wife and kids at
5 a local motel in Susanville.

6 Q Based on that information, what did you do?

7 A I contacted the Susanville Police Department, made
8 sure they had all the information about Mr. Botelho that I had,
9 and let them know that we had an active warrant for his
10 arrest.

11 Q Did you at that point respond to Susanville?

12 A After I learned that he was taken into custody, I
13 did.

14 Q So the day you got the call from the woman in
15 Susanville was what day?

16 A It was September the 17th.

17 Q So is that the day you responded up there?

18 A Yes, it was.

19 Q When you got there, did you make contact with Michael
20 Todd Botelho?

21 A Yes, I did.

22 Q What did you notice of significance in regards to his
23 appearance?

24 A I noticed that he changed his appearance.

1 Specifically, he had grown his hair out and bleached it. He
2 had also--I had also been provided a photograph when he was
3 first taken into custody. He had a beard that he hadn't had
4 before.

5 Q I am showing you what has been marked for
6 identification Exhibits 8-b and 8-c and ask you to take a look
7 at them and tell me if that depicts what you were just
8 describing to the Grand Jury?

9 A Yes, it does. 8-b is a picture of Michael Botelho
10 when he was first taken into custody.

11 Q Could you hold it up in comparison to 8-c?

12 A 8-c shows after he had shaved his beard.

13 Q Hold those two up with 8-a, the first one. Thank you
14 detective.

15 When you responded to Susanville, did you have--were
16 you able to interview Michael Todd Botelho?

17 A Yes, I was.

18 Q When you interviewed him, did you read him his rights
19 under the Miranda line of cases?

20 A Yes, I did.

21 Q Did he appear to understand those rights?

22 A Yes.

23 Q Did he indicate he was willing to talk and waive
24 those rights to you?

1 A Yes, he did.

2 Q In fact, did he do so in writing?

3 A Yeah. He signed a waiver in writing.

4 Q Showing you Grand Jury Exhibit 9, I will ask you take
5 a look at that and tell me if you recognize what that is.

6 A This is the signed waiver of the Miranda warning
7 Michael Botelho signed. I recognize it by my handwriting.

8 Q What was the date of that first interview?

9 A September 17, 2003.

10 Q What did the defendant admit, if anything, to you in
11 that interview?

12 A He admitted that he had picked up the victim and had
13 also dropped her off.

14 Q What did he say to you about fleeing? Let's start
15 there?

16 A About what? I am sorry.

17 Q Fleeing the jurisdiction. About leaving the State of
18 Nevada?

19 A He stated that he had left the area after learning
20 about the investigation because he needed time to think.

21 Q Did he admit to you quitting his job?

22 A Yes, he did.

23 Q Did he admit to you leaving his wife and children?

24 A Yes, he did.

1 Q What did he say to you about planning to turn himself
2 in in regards to this matter?

3 A He stated that he planned to turn himself in the next
4 day. He said he was on his way to Reno to turn himself in.

5 Q As it relates to the sexual assault on Jane Doe, was
6 he able to remember anything about that?

7 A No.

8 Q What did he tell you he told his wife about the
9 incident?

10 A He told me that he couldn't--he couldn't remember
11 what had happened.

12 Q Did he indicate to you that he felt something did
13 happen but he just wasn't sure what?

14 A Yeah. He stated he had a bad feeling like something
15 had happened, but he couldn't say what it was, couldn't
16 remember.

17 Q Let's break it down. Let's talk about the parts of
18 his statement and incident that he does remember. Does he
19 remember picking up or calling a babysitter?

20 A Yes, he does.

21 Q What phone did he call her on?

22 A Stated he called her from his cell phone.

23 Q That was the 781-2054 number?

24 A Yes, he identified that number for me.

1 Q The number the victim had provided you also matched
2 the Botelho number?

3 A Exact same number.

4 Q Did he remember what the victim looked like?

5 A Not completely. He stated that he recollected that
6 she had brown hair.

7 Q Did he remember the expression on her face when he
8 picked her up?

9 A Said she was smiling.

10 Q Was he able to remember her age?

11 A He said he believed the victim had told him 15 almost
12 16.

13 Q Was he able to remember anything about the sexual
14 assault or the kidnapping or the punching her in the stomach or
15 anything like that?

16 A No, he stated he couldn't remember that.

17 Q Does he remember calling you before he fled to go on
18 his thinking trip?

19 A Yes, he did.

20 Q Did he tell you why he fled? Does he remember? Did
21 he tell you how he felt when he found out the police were
22 looking for him?

23 A He stated he was scared, that he had fled because he
24 just needed time to think.

1 Q Let's talk about what he doesn't remember. Was he
2 able to remember what car he was in when he picked up this
3 babysitter?

4 A He said he wasn't sure, but he believed that he was
5 in the Ford Explorer.

6 Q Did you question him further? Does he also remember
7 bringing the babysitter home?

8 A Yes.

9 Q What is it he can remember about that?

10 A He remembers dropping her off near the place where he
11 picked her up and he remembered having to get out of the car in
12 order to let her out because the locks were on in the back.

13 Q Did he give any kind of explanation why he can
14 remember picking her up, details about dropping her off, then
15 nothing in between?

16 A No.

17 Q Did he say anything about memory problems he
18 sometimes has?

19 A He did state he had forgotten a couple of things in
20 the past.

21 Q Do you remember the quote that he gave you about the
22 incident in that first interview? If you don't, would looking
23 at the statement, transcript, help--

24 A I don't--

1 Q Would it help you to remember?

2 A Yes, it would.

3 Q Calling your attention to page 47 line 19, I would
4 ask you to take a look and tell me if it helps you to
5 remember.

6 A I am sorry, line?

7 Q The end of the page, page 47, line 19.

8 A Yes, it does help me.

9 Q Okay. What was his quote? If you need to use your
10 transcript, that is fine.

11 A He says, "I mean that's what I am saying. I feel
12 like I did something wrong."

13 Q Is there anything further in that statement?

14 A He said, "I feel like I did something wrong inside,
15 that something happened, but I don't know what it is."

16 Q Was he able to remember in this first interview where
17 he had taken the babysitter in that interim period of time?

18 A No, he wasn't.

19 Q In this interview, were you able to confirm things or
20 statements the victim made?

21 A Yes, I was.

22 Q What kind of things were those?

23 A He had told me that he recollected having the victim
24 walk to a tire store which is just down the street from her

1 residence. That is exactly what the victim had told me. He
2 recalled when he picked her up, the victim having to get into
3 the back seat on the passenger side because there was stuff in
4 the front seat. That is exactly what the victim told me.

5 Q How about the cell phone call?

6 A He had also admitted to calling the victim, he stated
7 two or three times from his cell phone, which is also what the
8 victim told me. He said he called her two or three times about
9 babysitting before the date of the incident.

10 Q Did you ask him why he had gone to the trouble of
11 bleaching his hair and changing his appearance?

12 A Yes, I did.

13 Q What did he say?

14 A He stated it was just coincidence. He was going to
15 do it anyway. He thought about bleaching his hair for a while.

16 Q Why was he had going to bleach his hair?

17 A He said because it was graying.

18 Q Is that also what the victim told you?

19 A The victim recalled that the suspect's hair was
20 graying on the sides.

21 Q Did you try and find out in this interview the
22 defendant's motive for doing this, his financial or marital
23 motive, anything like that?

24 A Yes, I did.

1 Q Were you able to determine whether there were
2 problems in his marriage?

3 A According to the suspect, he stated there were no
4 problems. He said he and his wife had gotten along, were
5 communicating better than they had in a long time. He had been
6 laid off, but he had just gotten a good job and he just
7 finished building his house.

8 Q Did you talk to him, ask him questions about the duct
9 tape the victim claimed had been wrapped around her head or
10 mouth or hands?

11 A Yes, I did.

12 Q What did he say about that?

13 A Stated he didn't remember using any duct tape. We
14 had talked to him about duct tape around his house. He stated
15 that he has numerous uses for duct tape and has it all around
16 his house for different reasons.

17 Q Did he indicate to you--What did he indicate to you
18 about the use of duct tape versus something else to restrain a
19 person if he was going to doing something like that?

20 A He stated if he was going to do something like this,
21 he would use a pair of handcuffs he has and told us we probably
22 found them.

23 Q Did you?

24 A Detective Carey stated that, he told me he did see

1 them. I personally did not.

2 Q When you were interviewing this defendant, did he
3 consent to giving you a DNA swab of his DNA?

4 A Yes, he did.

5 Q How did you take that?

6 A I took two oral swabs from Michael Botelho's mouth,
7 boxed them up, sealed it, booked it into Washoe County evidence
8 for testing.

9 Q Did you try and talk to--The victim described some
10 clothing the person had been wearing. Did you try and confirm
11 whether or not this defendant, Botelho, had that clothing?

12 A Yes, I did. The victim recalled the suspect wearing
13 a purple tank top. I questioned Mr. Botelho about this. He
14 stated he didn't own a purple tank top.

15 Q In fact, were you guys able to find a purple tank top
16 in that residence?

17 A No, we weren't.

18 Q Did you ask this suspect about using a condom when
19 attempting to assault this child?

20 A Yes, I did.

21 Q What was his response?

22 A He stated he didn't remember, but he stated something
23 to the effect that he always uses a condom or he would never do
24 something like that without a condom.

1 Q Even with his wife?

2 A He stated even with his wife he uses condoms, because
3 he doesn't want to have anymore children. He already has
4 children.

5 Q Didn't he say he has four kids, he can't imagine a
6 whoopsie for any reason?

7 A I remember a whoopsie.

8 Q Is that the only interview you conducted with Michael
9 Todd Botelho?

10 A No.

11 Q When did you conduct a second interview?

12 A On September the 24th when we went to pick him up we
13 conducted a second interview.

14 Q Again, did you advise him of his rights under the
15 Miranda line of case law and did he understand those rights and
16 waive those rights?

17 A Yes, he did.

18 Q Is that indicated-- How is that indicated, if so,
19 please say the exhibit for the record.

20 A This is Exhibit 9. The first time, the first
21 interview he indicated he understood his rights and signed
22 agreeing to the interview. The second interview I merely had
23 him revisit his rights and he waived them again and signed it
24 and dated it September 24th.

1 Q In the September 24th interview was he now able to
2 remember the sexual assault?

3 A No.

4 Q What changed from the first to the second interview?
5 Specifically, was he able to give you more information about
6 the red SUV?

7 A Yes, he was.

8 Q What did he say?

9 A He stated that he did recall that he was driving the
10 red Ford Explorer. And during the interview, he stated he
11 recalled cleaning the vehicle.

12 Q Did ask you him--When was he saying he cleaned the
13 vehicle?

14 A After he had taken the victim, dropped the victim
15 off, he stated that he had--was scared, felt like something had
16 happened and cleaned the vehicle.

17 Q In fact, he cleaned it to what point?

18 A Until all his quarters were gone.

19 Q Did he tell you or make any statements about what he
20 had told his friends had occurred?

21 A Yeah. He admitted that he had told his friends that
22 he was drunk and had met a girl and admitted he had lied to
23 them, to his friends..

24 Q Did you ask him why he lied?

1 A He said he was ashamed, that he couldn't tell them
2 the truth.

3 Q Did you follow-up and find out what that truth was?

4 A I attempted to ask him what did happen. He stated he
5 didn't remember.

6 Q Did you confront this defendant about the charm
7 bracelet that the victim had stated was very sentimental to
8 her?

9 A Yes, I did.

10 Q What, if anything, did he know about that?

11 A He recollected the victim asking him when he dropped
12 her off, about the charm bracelet, and he stated that--he told
13 me that he told the victim that if he found it, he would be
14 sure and give it back to her. And he swore to me that he
15 hadn't found it. He had never seen it.

16 Q Did you confront this defendant with the fact the
17 crime had occurred in both Washoe County and Carson City?

18 A Yes, I did.

19 Q How did he respond to that?

20 A He stated that he didn't remember going over into
21 Washoe County.

22 Q In regards to the rape, you asked him and I quote:
23 Do you think you could rape this girl? Do you recall what his
24 answer was? I am looking for a quote. If you can't remember,

1 I will give you your statement to remind you?

2 A I would like the statement to refresh my memory.

3 Q Detective, I am calling your attention to page 63,
4 lines 15 through 16 and ask you to take a look at it. Again,
5 my question is: To him, the question was: Do you think you
6 could rape the girl?

7 A Yeah. I asked him specifically: Do you think you
8 could rape--

9 Q Did you ask it?

10 A Detective Carey asked Mr. Botelho that. He replied,
11 "I'd like to think I couldn't, but obviously apparently I
12 have. I would like to think I couldn't.

13 MS. VILORIA: Thank you. I have nothing further for
14 this witness.

15 THE FOREMAN: Do the jurors have any questions of
16 this witness?

17 It is my duty to admonish you the proceedings before
18 the Grand Jury are secret. You may not disclose evidence
19 presented to the Grand Jury, any event occurring or statement
20 made in the presence of the Grand Jury, any information
21 obtained by the Grand Jury or the results of the investigation
22 being made by the Grand Jury.

23 However, you may disclose the above information to
24 the District Attorney for use in the performance of his

1 duties.

2 You also may disclose your knowledge concerning the
3 proceedings when directed by a court in connection with
4 judicial proceeding or when otherwise permitted by the Court or
5 to your own attorney.

6 The obligation of secrecy applies until the court
7 allows the matter to become public record.

8 A gross misdemeanor ad contempt of court may be
9 pursued if your obligation of secrecy is not followed. Do you
10 understand?

11 THE WITNESS: Yes, I do.

12 MS. VILORIA: For the record before I excuse you, I
13 would like to note that the reports and the transcripts were
14 given to you to refresh your recollection. They are not being
15 marked and not exhibits in this particular case.

16 Would you like this witness to remain or may he be
17 excused?

18 THE FOREMAN: Does anybody have any reason to think
19 we might need to question him again? He may be excused.

20 (Witness excused.)

21 THE FOREMAN: How is everybody doing? May we have a
22 ten minute recess?

23 (Short recess taken.)

24 (Whereupon another witness entered the Grand Jury room.)

1 THE FOREMAN: Please raise your right hand.
2 (Whereupon the witness was sworn by the Foreman.)
3

4 RENE ROMERO
5 called as a witness having been first duly
6 sworn by the Foreman testified as follows:
7

8 EXAMINATION

9 BY MS. VILORIA:

10 Q Ms. Romero, it is my duty to inform you the Grand
11 Jury is here today considering a proposed Indictment on the
12 count of kidnapping in the first degree, battery with the
13 intent to commit sexual assault on a child, and three counts of
14 sexual assault on a child. It is my understanding that you
15 have information concerning these charges; is that correct?

16 A Correct.

17 THE FOREMAN: Are you aware the Grand Jury is
18 investigating charges of kidnapping in the first degree, sexual
19 assault on a child and battery with intent to commit sexual
20 assault?

21 THE WITNESS: I understand.

22 BY MS. VILORIA:

23 Q Ma'am, if you will please state your name and spell
24 your name for the record?

1 A Rene Romero, R-O-M-E-R-O.

2 Q What is it you do for a living?

3 A I am a supervising criminalists at the Washoe County
4 Sheriff's Office Crime Laboratory, and I work in the DNA
5 section of the laboratory.

6 Q How long have you worked in the DNA section of the
7 laboratory?

8 A For 11 years.

9 Q What kind of training and experience do you have
10 relative to DNA analysis?

11 A I have a Bachelor degree from Michigan State
12 University in chemistry with the fulfillment of a Bachelor
13 degree in Forensic Science also from Michigan State
14 University. And I have a Masters degree in cell and molecular
15 biology from the University of Nevada Reno. And I have
16 attended training specific to my duties at the Crime Lab at the
17 Federal Bureau of Investigation as well as at companies,
18 private companies that make the chemicals, kits and equipment
19 that we use in our laboratory. And I participate in continuing
20 education on an annual basis. I perform DNA proficiency tests
21 twice a year.

22 Q This crime lab you work at, Washoe County Crime Lab,
23 is it an accredited laboratory?

24 A Yes, it is. The laboratory is accredited. The

1 laboratory is accredited by the American Society of Crime Lab
2 Directors Laboratory Accreditation Board.

3 Q What does that mean? Why does that matter?

4 A It means somebody is checking to see that we do what
5 we say we do. The accrediting body has a certain set of
6 standards and criteria that we have to meet, and an inspection
7 team comes in, makes sure that we are meeting those criteria as
8 well as the criteria we set forth for ourselves in our
9 procedures and our quality assurance manual. And they check to
10 make sure we do what we are saying we do.

11 Q So the fact the Washoe County Crime Lab is
12 accredited, you guys do what you say you do?

13 A Yes.

14 Q Please provide if you will, an explanation for this
15 Grand Jury of DNA analysis, the process of how that works?

16 A The process or what DNA is?

17 Q Whichever you think would be more beneficial to their
18 understanding of what you do.

19 Q Okay. Let's start a little bit with what DNA is.
20 DNA is something that is found in all of our cells. We get our
21 DNA from our parents. We get it in the form of a sperm cell
22 and egg cells. That is your DNA that get split out to the rest
23 of your body and is found in all of your cells, hair roots,
24 saliva, blood, semen, et cetera. And in the laboratory, what

1 we do in forensics, we look at areas of DNA that are different
2 among us. Now a lot of our DNA is the same because our DNA
3 codes for being human, code for having a liver, lungs, heart,
4 two arms, two legs, et cetera a lot of our DNA is the same. In
5 forensics, we look at areas of DNA that are different. We look
6 at 13 different areas of DNA in the laboratory, and if we can
7 get results at all 13 areas of DNA, then we will make an
8 identification as to who is the source of a particular piece of
9 evidence that we might be looking at.

10 Q In general, as it relates to sexual assault cases,
11 how are those handled in your Crime Lab in relation to DNA
12 analysis?

13 A Typically, an officer will book a sexual assault kit
14 into our evidence section, and then a criminalist from our
15 primary examination section will check that kit out and examine
16 the content of the kit looking for items of evidentiary value
17 that can go down to the DNA section, vaginal swabs, looking for
18 sperm cells, remove the vaginal swabs, put those into a
19 separate envelope, prepare those for DNA testing. So if
20 positive results are found, evidentiary value items are found,
21 a DNA request is made and those items from the kit, not the
22 whole kit, just the items of value go down to the DNA section.
23 We look at those and then we also look at reference standards
24 which would be known DNA. So an oral swab say from the victim

1 and swabs from the suspect.

2 Q Did you have occasion to look at DNA evidence that
3 had been provided to you in Washoe County case umber WC0-3-
4 8924?

5 A I did.

6 Q Did that involve getting a vaginal swab from a 14
7 year old victim by the name of Jane Doe?

8 A Yes.

9 Q Did that include also a DNA swab from a suspect by
10 the name of Michael Todd Botelho?

11 A Yes.

12 Q Was the standard process you just described relating
13 to sexual assault cases followed in this particular case?

14 A Yes, they were.

15 Q In this particular case, you conducted the DNA
16 analysis?

17 A Yes, I did.

18 Q In doing that, were you able to develop a profile?

19 A Yes.

20 Q How did you do that?

21 A Going through our DNA testing procedures, when you
22 have a vaginal swab, we do something called a differential
23 extract. Basically what that means, I can separate the sperm
24 cells from the vaginal cells. Sperm cells have a tougher coat

1 around them. They are harder to break open. So I break open
2 the vaginal cells first, set those aside, then I can break open
3 the sperm cells. I did that in this case and developed a DNA
4 profile from those samples as well as from the reference
5 standard from Jane Doe and Mr. Botelho.

6 Q And in that, were you able to reach a conclusion as
7 to the source of the sperm that was located inside Jane Doe's
8 vagina?

9 A My conclusion is that Mr. Botelho is the source of
10 the sperm from the vaginal swab from Jane Doe, barring an
11 identical twin. Identical twins have the same DNA profile.

12 Q If there is no evidence of identical twins, what
13 would that mean in this particular case?

14 A That he is the source of that DNA.

15 MS. VILORIA: Thank you. I have nothing further of
16 this witness.

17 THE FOREMAN: Do the jurors have any questions of
18 this witness?

19 It is my duty to admonish you that the proceedings
20 before the Grand Jury are secret. You may not disclose
21 evidence presented to the Grand Jury, any event occurring or
22 statement made in the presence of the Grand Jury, any
23 information obtained by the Grand Jury or the results of the
24 investigation being made by the Grand Jury.

1 However, you may disclose the above information to
2 the District Attorney for use in the performance of her
3 duties.

4 You also may disclose your knowledge concerning the
5 proceedings when directed by a court in connection with
6 judicial proceedings or when otherwise permitted by the court
7 or to your own attorney.

8 The obligation of secrecy applies until the Court
9 allows the matter to become public record.

10 A gross misdemeanor and contempt of court may be
11 pursued if your obligation of secrecy is not followed. Do you
12 understand?

13 THE WITNESS: I do.

14 MS. VILORIA: May this witness be excused or do you
15 wish her to remain pending deliberations?

16 THE FOREMAN: Anybody anticipate any questions? She
17 may be excused.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 MS. VILORIA: At this time, I want to go through and
21 make sure we have all the exhibits there.

22 Unless anybody requires anything of me, that will be
23 the presentation this afternoon.

24 A GRAND JUROR: I have a question. Kidnapping in the

1 first degree, the testimony was she got in the car willfully.
2 Can we infer from this that the kidnapping can take place in
3 Washoe County because of where it took place, where the final
4 destination was as opposed to where she got in the vehicle?

5 MS. VILORIA: You can draw any inference you believe
6 appropriate based on the law provided to you. I did provide a
7 copy of the statute. I believe the kidnapping statute is the
8 final one attached to that, NRS 171.030. That describes when a
9 crime is committed in part of one county or part of the other,
10 both counties are deemed to be able to hear the matter. Does
11 that answer your question, sir?

12 A GRAND JUROR: Yes. Yes. Okay.

13 MS. VILORIA: May I be excused?

14 (Whereupon the Deputy District Attorney and the Court
15 Reporter left the Grand Jury room.)

16 (Whereupon the Grand Jury deliberated.)

17 (Whereupon the Deputy District Attorney and the Court
18 Reporter re- entered the Grand Jury room.)

19 THE FOREMAN: Back in session on the record. The
20 jury returned a True Bill on all five counts.

21 MS. VILORIA: At this time, I would just, today is
22 the 8th day of October, I am affixing my signature on the
23 Indictment at this time.

24 I need you to strike the custodian of records of

1 Verizon Wireless. We did not hear any testimony from that
2 person, which the Grand Jury Foreman is doing at this time.
3 Actually, cross those off, too, as well as the custodian of
4 records of Carson-Tahoe Hospital.

5 The Foreman is affixing his signature at this time.

6 May I have my other exhibits returned to me?

7 THE FOREMAN: Yes.

8 MS. VILORIA: Thank you.

9 (Whereupon, the proceedings were concluded.)
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1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)
4

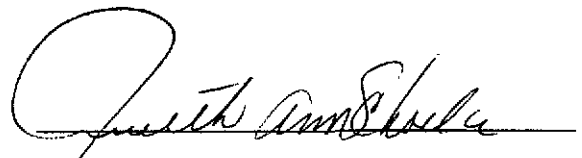
5 I, Judith Ann Schonlau, one of the Court Reporters of
6 the Second Judicial District Court of the State of Nevada, in
7 and for the County of Washoe, do hereby certify:

8 That I reported in stenotype the testimony of the
9 witnesses before the Washoe County Grand Jury in the matter of
10 MICHAEL TODD BOTELHO, also known as Kevin at Reno, Nevada on
11 Wednesday, October 8, 2003;

12 That the foregoing transcript, consisting of pages
13 numbered 1 through 110, inclusive, is a full, true and correct
14 transcription of the stenotype notes taken in the
15 above-entitled matter, to the best of my knowledge, skill and
16 ability.

17 I further certify that I am in no way interested in
18 the outcome of said action.

19 Dated at Reno, Nevada, this 17th of October, 2003.
20

21 
22
23 JUDITH ANN SCHONLAU CSR #18
24

ORIGINAL

FILED

2003 OCT 20 PM 2:28

RONALD A. LONGTON, JR.

BY [Signature]
DEPUTY

1 CODE: 1775

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

STATE OF NEVADA

Plaintiffs,

CASE NO: CR03-2156

VS.

DEPT. NO.: 3

MICHAEL TODD BOTELHO,
Defendants

RECEIPT OF GRAND JURY TRANSCRIPT

TRANSCRIPT OF GRAND JURY PROCEEDINGS RECEIVED FROM RONALD A.
LONGTON, JR., CLERK OF THE COURT.

Dated this 20 day of Oct., 2003.

[Signature]
Signature of Receiving Party

RONALD A. LONGTON, JR.

Clerk of the Court

By [Signature]

Deputy Clerk

CASE NO. CR03-2156

STATE OF NEVADA VS. MICHAEL TODD BOTELHO

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

10/23/03

ARRAIGNMENT

HONORABLE

Deputy District Attorney Kelli Vilorio represented the State.

JEROME M.

Defendant was present with counsel, Deputy Public Defender Sean

11/06/03

POLAHA

Sullivan. Probation Officer Pat Cerniglia was also present.

8:30 a.m.

DEPT. NO. 3

TRUE NAME: MICHAEL TODD BOTELHO. Defendant handed a

Entry of Plea

P. Meacham

copy of the Information; waived reading.

(Clerk)

Defendant requested time in which to enter a plea; Counsel for the

J. Dotson

State joined in that motion.

COURT ORDERED: Matter continued.

Defendant remanded to the custody of the Sheriff.

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
DC-09900071966-001
Page 1
10/23/2003 09:30 AM
MIN

V2.129

WASHOE COUNTY DETENTION FACILITY

INMATE REQUEST

Courts Transportation

OCT 11 2003

CR03-2156

D3

DA
PD

1. one issue/topic per request form.

2. Write only in the space provided.

3. one form per each issue/topic.

4. No profanity.

Do not address your request to a named individual.

Inmate's Name: MICHAEL BOTELHOBooking #: 03-12386Housing Unit: 4Cell #: 3Date: 10-10-03

Issue Request:

I WENT TO COURT YESTERDAY DOWNTOWN
TO FIND OUT THE SHERIFFS DEPT SUPPOSEDLY
MADE A MISTAKE AND THAT COURT WAS
HELD WEDNESDAY 10-8-03 AND THAT I
MISSED IT - I WAS SUPPOSED TO BE
THERE, I WANTED TO BE THERE AND
I HAD A RIGHT TO BE THERE!
NOT TO MENTION I STILL HAVE NOT
SEEN A LAWYER CONCERNING MY CASE
THAT I NOW CONVENIENTLY HAVE BEEN
DENIED!

Inmate's Signature: Michael BotelhoReceiving Staff Member/I.D.#: 0242

(PRINT NAME)

Date: _____

(INMATE IS NOT TO WRITE BELOW THIS SPACE)

ACTION

CR03-2156

Routed to: COURT TRANSPORT Date: 10/10/03 Re-Routed to: 2JDC Date: 10/11/03Answer: Approved ☐Denied ☐

Reason:

Referred to Counsel per Judge Polaha

FILED
2003 OCT 30 AM 11:10
RONALD A. LAMOTHE, JR.
CLERK
DEPUTY

Responding Staff Member / I.D.#: _____

Date: _____

(PRINT NAME)

White-Booking;

Canary-Inmate;

Pink-Inmate Receipt

V2.129

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
10/30/2003 11:14 AM
Washoe County
1810

V2.130

CRIMINAL PROGRESS SHEET

INE. IND 10-8-03

CASE NO. CR03-2156

AI. _____

2AI. _____

2INF. _____

DEFT: MICHAEL TODD BOTELHO @ 154004

LANGUAGE:

Y STATUS: CUSTODY ☒] NIC ☐] BAIL ☐ \$ _____ OR ☐] OR ☐] W/COURT SERVICES
E: 10-28-03 DEPT. NO. 3 REPORTER: J. Dolson CLERK: P. Meacham
ME: Pat Carniglia
10 DAY RULE: YES ☒] NO ☐] DATE: 11-6-03
TY ☐] By: _____ GUILTY ☐] ALFORD ☐] NC ☐] TO: _____
ED TO JUSTICE COURT FOR FURTHER PROCEEDINGS: _____

☒] HANDED COPY
☒] WAIVED READING
☒] REQUESTED TIME TO PLEA
☐] REFERRED TO DRUG COURT
☐] ACCEPTED TO DRUG COURT
☐] WAIVED PSI

MOTION FOR PSYCH. EVAL: DATE: _____ DEPT. NO. _____ APPTD. DRS.: _____ & _____

REPORT ON PSYCH. EVAL: DATE: _____ DEPT. NO. _____ REPORTER: _____ CLERK: _____

COURT FOUND DEFT: ☐] COMPETENT ☐] REMANDED J.C. ☐] INCOMPETENT; DEFT REMANDED LAKES

ENTRY OF PLEA: DATE: 11-6-03 DEPT. NO. * 3 REPORTER: J. Schonlau CLERK: P. Meacham
NOT GUILTY ☒] By: Deft GUILTY ☐] ALFORD ☐] NC ☐] TO: Indictment Cts 5
☐] WAIVED PSI P & P Ref: Linda Shipley Waived 60-day Rule Yes ☒] No ☐] 11-6-03

CHANGE OF PLEA: DATE: 12-11-03 DEPT. NO. 3 REPORTER: J. Dolson CLERK: A. Patterson
GUILTY ☒] ALFORD ☐] NC ☐] TO: Counts 1, 3, 4 & 5 of Informative
☐] WAIVED PSI P & P Ref: L. Shipley TRIAL DATE OF: 7-26-04 VACATED

CONTINUED TO: 11-6-03 @ 8:30 FOR: E.O.P.
CONTINUED TO: 7-15-04 @ 8:30 FOR: MTC vacated 12-11-03
CONTINUED TO: 7-26-04 @ 8:30 FOR: Jury Trial (4 days) vacated 12-11-03
CONTINUED TO: 2-11-04 @ 8:30 FOR: Sentencing - 2 hours closed
CONTINUED TO: _____ FOR: _____
CONTINUED TO: _____ FOR: _____
CONTINUED TO: _____ FOR: _____
CONTINUED TO: _____ FOR: _____
CONTINUED TO: _____ FOR: _____
CONTINUED TO: _____ FOR: _____
CONTINUED TO: _____ FOR: _____
CONTINUED TO: _____ FOR: _____
CONTINUED TO: _____ FOR: _____

V2.130

CRIMINAL PROGRESS SHEET CONTINUED

CASE NO. CR03-2156

JUDGMENT DEFERRED: DATE: _____ DEPT. NO. _____ REPORTER: _____ CLERK: _____

NRS 453 [] NRS 458 [] PROBATION: _____ \$25 AAF [] \$60 CAF [] \$150 DNA []

RESTITUTION: \$ _____ ATTY. FEES: \$ _____

CASE TRANSFERRED TO DEPT. 7/DIVERSION COURT [] DEPT. _____ RETAINED JURISDICTION []

REVOKE DEFERRED STATUS: DATE: _____ DEPT. NO. _____ REPORTER: _____ CLERK: _____

GRANTED [] DEFT FORMALLY SENTENCED

DATE: _____ DEPT. NO. _____ REPORTER: _____ CLERK: _____

[] 190 DAY REGIMENTAL DISCIPLINE - CONTINUED TO: _____ FOR: SENTENCING

SENTENCING: DATE: 4-7-04 DEPT. NO. 3 REPORTER: J. Dotson CLERK: C. PartumDISPOSITION Count 1: Life with poss. of parole after 5 yrs. Count 2: Life with
poss. of parole after 20 years served consecutive to Count 1. Count 4: Life with
poss. of parole after 20 years served concurrent Count 3. Count 5: Life with
poss. of parole after 20 years served consecutive in Count 3 & 4. Special
condition of lifetime supervision of every release on parole or probation term\$25 AAF [X] \$60 CAF [] \$150 DNA [X] \$ _____ PSE FEE [] \$35 DBA [] ATTY FEES: \$ 500.00FINE: \$ _____ RESTITUTION: \$ 632.00 BAIL EXONERATED: [] TIME SERVED: 197 days

PROBATION REVOKED: [] DATE: _____ DEPT. NO. _____ REPORTER: _____ CLERK: _____

TIME SERVED REVO: _____

MOTIONS: 5-11-07 (J. Dotson) Pet for Post Conviction
relief Denied, State to prepare the Order.

CASE NO. CR03-2156

STATE OF NEVADA VS. MICHAEL TODD BOTELHO

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

11/06/03

ENTRY OF PLEA

HONORABLE

Deputy District Attorney Kelli Vilorio represented the State.

JEROME M.

Defendant was present with counsel, Deputy Public Defender Sean

07/15/04

POLAHA

Sullivan. Probation Officer Linda Shipley was also present.

8:30 a.m.

DEPT. NO. 3

Defendant entered a plea of Not Guilty to Kidnapping in the First

Motion/Confirm

P. Meacham

Degree, Battery with Intent to Commit Sexual Assault on a Child, and

(Clerk)

3 counts of Sexual Assault on a Child as contained in Counts 1 – 5 of

07/26/04

J. Schonlau

the Indictment.

8:30 a.m.

(Reporter)

Defendant waived the 60 day rule.

Jury Trial

COURT ORDERED: Matter set for trial.

4 days

Defendant remanded to the custody of the Sheriff.



CR03-2156 DC-09900071886-023
STATE VS. MICHAEL TODD BOTELHO Page
District Court 11/06/2003 09:21 AM
Washoe County MIN
ACMTTL

ORIGINAL

FILED

NOV 20 2003

RONALD A. LONGTIN, JR., CLERK

DEPUTY

4185

JOAN MARIE DOTSON

CCR #102

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE HONORABLE JEROME M. POLAHA, DISTRICT JUDGE

--o0o--

THE STATE OF NEVADA,
Plaintiff,

Case No. CR03-2156

vs.

Department No. 3

MICHAEL TODD BOTELHO,
Defendant.

TRANSCRIPT OF PROCEEDINGS

ARRAIGNMENT/CONTINUED

Thursday, October 23rd, 2003

8:30 A.M.

Reno, Nevada

Reported by: JOAN MARIE DOTSON
NV, CA AND UT CERTIFIED, REGISTERED PROFESSIONAL REPORTER
Computer-aided Transcription

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court 11/20/2003 04:38 PM
Washoe County 4185

A P P E A R A N C E S

For the Plaintiff: OFFICE OF THE DISTRICT ATTORNEY
BY: KELLI ANNE VILORIA
Deputy District Attorney
P.O. Box 11130
Reno, Nevada 89520

For the Defendant: OFFICE OF THE PUBLIC DEFENDER
BY: SEAN SULLIVAN
Deputy Public Defender
P.O. Box 11130
Reno, Nevada 89520

1 THURSDAY, OCTOBER 23RD, 2003; RENO, NEVADA

2 --o0o--

3 THE COURT: Let's do CR03-2156, State of Nevada verses
4 Michael Todd Botelho.

5 MS. VILORIA: Good morning, your Honor. Kelli Anne
6 Viloria on behalf of the State.

7 MR. SULLIVAN: Sean Sullivan on behalf of Mr. Botelho,
8 who is present today in custody.

9 THE COURT: All right. Good morning. This is the
10 time set for the arraignment on an Indictment that was filed
11 October the 8th, 2003. And let the record reflect I provided
12 counsel a copy of that Indictment.

13 MR. SULLIVAN: Thank you, your Honor. We are in
14 receipt of the Indictment. We are familiar with the
15 contents. We waive a formal reading. My client has told me
16 that his name is correctly spelled on line number twelve.
17 Your Honor, it is my understanding that myself and Miss
18 Viloria have agreed to continue this matter for two weeks.

19 MS. VILORIA: That is correct, your Honor.

20 THE COURT: All right.

21 MS. VILORIA: Just for the record, your Honor, the
22 defendant wants time to decide whether to enter a plea of
23 guilty or not guilty.

24 THE CLERK: Entry of plea -- entry of plea November 6th

1 at 8:30 in the morning.

2 MR. SULLIVAN: Actually I don't think it is scheduled
3 for entry of plea. An arraignment.

4 THE CLERK: Arraignment. November 6th at 8:30.

5 MR. SULLIVAN: Thank you.

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8 (At this time the foregoing proceedings were concluded.)
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1 STATE OF NEVADA)

2)ss.

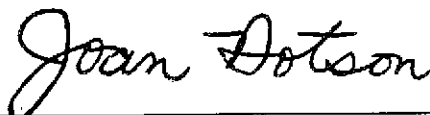
3 COUNTY OF WASHOE)

4 I, JOAN MARIE DOTSON, a Certified Shorthand
5 Reporter for the Second Judicial District Court of the State
6 of Nevada in and for the County of Washoe DO HEREBY CERTIFY;

7 That I was present in Department No. 3 of
8 the above-entitled court on Thursday, October 23rd, 2003 and
9 took verbatim stenotype notes of the proceedings and
10 thereafter transcribed them into typewriting as herein
11 appears;

12 That the foregoing transcript is a full,
13 true and correct transcription of my said stenotype notes and
14 is a full, true and correct record of the proceedings had and
15 the testimony given in the above-entitled action to the best
16 of my knowledge, skill and ability.

17
18
19 DATED: This 13th day of November, 2003.

20
21 

22 JOAN MARIE DOTSON, CSR #102

ORIGINAL

FILED

2003 DEC -8 AM 11:05

RONALD A. LONGTIN, JR.

BY DEPUTY

1 CODE 1250
 Richard A. Gammick
 #001510
 P.O. Box 30083
 Reno, NV 89520-3083
 (775) 328-3200
 Attorney for Plaintiff

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

* * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR03-2156

11 v.

Dept. No. 3,

12 MICHAEL TODD BOTELHO,

13 Defendant.

14 _____/
 15 APPLICATION FOR SETTING

16 TYPE OF ACTION: CRIMINAL

17 MATTER TO BE HEARD: CHANGE OF PLEA

18 DATE OF APPLICATION: December 5, 2003 MADE BY PLAINTIFF

19 COUNSEL FOR PLAINTIFF: KELLI ANNE VILORIA, D.D.A.

20 COUNSEL FOR DEFENDANT: SEAN SULLLIVAN, D.P.D.

21 CUSTODY STATUS: BAIL O.R. XX IN CUSTODY

22
 23
 24
 25
 26 Setting at 8:30 a.m. on the 11th of December, 2003.

CASE NO. CR03-2156

STATE OF NEVADA VS. MICHAEL TODD BOTELHO

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

120/11/03

MOTION FOR CHANGE OF PLEA

HONORABLE

Deputy District Attorney Kelli Vilorio represented the State.

JEROME M.

Defendant was present with counsel, Deputy Public Defender Sean Sullivan. Probation Officer Linda Shipley was also present.

POLAHA

DEPT. NO. 3

Defendant moved to withdraw his former plea of Not Guilty; MOTION GRANTED.

C. Patterson

Defendant entered a plea of Guilty to Kidnapping In the First Degree and 3 counts of Sexual Assault on a Child as contained in Counts 1, 3, 4 and 5 of the Indictment. Plea negotiations stated.

(Clerk)

Court interrogated the Defendant, advised him of his rights, found that there was a factual basis for the plea and that the Defendant understood the elements of the offense and the possible punishment therefore; Court further found that the plea was knowing, voluntary and intelligent, that the Defendant was competent to enter the plea and accepted same.

J. Dotson

Court ordered Presentence Investigation and matter continued for entry of judgment and imposition of sentence. Trial date of July 26, 2004 ordered vacated.

Defendant remanded to the custody of the Sheriff.

02/11/04

9:30 a.m.

Sentencing

2 hours

Closed Hrg.

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
DC-09900071886-022
Page 1
12/11/2003 09:13 AM
MIN
NEW

FILED

DEC 11 2003

RONALD A. LONGTIN, JR., CLERK

By: C. Patton
DEPUTY

CODE 1785

Richard A. Gammick

#001510

P.O. 30083

Reno, NV. 89520-3083

(775)328-3200

Attorney for Plaintiff

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-2156

v.

Dept. No. 3

MICHAEL TODD BOTELHO,
also known as
"KEVIN",

Defendant.

GUILTY PLEA MEMORANDUM

1. I, MICHAEL TODD BOTELHO, also known as "KEVIN",
understand that I am charged with the offense(s) of: COUNT I.
KIDNAPPING IN THE FIRST DEGREE, a violation of NRS 200.310-1 and NRS
200.320, a felony; COUNT II. BATTERY WITH INTENT TO COMMIT SEXUAL
ASSAULT ON A CHILD, a violation of NRS 200.400, a felony; COUNT III.
SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.366, a felony;
COUNT IV. SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.366, a
felony; COUNT V. SEXUAL ASSAULT ON A CHILD, a violation of NRS
200.366, a felony.

///

1 2. I desire to enter a plea of guilty to the offense(s) of
2 COUNT I. KIDNAPPING IN THE FIRST DEGREE, a violation of NRS 200.310-
3 1 and NRS 200.320, a felony; COUNT III. SEXUAL ASSAULT ON A CHILD, a
4 violation of NRS 200.366, a felony; COUNT IV. SEXUAL ASSAULT ON A
5 CHILD, a violation of NRS 200.366, a felony; COUNT V. SEXUAL ASSAULT
6 ON A CHILD, a violation of NRS 200.366, a felony, as more fully
7 alleged in the charge(s) filed against me.

8 3. By entering my plea of guilty I know and understand
9 that I am waiving the following constitutional rights:

10 A. I waive my privilege against self-incrimination.

11 B. I waive my right to trial by jury, at which trial the
12 State would have to prove my guilt of all elements of the offenses
13 beyond a reasonable doubt.

14 C. I waive my right to confront my accusers, that is, the
15 right to confront and cross examine all witnesses who would testify
16 at trial.

17 D. I waive my right to subpoena witnesses for trial on my
18 behalf.

19 4. I understand the charge(s) against me and that the
20 elements of the offense(s) which the State would have to prove beyond
21 a reasonable doubt at trial are that on the 7th day of August, 2003,
22 or thereabout, in the County of Washoe, State of Nevada, I did, as to
23 Count I., willfully and unlawfully seize and/or confine and/or
24 entice and/or kidnap and/or carry away the person of JANE DOE, a
25 minor child of the age of fourteen years having a date of birth of
26 November 8, 1988, with the intent to hold and detain and did hold and

1 detain such person for the purpose of committing sexual assault upon
2 her, and/or with the intent to hold said minor to unlawful service or
3 to perpetrate upon the person of the minor any unlawful act.

4 I further understand the charge(s) against me and that the
5 elements of the offense(s) which the State would have to prove beyond
6 a reasonable doubt at trial are that on the 7th day of August, 2003,
7 or thereabout, in the County of Washoe, State of Nevada, I did, as to
8 Count III., willfully and unlawfully subject JANE DOE, a female
9 child under the age of sixteen years, having a date of birth of
10 November 8, 1988, to sexual penetration, against the victim's will or
11 under conditions in which I knew or should have known that the victim
12 was mentally or physically incapable of resisting or understanding
13 the nature of my conduct, to wit, I forced the victim to perform
14 fellatio upon me, in the hills of Washoe Valley, Washoe County,
15 Nevada.

16 I further understand the charge(s) against me and that the
17 elements of the offense(s) which the State would have to prove beyond
18 a reasonable doubt at trial are that on the 7th day of August, 2003,
19 or thereabout, in the County of Washoe, State of Nevada, I did, as to
20 Count IV., willfully and unlawfully subject JANE DOE, a female child
21 under the age of sixteen years, having a date of birth of November 8,
22 1988, to sexual penetration, against the victim's will or under
23 conditions in which I knew or should have known that the victim was
24 mentally or physically incapable of resisting or understanding the
25 nature of the my conduct, to wit, I subjected said child to
26 cunnilingus, in the hills of Washoe Valley, Washoe County, Nevada.

1 I further understand the charge(s) against me and that the
2 elements of the offense(s) which the State would have to prove beyond
3 a reasonable doubt at trial are that on the 7th day of August, 2003,
4 or thereabout, in the County of Washoe, State of Nevada, I did, as to
5 Count V., willfully and unlawfully subject JANE DOE, a female child
6 under the age of sixteen years, having a date of birth of November 8,
7 1988, to sexual penetration, against the victim's will or under
8 conditions in which I knew or should have known that the victim was
9 mentally or physically incapable of resisting or understanding the
10 nature of my conduct, to wit, I subjected said child to vaginal
11 intercourse with my penis, in the hills of Washoe Valley, Washoe
12 County, Nevada.

13 5. I understand that I admit the facts which support all
14 the elements of the offenses by pleading guilty. I admit that the
15 State possesses sufficient evidence which would result in my
16 conviction. I have considered and discussed all possible defenses
17 and defense strategies with my counsel. I understand that I have the
18 right to appeal from adverse rulings on pretrial motions only if the
19 State and the Court consent to my right to appeal. In the absence of
20 such an agreement, I understand that any substantive or procedural
21 pretrial issue or issues which could have been raised at trial are
22 waived by my plea.

23 6. I understand that the consequences of my plea of guilty to
24 Count I., are that I may be imprisoned for a period of life with
25 eligibility of parole at five years or definite term of fifteen years

26 ///

1 with parole eligibility after five years have been served in the
2 Nevada State Prison and that I am not eligible for probation.

3 I further understand that the consequences of my plea of
4 guilty to Count III., are that I may be imprisoned for a period of
5 life with eligibility of parole at twenty years or definite term of
6 twenty years with parole eligibility after five years have been
7 served in the Nevada State Prison and that I am not eligible for
8 probation. I further understand that I will be required to be on
9 lifetime supervision pursuant to NRS 176.0931.

10 I further understand that the consequences of my plea of
11 guilty to Count IV., are that I may be imprisoned for a period of
12 life with eligibility of parole at twenty years or definite term of
13 twenty years with parole eligibility after five years have been
14 served in the Nevada State Prison and that I am not eligible for
15 probation. I further understand that I will be required to be on
16 lifetime supervision pursuant to NRS 176.0931.

17 I further understand that the consequences of my plea of
18 guilty to Count V., are that I may be imprisoned for a period of life
19 with eligibility of parole at twenty years or definite term of twenty
20 years with parole eligibility after five years have been served in
21 the Nevada State Prison and that I am not eligible for probation. I
22 further understand that I will be required to be on lifetime
23 supervision pursuant to NRS 176.0931. I also understand that the
24 sentence on each count may be concurrent or consecutive to each
25 other.

26 ///

1 7. In exchange for my plea of guilty, the State, my
2 counsel and I have agreed to recommend the following: The State will
3 be free to argue for an appropriate sentence. As part of plea
4 negotiations, the State will dismiss COUNT II. BATTERY WITH INTENT
5 TO COMMIT SEXUAL ASSAULT ON A CHILD at the time of sentencing. The
6 State will also refrain from pursuing any transactionally related
7 charges or enhancements arising out of the instant offense.

8 8. I understand that, even though the State and I have
9 reached this plea agreement, the State is reserving the right to
10 present arguments, facts, and/or witnesses at sentencing in support
11 of the plea agreement.

12 9. I also agree that I will make full restitution in this
13 matter, as determined by the Court. Where applicable, I additionally
14 understand and agree that I will be responsible for the repayment of
15 any costs incurred by the State or County in securing my return to
16 this jurisdiction.

17 10. I understand that the State, at their discretion, is
18 entitled to either withdraw from this agreement and proceed with the
19 prosecution of the original charges or be free to argue for an
20 appropriate sentence at the time of sentencing if I fail to appear at
21 any scheduled proceeding in this matter OR if prior to the date of my
22 sentencing I am arrested in any jurisdiction for a violation of law
23 OR if I have misrepresented my prior criminal history. I represent
24 that I have one prior felony conviction. I understand and agree that
25 the occurrence of any of these acts constitutes a material breach of
26 my plea agreement with the State. I further understand and agree

1 that by the execution of this agreement, I am waiving any right I may
2 have to remand this matter to Justice Court should I later withdraw
3 my plea.

4 11. I understand and agree that pursuant to the terms of
5 the plea agreement stated herein, any counts which are to be
6 dismissed and any other cases charged or uncharged which are either
7 to be dismissed or not pursued by the State, may be considered by the
8 court at the time of my sentencing.

9 12. I understand that the Court is not bound by the
10 agreement of the parties and that the matter of sentencing is to be
11 determined solely by the Court. I have discussed the charge(s), the
12 facts and the possible defenses with my attorney. All of the
13 foregoing rights, waiver of rights, elements, possible penalties, and
14 consequences, have been carefully explained to me by my attorney. I
15 am satisfied with my counsel's advice and representation leading to
16 this resolution of my case. I am aware that if I am not satisfied
17 with my counsel I should advise the Court at this time. I believe
18 that entering my plea is in my best interest and that going to trial
19 is not in my best interest.

20 13. I understand that this plea and resulting conviction
21 may have adverse effects upon my residency in this country if I am
22 not a U. S. Citizen.

23 14. I offer my plea freely, voluntarily, knowingly and
24 with full understanding of all matters set forth in the Indictment
25 and in this Plea Memorandum. I understand everything contained
26 within this Memorandum.

ORIGINAL

FILED

4185

JOAN MARIE DOTSON

CCR #102

75 COURT STREET

RENO, NEVADA

DEC 22 2003

RONALD A. LONGTIN, JR., CLERK

By:

DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE
 BEFORE THE HONORABLE JEROME M. POLAHA, DISTRICT JUDGE

--oOo--

THE STATE OF NEVADA,
 Plaintiff,

Case No. CR03-2156

vs.

Department No. 3

MICHAEL TODD BOTELHO,
 Defendant.

TRANSCRIPT OF PROCEEDINGS

CHANGE OF PLEA

Thursday, December 11th, 2003

8:30 A.M.

Reno, Nevada

Reported by: JOAN MARIE DOTSON
 NV, CA AND UT CERTIFIED, REGISTERED PROFESSIONAL REPORTER
 Computer-aided Transcription

CR03-2156
 DC-0900071844-020
 STATE VS. MICHAEL TODD BOTELHO 21 Pages
 District Court 12/22/2003 11:20 AM
 Washoe County 4185

A P P E A R A N C E S

For the Plaintiff:

OFFICE OF THE DISTRICT ATTORNEY

BY: KELLI ANNE VILORIA

Deputy District Attorney

P.O. Box 11130

Reno, Nevada 89520

For the Defendant:

OFFICE OF THE PUBLIC DEFENDER

BY: SEAN SULLIVAN

Deputy Public Defender

P.O. Box 11130

Reno, Nevada 89520

1 THURSDAY, DECEMBER 11TH, 2003; RENO, NEVADA

2 --o0o--

3 THE COURT: The next matter CR03-2156, State of Nevada
4 verses Michael Todd Botelho.

5 MR. SULLIVAN: Your Honor, can we trail this one?

6 THE COURT: Yes.

7
8 (At this time a brief
9 recess was taken.)

10 THE COURT: Then let's do CR03-2516, State verses
11 Michael Todd Botelho.

12 MR. SULLIVAN: Sean Sullivan on behalf of the
13 defendant.

14 MS. VILORIA: Kelli Anne Viloria on behalf of the
15 State, your Honor.

16 MR. SULLIVAN: Sean Sullivan on behalf of Mr. Botelho,
17 who is present today in custody.

18 THE COURT: All right. Now, this is set for a change
19 of plea. I see that we have a trial date of July 26th, 2004.

20 MS. VILORIA: That's correct, your Honor.

21 THE COURT: What's going to happen here?

22 MR. SULLIVAN: Your Honor, it is my understanding my
23 client -- we have reached negotiations in this matter.
24 Judge, pursuant to negotiations, my client desires to enter a

1 guilty plea to Count I which is alleged in the Indictment,
2 Count II -- excuse me. Count I, Count III, Count IV and
3 Count V. The State will not be pursuing Count II. In
4 exchange for my client's guilty plea, the parties will be
5 free to argue for the appropriate sentence.

6 As part of the negotiations, the State will
7 dismiss Count II. The State will also refrain from pursuing
8 any transactionally related charges or enhancements arising
9 out of the instant offense. And, Judge, on page six of the
10 original Guilty Plea Memorandum, line two, I struck out the
11 words, "The State will be free to argue," and I just inserted
12 the word, "Parties." And I initialled them. Can I approach?

13 MS. VILORIA: That is correct in addition to the
14 interlineation.

15 THE COURT: Mr. Botelho, you heard what your attorney
16 said?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is that what you intend to do this
19 morning?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. I received the Guilty Plea
22 Memorandum. And I see that it says you signed it on the
23 10th. Is that correct?

24 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, did you read this before you signed
2 it?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand what you read?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: How much education do you have?

7 THE DEFENDANT: Almost two years of college.

8 THE COURT: All right. And you read and understand
9 English?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any questions about anything
12 that is set out or contained in the Guilty Plea Memorandum?

13 THE DEFENDANT: No, sir.

14 THE COURT: Now, you were arraigned back in October.
15 You entered a plea in November. And we have a trial set for
16 July in this case. And at page two it sets out your
17 constitutional rights. And you were on your way to receiving
18 the full benefit of those constitutional rights. If you
19 change your plea, then that means that you don't want to have
20 the advantage of those constitutional rights and that you are
21 giving them up. Is that how you understand it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. And they are set out at page
24 two. You are giving up your right to a jury trial. And, as

1 you know, that's been set for July. At that trial the State
2 would have to convince twelve people of your guilt on all the
3 elements of all the offenses that you are charged with by the
4 Indictment. If you plead guilty, you are telling the State
5 that they don't have to prove or convince anybody of your
6 guilt; that you will admit your guilt in open court. Is that
7 what you want to do?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. And you are giving up your
10 trial right.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. At that trial you would have
13 had the right of confrontation. That means you would get to
14 confront your accusers. You would be present. You would be
15 represented by counsel and he would get to cross examine the
16 witnesses that the State would bring against you in their
17 effort to convince the twelve people on the jury of your
18 guilt.

19 That's not going to happen, if you plead
20 guilty. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. So you are giving up that
23 constitutional right.

24 THE DEFENDANT: Yes, sir.

1 THE COURT: The right to subpoena witnesses means
2 that -- and this is the compulsory process.

3 That means, if you had any witnesses who
4 could help you establish a defense, the Court could issue
5 subpoenas. And, if they are properly served, those people
6 would have to come to court and offer their testimony in your
7 behalf.

8 That happens at the trial. You gave up the
9 trial. You gave up your right of confrontation. So you are
10 necessarily giving up the subpoena process too. Do you
11 understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Here it says the privilege
14 against self-incrimination. Obviously, if you enter pleas of
15 guilty, you are convicting yourself. So that's greater than
16 incriminating yourself. So you are necessarily giving up
17 that privilege also. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: The way that works at trial, that
20 privilege, is that the jury is advised that under the law you
21 are presumed innocent of the charges. The State could not
22 call you as a witness against yourself when they are
23 presenting their case.

24 And, if, for any reason, you chose not to

1 testify in your own behalf when it came your time to put on
2 your defense, the State couldn't argue that to the jury to
3 say, "See, he didn't say anything, so he must be guilty."

4 And the jury will be instructed that they
5 could not consider the fact that you didn't testify, if you
6 didn't, as an indicator of guilt. They could not consider
7 that in your deliberations. Okay. That's how the law
8 protects an accused. You are giving up those rights by your
9 pleas of guilty. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that once you give them
12 up today, they are gone?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Do you want to give them up?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you want to change the pleas that you
17 have heretofore entered for counts one, three, four and five
18 from not guilty to guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Let me ask you, the Indictment
21 that was returned October the 8th, 2003 in Count I charges
22 you with kidnapping in the first degree, a felony offense, to
23 that charge, how do you plead?

24 THE DEFENDANT: Guilty.

1 THE COURT: Count III of that Indictment charges you
2 with the felony offense sexual assault on a child, how do you
3 plead?

4 THE DEFENDANT: Guilty.

5 THE COURT: Count IV of that Indictment charges you
6 with a second sexual assault on a child. How do you plead?

7 THE DEFENDANT: Guilty.

8 THE COURT: Count V of that Indictment charges you
9 with a third count of sexual assault on a child. How do you
10 plead?

11 THE DEFENDANT: Guilty.

12 THE COURT: All right. Miss Viloria, would you give
13 us the element please.

14 MS. VILORIA: I will, your Honor.

15 Sir, had we taken this matter to trial, the
16 State would be prepared to prove beyond a reasonable doubt
17 the following elements against you.

18 In Count I, kidnapping in the first degree,
19 a felony, the State would be prepared to prove the elements
20 as follows: That you on the 7th day of August, 2003 in the
21 County of Washoe, State of Nevada did willfully and
22 unlawfully seize and/or confine and/or entice and/or kidnap
23 and/or carry away the person of Jane Doe, a minor child of
24 the age of fourteen years having a date of birth of November

1 8th, 1988 and that you did this with the intent to hold and
2 detain and that you did hold and detain such person for the
3 purpose of committing sexual assault upon her and/or you did
4 hold her with the intent to hold her to unlawful service or
5 to perpetrate upon her any unlawful act.

6 Sir, do you understand the elements the
7 State would have been prepared to prove as to relates to
8 Count I, kidnapping in the first degree?

9 THE DEFENDANT: Yes, ma'am.

10 MS. VILORIA: The State would also have been prepared
11 to prove beyond a reasonable doubt the following elements in
12 Count II -- excuse me, Count III, sexual assault on a child.
13 That's that you on the 7th day of August, 2003 in the County
14 of Washoe, State of Nevada did willfully and unlawfully
15 subject Jane Doe, a female child under the age of 16 years,
16 having a birth date of the November 8th, 1988 to sexual
17 penetration against her will or under conditions in which you
18 knew or should have known that she was mentally or physically
19 incapable of resisting or understanding the nature of her
20 conduct in that you forced the victim to perform fellatio in
21 the hills of Washoe Valley, Washoe County, Nevada.

22 Do you understand the elements the State
23 would have been prepared to prove as it relates to Count III?

24 THE DEFENDANT: Yes, ma'am.

1 MS. VILORIA: Likewise, sir, the State would have been
2 prepared to prove the following as it relates to Count IV,
3 sexual assault on a child in that you on the 7th of August,
4 2003 in the County of Washoe, State of Nevada did willfully
5 and unlawfully subject Jane Doe, a female child under the age
6 of sixteen years, having a date of birth of November 8th,
7 1988 to sexual penetration against her will or under
8 conditions in which you knew or should have known that she
9 was mentally or physically incapable of resisting or
10 understanding your conduct in that you subjected her to
11 cunnilingus in the hills of Washoe Valley, Washoe County,
12 Nevada.

13 Do you understand the elements the State
14 would have been prepared to prove as it relates to Count IV?

15 THE DEFENDANT: Yes, ma'am.

16 MS. VILORIA: Likewise, as it relates to Count V,
17 sexual assault on a child, the State would have been prepared
18 to prove the following elements in that you on the 7th of
19 August, 2003 in the County of Washoe, State of Nevada did
20 willfully and unlawfully subject Jane Doe, a female child
21 under the age of sixteen years, having a date of birth of
22 November 8th, 1988 to sexual penetration against her will or
23 under conditions in which you knew or should have known that
24 she was mentally or physically incapable of resisting or

1 understanding the nature of her conduct in that you subjected
2 such child to vaginal intercourse with your penis in Washoe
3 Valley, Washoe County, Nevada.

4 Do you understand the elements the State
5 would have been prepared to prove as it relates to Count V?

6 THE DEFENDANT: Yes, ma'am.

7 MS. VILORIA: For the record, the victim in this case
8 has elected to proceed under the use of a pseudonym; and this
9 is the reason we are calling her Jane Doe.

10 THE COURT: All right.

11 Mr. Botelho, do you understand that by your
12 pleas of guilty you are admitting the facts that were recited
13 by the District Attorney?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Now, the potential
16 consequences of your pleas that you entered this morning, to
17 Count I, you may be imprisoned for a period of life with the
18 eligibility of parole after five years or you could be
19 sentenced to a definite term of fifteen years with parole
20 eligibility after you serve five years in the Nevada State
21 Prison. Probation is not available. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: That means the next time you come to court
24 you will be sent to prison.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: The punishment that is set out for counts
3 three, four and five are life imprisonment with eligibility
4 of parole after twenty years or for a definite term of twenty
5 years with parole eligibility after five years.

6 MS. VILORIA: It seems strange, your Honor. It has
7 been corrected in the legislature; but that is the offense
8 when the child is between the ages of fourteen and sixteen.

9 THE COURT: Oh, okay. All right.

10 MR. SULLIVAN: I concur, your Honor.

11 THE COURT: All right.

12 MS. VILORIA: I would just add that, as it relates to
13 counts three, four and five, that the defendant is likewise
14 is not eligible for probation.

15 THE COURT: I was just going to say that.

16 You understand that probation is not
17 available to you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. So, again, when you come next time
20 you will be sent to prison and it's just a matter of how
21 long.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that?

24 THE DEFENDANT: Uh-huh (affirmative).

1 THE COURT: The punishment, as I have indicated for
2 counts three, four and five, they are identical counts
3 charging three separate acts; but the punishment is the
4 same. And that is life with the eligibility of parole after
5 twenty years or a definite term of twenty years with parole
6 eligibility after five years. Now, do you understand what
7 concurrent means and consecutive?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Concurrent means that they can all
10 be done together. Consecutive means you do one, then the
11 other, then the other, then the other and so on. Do you
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Do you understand that what
15 happens to you at the sentencing is up to the court?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. Now, in this regard, did anybody
18 make any promises to you in that respect?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. One of the constitutional
21 rights that you have not given up is your right to be
22 represented by a lawyer. Mr. Sullivan of the Public
23 Defender's staff is standing there beside you. Was he your
24 attorney throughout?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay.

3 MS. VILORIA: Your Honor, did you canvass the defendant
4 as it relates to the lifetime supervision part of this?

5 THE COURT: Not yet, thank you. At page four,
6 paragraph five of the plea agreement, it says that you have
7 considered and discussed all possible defenses and defense
8 strategies with your counsel. Is this an accurate statement?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. At page seven, paragraph twelve, it
11 says you have discussed the charges, the facts and the
12 possible defenses with your attorney. All of the foregoing
13 rights, the waiver of rights, the elements, the possible
14 penalties and the consequences have been carefully explained
15 to you by your attorney. Is that an accurate statement?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. And then the District Attorney
18 reminded the Court that pursuant to NRS 176.093(1) lifetime
19 supervision is required. That means if you get out on parole
20 you are required to undergo supervision for life. Do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has that been explained to you by
24 Mr. Sullivan?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions about that?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you satisfied with the amount of time
5 that Mr. Sullivan or members of the Public Defender's staff
6 had to spend with you on this particular case?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Are you satisfied with the representation
9 they provided so far?

10 THE DEFENDANT: Yes.

11 THE COURT: Did anyone promise you anything to get you
12 to plead guilty?

13 THE DEFENDANT: No.

14 THE COURT: Did anyone threaten you with anything to
15 get you to plead guilty?

16 THE DEFENDANT: No.

17 THE COURT: Are you pleading guilty to these charges
18 because in truth and in fact you are guilty of these crimes?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. In your own words, I am going
21 to require you to tell me what you did that makes you plead
22 guilty starting with Count I kidnapping?

23 THE DEFENDANT: I had been -- I had been drinking and
24 I ended up going out and -- picking up a girl whom I called

1 several times and took her out to the Washoe Lake area and --

2 THE COURT: Against her will?

3 MR. SULLIVAN: Can I have the Court's indulgence?

4 THE DEFENDANT: Excuse me. Say it again.

5 THE COURT: For the purposes of having sex with her
6 against her will?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Count III, sexual assault on a child, what
9 did you do?

10 THE DEFENDANT: I did all -- I did all three counts.

11 I am -- I just choked trying to say it.

12 Sorry.

13 MR. SULLIVAN: He is choked up trying to say it, your
14 Honor.

15 THE COURT: All right. But as far as the allegations
16 that were contained in Count III, forcing the victim to
17 perform fellatio on you, is that an accurate statement?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Count IV, you subjected her to
20 cunnilingus. Is that an accurate statement?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Count V, you subjected her to vaginal
23 intercourse?

24 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Are you under the influence of
2 anything this morning?

3 THE DEFENDANT: No.

4 THE COURT: You are clearheaded and you understand
5 fully what it is that you are doing?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The rights that you are giving up? You
8 have to answer audibly.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And the potential consequences of what you
11 are doing this morning?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you want to do it?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. The Court finds that Michael
16 Todd Botelho is competent to enter the pleas of guilty that
17 he entered. The Court finds that there is a factual bases to
18 accept all the pleas. The Court finds that Mr. Botelho does
19 understand his constitutional rights and has freely,
20 knowingly, voluntarily and intelligently waived them. The
21 Court finds that he does understand the true nature of each
22 of the charges that have been filed against him in that
23 Indictment. And the Court finds that he does understand the
24 potential consequences of the convictions that result in his

1 pleas of guilty to those particular charges.

2 The Court finds that the pleas of guilty
3 that were entered were entered freely, knowingly, voluntarily
4 and intelligently with the advice of counsel. And the court
5 does hereby accept the pleas of guilty.

6 MR. SULLIVAN: Your Honor, the defense and I believe
7 the State would request a special hearing. I believe two
8 hours would be sufficient. We would like to have a closed
9 hearing, special set, Judge, if that's at all possible. And
10 I am thinking I need a few months to prepare for sentencing
11 for this particular case. The end of March, would that be
12 available?

13 MS. VILORIA: Your Honor, I will not be available from
14 March 1st on so it has to be the end -- I would actually
15 prefer it to be the middle of February, if the court can
16 accommodate or it's going to have to be continued out past my
17 leave.

18 But I concur with everything that
19 Mr. Sullivan says, except for the request for a closed
20 hearing. But as it relates to the time set and a special
21 set, I do request that jointly.

22 MR. SULLIVAN: I just -- I have some concerns. I have
23 a murder trial starting March 1st in Department Four. So can
24 I have the Court's indulgence. Your Honor, does the Court

1 have the first or second week of February available?

2 THE CLERK: Is counsel available at 9:30 on February
3 11th? That's a Wednesday.

4 MR. SULLIVAN: I'm sorry, what's the date?

5 THE CLERK: February 11th.

6 MR. SULLIVAN: That's fine.

7 THE CLERK: At 9:30 a.m. for two hours.

8 MS. VILORIA: Thank you.

9 THE COURT: All right.

10
11
12 (At this time the foregoing proceedings were concluded.)
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1 STATE OF NEVADA)

2)ss.

3 COUNTY OF WASHOE)

4 I, JOAN MARIE DOTSON, a Certified Shorthand
5 Reporter for the Second Judicial District Court of the State
6 of Nevada in and for the County of Washoe DO HEREBY CERTIFY;

7 That I was present in Department No. 3 of
8 the above-entitled court on Thursday, December 11th, 2003 and
9 took verbatim stenotype notes of the proceedings and
10 thereafter transcribed them into typewriting as herein
11 appears;

12 That the foregoing transcript is a full,
13 true and correct transcription of my said stenotype notes and
14 is a full, true and correct record of the proceedings had and
15 the testimony given in the above-entitled action to the best
16 of my knowledge, skill and ability.

17
18
19 DATED: This 19th day of December, 2003.

20
21 
22 JOAN MARIE DOTSON, CSR #102
23
24

ORIGINAL

FILED

JAN 12 2004

RONALD A. LONGTIN, JR., CLERK

By:
DEPUTY CLERK

4185

JUDITH ANN SCHONLAU

CCR #18

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE HONORABLE JEROME M. POLAHA, DISTRICT JUDGE

-o0o-

THE STATE OF NEVADA,)

Plaintiff,)

vs.)

MICHAEL TODD BOTELHO,)

Defendant.)

CASE NO. CR03-2156
DEPARTMENT NO. 3

TRANSCRIPT OF PROCEEDINGS

ENTRY OF PLEA
THURSDAY, NOVEMBER 6, 2003

8:30 A.M.

Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18
NEVADA- CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
Computer-aided Transcription

A P P E A R A N C E S

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For the Plaintiff:

OFFICE OF THE DISTRICT ATTORNEY

5

BY: KELLI ANNE VILORIA

6

Deputy District Attorney

7

Washoe County Courthouse

8

Reno, Nevada

9

10

11

For the Defendant:

OFFICE OF THE PUBLIC DEFENDER

12

BY: SEAN SULLIVAN

13

Deputy Public Defender

14

350 S. Center Street

15

Reno, Nevada

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1 RENO, NEVADA; THURSDAY, NOVEMBER 6, 2003; 8:30 A.M.

2 -oOo-

3 THE COURT: Next case CR03-2156, State of Nevada
4 versus Michael Todd Botelho.

5 MS. VILORIA: Good morning. Kelli Anne Viloria on
6 behalf of the state.

7 MR. SULLIVAN: Sean Sullivan on behalf of Mr. Botelho
8 who is present today in custody.

9 THE COURT: All right. This is the time set for the
10 entry of plea in this matter.

11 MR. SULLIVAN: Actually, no, Your Honor. This was
12 the time set for--we continued the Arraignment last time. We
13 set it for a status hearing, I believe, not an entry of plea.

14 My client, at this point in time, he would like more
15 time to review the discovery. However, we are prepared to go
16 forward with the Arraignment today. He is going to enter a not
17 guilty count-- or, excuse me--not guilty plea to each count
18 contained in the Information. He has been advised of his
19 60-day rule. He will waive that. I understand Ms. Viloria
20 would like the matter set in accordance with her calendar well
21 into next year, July, August, maybe even September. I am not
22 sure which date. But we have no problem with that, Your
23 Honor. We are hopeful my client and I and Ms. Viloria will
24 resolve this case. We just need some time to review the

1 voluminous discovery in this matter.

2 THE COURT: All right. He was handed a copy. He
3 waived reading. We ascertained his true name, and now I hear
4 he is going to waive the 60-day rule?

5 MR. SULLIVAN: That is correct, Judge.

6 THE COURT: Is that correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. We'll put that on the
9 record. And to the charges that are set out in the Indictment
10 that was returned October the 8, 2003, charging you,
11 Mr. Botelho with Count I, kidnapping in the first degree, how
12 do you plead?

13 THE DEFENDANT: Not guilty.

14 THE COURT: Not guilty. Okay. Count II, battery
15 with the intent to commit sexual assault on a child, how do you
16 plead?

17 THE DEFENDANT: Not guilty.

18 THE COURT: Count III, sexual assault on a child how
19 do you plead?

20 THE DEFENDANT: Not guilty.

21 THE COURT: Count IV, sexual assault on a child, how
22 do you plead?

23 THE DEFENDANT: Not guilty.

24 THE COURT: Count V, sexual assault on a child, how

1 do you plead?

2 THE DEFENDANT: Not guilty.

3 THE COURT: All right. And you understand what we
4 are talking about is almost a year from now?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: For the trial date.

7 MR. SULLIVAN: If we resolve this before that, Your
8 Honor, we'll set it for an entry of plea.

9 THE COURT: Okay. I have got the transcript. So the
10 transcripts are ready.

11 THE CLERK: How many days, counsel?

12 MS. VILORIA: I would say no more than four.

13 THE CLERK: Trial date will be July 26th, 8:30 in the
14 morning. Motion to Confirm will be July 15th at 8:30 in the
15 morning.

16 MR. SULLIVAN: I am sorry, Miss Clerk, July 15th?

17 THE CLERK: July 15th, yes.

18 MR. SULLIVAN: Thank you.

19 THE COURT: Is that good on your calendar?

20 MS. VILORIA: Yes. Thank you, Judge.

21 MR. SULLIVAN: Thanks, Your Honor.

22 THE COURT: Okay.

23 (Whereupon, the proceedings were concluded.)

24 ---o0o---

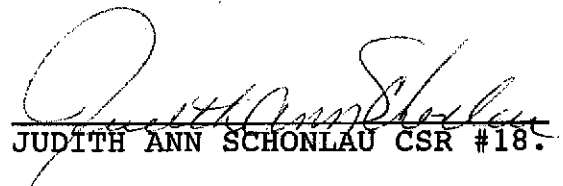
1 STATE OF NEVADA,)
2 COUNTY OF WASHOE.) ss.

3 I, Judith Ann Schonlau, Official Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, DO HEREBY CERTIFY:

6 That as such reporter I was present in Department No.
7 3 of the above-entitled court on Thursday, November 6, 2003, at
8 the hour of 8:30 o'clock a.m. Of said day and that I then and
9 there took verbatim stenotype notes of the proceedings had in
10 the matter of THE STATE OF NEVADA vs. MICHAEL TODD BOTELHO,
11 Case Number CR03-2156.

12 That the foregoing transcript, consisting of pages
13 numbered 1- 6 inclusive, is a full, true and correct
14 transcription of my said stenotypy notes, so taken as
15 aforesaid, and is a full, true and correct statement of the
16 proceedings had and testimony given upon the trial of the
17 above-entitled action to the best of my knowledge, skill and
18 ability.

19 DATED: At Reno, Nevada this 6th day of November, 2003.
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JUDITH ANN SCHONLAU CSR #18.

ORIGINAL FILED

DA # 318167Team maa

2004 JAN 26 PM 2:10

RONALD A. LONGTIN, JR.

BY [Signature]
DEPUTY

CODE 3839
 Richard A. Gammick
 #001510
 P.O. Box 30083
 Reno, NV 89520-3083
 (775) 328-3200
 Attorney for Plaintiff

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-2156Michael Todd Botelho,Dept. No. 3

Defendant.

REQUEST, AGREEMENT AND ORDER FOR PRE-TRIAL RECIPROCAL DISCOVERYDEFENDANT'S REQUEST FOR DISCOVERY

Pursuant to NRS 174.087, 174.089, 174.235 to 174.295,
 inclusive, the defendant requests all written or recorded
 statements or confessions made by the defendant, any written or
 recorded statements made by a witness or witnesses the State
 intends to call in its case-in-chief, or any reports of
 statements or confessions, or copies thereof, results or reports
 of physical or mental examinations, scientific tests or
 scientific experiments, or copies thereof, that are within the
 possession, custody or control of the State, the existence which
 is known, or with the exercise of due diligence may become known

1 to the prosecuting attorney; and books, papers, documents or
2 tangible objects that the State intends to introduce in its case-
3 in-chief and which is in the possession, custody or control of
4 the State, the existence which is known, or with the exercise of
5 due diligence may become known to the prosecuting attorney.

6 STATE'S REQUEST FOR DISCOVERY

7 Pursuant to NRS 174.087, 174.089, 174.235 to 174.295,
8 inclusive, the State requests any written or recorded statements
9 made by a witness or witnesses the defendant intends to call in
10 his or her case-in-chief, or copies thereof, results or reports
11 of physical or mental examinations, scientific tests or
12 scientific experiments, or copies thereof, that are within the
13 possession, custody or control of the defendant, the existence
14 which is known, or with the exercise of due diligence may become
15 known to the defendant; and books, papers, documents or tangible
16 objects that the defendant intends to introduce in his or her
17 case-in-chief and which is in the possession, custody or control
18 of the defendant, the existence which is known, or with the
19 exercise of due diligence may become known to the defendant.

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AGREEMENT TO RECIPROCAL DISCOVERY

The parties hereby agree that they will comply with the requirements of NRS 174.087, 174.089, 174.235 to 174.295, inclusive.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By *K. Gilona*
Deputy District Attorney

1-20-04
Date

Sean B. Sullivan
Defense Attorney
Sean B. Sullivan

1-14-04
Date

☐ Retained ☐ Court Appointed ☒ Public Defender

ORDER

PURSUANT TO NRS 174.087, 174.089, and 174.235 to 174.295 inclusive and good cause appearing therefore,

IT IS HEREBY ORDERED that discovery be provided in accordance with the within requests and agreement.

DATED this 22nd day of January, 2004.

James P. Baker
DISTRICT JUDGE

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04 JAN 30 PM 2:23

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-2156

vs.

Dept. 3

MICHAEL TODD BOTELHO,

Defendant.

STIPULATION AND ORDER FOR CONTINUANCE

COMES NOW, Defendant, MICHAEL TODD BOTELHO, by and through MICHAEL R. SPECCHIO, Washoe County Public Defender and SEAN SULLIVAN, Deputy Public Defender, along with RICHARD A. GAMMICK, Washoe County District Attorney and KELLI VILORIA, Deputy District Attorney, and hereby stipulate to vacate the Sentencing date scheduled for February 11, 2004 and reschedule this hearing for February 18, 2004 at 10:00 a.m.

The basis for this stipulation is not made for the purpose of delay.

DATED this 26th day of January, 2004.

By

Kelli Vioria
Kelli Vioria
Deputy District Attorney

By

Sean Sullivan
Sean Sullivan
Deputy Public Defender

GOOD CAUSE APPEARING, it is so ORDERED.

DATED this 28th day of January, 2004.

[Signature]
DISTRICT JUDGE

ORIGINAL

FILED

2004 FEB -3 PM 1:44

RONALD A. LONSTIN, JR.

BY *[Signature]*
DEPUTY

1 CODE

Richard A. Gammick

UO01510

P.O. Box 30083

Reno, NV 89520-3083

(775) 328-3200

Attorney for Plaintiff

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-2156

v.

Dept. No. 3

MICHAEL TODD BOTELHO,

Defendant.

NOTICE OF INTENT TO INTRODUCE PRIOR OR OTHER BAD ACT EVIDENCE AT
SENTENCING HEARING

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and KELLI ANNE VILORIA, Deputy District Attorney, and offers its NOTICE OF INTENT TO INTRODUCE PRIOR OR OTHER BAD ACT EVIDENCE AT SENTENCING HEARING. This notice is based upon the attached Points and Authorities and the pleadings and papers on file herein.

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POINTS AND AUTHORITIES**FACTUAL BACKGROUND***Instant Offense*

On August 7, 2003, and under the pretense of needing a babysitter for his children, defendant, MICHAEL TODD BOTELHO, picked fourteen-year-old JANE DOE from her home, drove her into the hills of Washoe Valley beat where he duct-taped and sexually assaulted her. Following the attack, defendant became stressed and had to be calmed by the victim. Defendant kept telling the victim he "...didn't know what he was going to do with her now." Due to the calmness of her demeanor and a promise not to tell, by calling herself a reputed liar, the victim was able to talk defendant into taking her home.

Prior or Other Bad Act Evidence

During the investigation of this case, defendant was interviewed by Detective Greg Herrera of the Washoe County Sheriff's Office. In the interview, defendant admitted to Detective Herrera that he had fantasized about wanting to rape a woman or girl and even about tying the victim up.

Prior to interviewing defendant, Detective Herrera had received information from defendant's ex-wife, Melissa Botelho that defendant had sexual fantasies of raping and dismembering a young girl. Melissa Botelho has further described the defendant's sexual fantasies as evolving, getting worse as time went on and, eventually, being a basis that destroyed their marriage. The State wants to present Melissa Botelho as a witness in defendant's sentencing hearing.

1 ARGUMENT

2 The State intends to call the testimony of the defendant and his ex-
3 wife in regards to the defendant's sexual fantasies as it relates
4 specifically to the defendant's propensity for dangerousness and harm
5 to the children in this community.

6 Evidence of a defendant's propensity for dangerousness and
7 harm to children is not inadmissible. Williams v. New York, 337
8 U.S. 242 (1949) is the seminal case dealing with the broad amount of
9 information a trial court is entitled to consider in imposing a
10 sentence. It has been cited with approval in dozens of subsequent
11 United States Supreme court decisions as well as in literally
12 hundreds of other decisions from other federal and state appellate
13 courts. See, e.g., Williams v. Oklahoma, 358 U.S. 576, 584 (1959);
14 Gregg v. Georgia, 428 U.S. 153, 189 (1976); United States v. Grayson,
15 438 U.S. 45, 48-49 (1978); Unites States v. Plisek, 657 F.2d 920, 927
16 (7th Cir. 1986); United States v. Wise, 603, F.2d 1101, 1105 (4th
17 Cir. 1979); Eyman v. Alford, 448 F.2d 306 314, 315 (9th Cir. 1969);
18 Arizona v. Cawley, 648 P.2d 142, 144 (Arizona 1982).

19 In Williams, the United State Supreme Court offered an
20 extended discussion regarding the broad discretion trial judges have
21 in admitting character evidence pertaining to the defendant.

22 Tribunals passing on the guilt of a defendant
23 always have been hedged in by strict evidentiary
24 procedural limitations. But before and since the
25 American colonies became a nation, courts in this
26 country and in England practiced a policy in
which a sentencing judge could exercise a wide
discretion in the sources and types of evidence
used to assist him in determining the kind and
extent of punishment to be imposed within limits

1 fixed by law. Out-of-court affidavits have been
2 used frequently, and of course in the smaller
3 communities sentencing judges naturally have in
4 mind their knowledge of the personalities and
5 Background of convicted offenders. A recent
6 manifestation of the historical altitude allowed
7 sentencing judges appears in Rule 32 of the
8 Federal rules of Criminal Procedure. That rule
9 provides for consideration by Federal Judges of
10 reports made by probation officers containing
11 information about a convicted defendant,
12 including such information 'as may be helpful in
13 imposing a sentence or in granting probation or
14 in the correctional treatment of the
15 defendant...'

16 In addition to the historical basis for different
17 evidentiary rules governing trial and sentencing
18 procedures there are sound practical reasons for
19 the distinction. In a trial before verdict the
20 issue is whether a defendant is guilty of having
21 engaged in certain criminal conduct of which he
22 has been specifically accused. Rules of evidence
23 have been fashioned for criminal trials which
24 narrowly confine the trial contest to evidence
25 that is strictly relevant to the particular
26 events charged. These rules rest in part on a
necessity to prevent a time consuming and
confusing trial of collateral issues. They were
also designed to prevent tribunals concerned
solely with the issue of guilt of a particular
offense from being influenced to convict for that
offense by evidence that the defendant had
habitually engaged in other misconduct. A
sentencing judge, however, is not confined to the
narrow issue of guilt. His task within fixed
statutory or constitutional limits is to
determine the type and extent of punishment after
the issue of guilt has been determined. Highly
relevant --- if not essential --- to [the trial
judges] selection of an appropriate sentence is
possession of the fullest information possible
concerning the defendants life and
characteristics. And modern concepts
individualizing punishment have made it all the
more necessary that a sentencing judge not be
denied an opportunity to obtain pertinent
information by requirement of rigid adherence
to restrictive rules of evidence properly applicable to the
trial. Williams, 337 U.S., at pp. 246-247. (Emphasis
added)

///

1 In United States v. Plisek, 657 F.2d 920 (1981), the
2 Seventh Circuit relied heavily on Williams in approving a trial court
3 judges consideration of the facts and circumstances relating to a
4 prior case in which the subject defendant had been acquitted
5 following trial. Id., at page 927. In Plisek the court stated:

6 [T]he scope of a sentencing judge's
7 discretion is wide, and in making the sentencing
8 determination, 'a judge may appropriately conduct
9 an inquiry broad in scope, largely unlimited
10 either as to the kind of information he may
11 consider, or the source from which it may come.'
12 United States v. Tucker, 912 S.Ct. 589, 591, 30
13 L.Ed.2d 592 (1972). While it has been suggested
14 that consideration of mere arrests or pending
15 charges be prohibited in reaching the sentencing
16 determination, United States v. Johnson, 507 F.2d
17 826, 832 (7th Cir. 1974), cert denied, 421 U.S.
18 949, 95 S.Ct. 682, 44 L.Ed.2d 103 (1975)
19 (concurring and dissenting opinion) (Swygert,
20 C.J.), the legislature has chosen to permit a far
21 broader inquiry into 'the background, character
22 and conduct' of a convicted defendant. 18 U.S.C.
23 §3577 (1976). A broad interpretation of this
24 language finds support in the legislative history
25 of §3577, which makes it clear that the section
26 was intended to 'maximize sources of sentencing
information [and] to guard against the
unnecessary formalization of sentencing
procedure.' Rep. No. 91-617, 91st Cong., 1st
Sess 90 (1969), quoted in United States v.
Williamson, 567 F.2d 610, 615 (4th Cir. 1977).
This legislative mandate reflects a sentencing
philosophy articulated by the Supreme Court in
Williams v. New York. Plisek, Id. at p.927.

21 The Plisek court then went on to quote from the
22 Williams decision before concluding that:

23 [The] Williams court intended that full
24 knowledge of the defendant's entire background
25 should be available to the sentencing court... we
26 believe that under this broad grant of sentencing
discretion the trial court did not err in
referring to information in the presentence
report concerning the circumstances surrounding a

1 prior acquittal, particularly in view of the wide
2 latitude of response to the information permitted
to the defendant. Plisek, Id. at p.927.

3 In Arizona v. Cawley, 648 P.2d 142 (Arizona 1982), the
4 defendant was convicted in the court below of three counts of child
5 molesting. On appeal, he challenged the trial judge's consideration
6 of hearsay information regarding past evidence of peculiar sexual
7 behavior. This hearsay information was in the form of a pre-sentence
8 report and a report from his United States navy record. The
9 appellate court upheld the trial court's consideration of this
10 hearsay evidence regarding the defendant's abnormal sexual behavior,
11 even though none of the prior incidents resulted in convictions.
12 Cawley, id. at p.144.

13 In Smith v. State, 517 A.2d 1081 (MD. 1986), the Maryland
14 Court of Appeals held that testimony concerning a rape defendants
15 alleged participation in an uncharged, unrelated attempted rape of
16 another woman was properly admitted at the sentencing hearing, even
17 though no charges had ever been filed in the attempted rape case.
18 The defendant argued that the testimony was unreliable because no
19 formal charges had been filed. The Court rejected this claim and
20 noted that the victim's testimony was not to be deemed incredible
21 simply because she had not pressed charges. The Court noted she was
22 sworn to tell the truth at sentencing hearing and was subject to
23 cross examination. Smith, id. at pp. 1082-1088.

24 NRS 175.552 deals with the evidence that may be considered
25 at the penalty\sentencing hearing in first degree murder cases. That
26 section provides:

1 In the hearing, evidence may be presented
2 concerning aggravated and mitigating
3 circumstances relative to the events, defendant
4 or victim and on any other matter which the court
deems relevant to the sentence, whether or not
the evidence is ordinarily admissible. NRS
175.552(3).

5 This section makes clear that the Nevada legislature
6 intended that the sentencing body in first degree murder cases be
7 allowed to consider the broadest amount of information possible.

8 The Nevada legislature has also made clear that a broad
9 amount of information may be considered by the sentencing court in
10 cases other than first degree murder. NRS 176.145(1)(a)(b) provides
11 that the pre-sentence report compiled to assist the judge at
12 sentencing must contain information regarding the prior criminal
13 record of the defendant and "such information about his
14 characteristics, his financial condition, the circumstances effecting
15 his behavior and the circumstances of the offense, as may be helpful
16 in imposing sentence..."

17 Accordingly, and based on the facts above, the State will seek to
18 admit the defendant and Melissa Botelho's testimony at sentencing.

19 CONCLUSION

20 Based upon the foregoing, the State intends to call the
21 testimony of the defendant and his ex-wife in regards to the
22 defendant's deviant sexual fantasies as it relates specifically to

23 ///

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1 the defendant's propensity for dangerousness and harm to the children
2 in this community.

3 Dated this 2nd day of February, 2004.

4 RICHARD A. GAMMICK
5 District Attorney
6 Washoe County, Nevada

7
8 By Kelli Anne Viloria
9 KELLI ANNE VILORIA
10 Deputy District Attorney
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01281561

CERTIFICATE OF FORWARDING

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

SEAN SULLIVAN, ESQ
WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
350 S CENTER ST., 6TH FLOOR
RENO NV

DATED this 2nd day of February, 2004.

Dee: Gair

ORIGINAL

FILED

2004 FEB 13 PM 3:33

RONALD A. LONGTIN, JR.
BY

DEPUTY

1 CODE 2645
 2 MICHAEL R. SPECCHIO
 3 BAR# 1017
 4 WASHOE COUNTY PUBLIC DEFENDER
 5 P.O. BOX 30083
 6 RENO NV 89520-3083
 7 (775) 328-3464
 8 ATTORNEY FOR: DEFENDANT

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 10
 11 IN AND FOR THE COUNTY OF WASHOE

12 THE STATE OF NEVADA,
 13 Plaintiff,
 14 vs.

15 MICHAEL TODD BOTELHO,
 16 Defendant.

Case No. CR03-2156

Dept. 3

17 OPPOSITION TO STATE'S INTRODUCTION OF PRIOR OR OTHER BAD ACT
 18 EVIDENCE AT SENTENCING HEARING; DEFENDANT'S MOTION TO HAVE THE
 19 MATTER SEALED, TO RECUSE THE PRESENT SENTENCING COURT, AND TO
 20 HAVE THE MATTER TRANSFERRED TO ANOTHER COURT FOR SENTENCING
 21 PURPOSES.

22 COMES NOW Defendant, Michael Todd Botelho, by and through
 23 his counsel, the Washoe County Public Defender, Sean B.
 24 Sullivan, Deputy Public Defender and hereby opposes the State's
 25 Notice of Intent to Introduce Prior or Other Bad Act Evidence
 26 at Sentencing Hearing. The Defendant hereby respectfully
 requests that this Court enter an order prohibiting the State
 from presenting any testimony or evidence at the sentencing
 hearing regarding any alleged "deviant sexual fantasy" from the

CR03-2156
 DC-09900071844-025
 STATE VS. MICHAEL TODD BOTELHO 8 Pages
 District Court 02/13/2004 08:29 AM
 Washoe County 2645

1 Defendant's ex-wife, Melissa Botelho, or from allowing Ms.
2 Botelho to testify at the proceeding in violation of NRS
3 49.295, NRS 49.405, and the applicable Nevada case law set
4 forth below. Furthermore, the Defendant respectfully requests
5 that this Court enter an order sealing all papers, pleadings,
6 motions, and transcripts pertaining to this present issue.
7 Finally, the Defendant respectfully requests that this Court,
8 upon entertaining the merits of the present motion, refrain
9 from sentencing the Defendant in the present matter, and that
10 it recuse itself from hearing the sentencing, and transfer the
11 matter to another court for the purposes of sentencing.

12 The Defendant respectfully requests oral arguments upon
13 the merits of the present matter on or before the time set for
14 sentencing. The sentencing in this matter is currently set for
15 February 18, 2004 at 10:30 a.m., in Department Number Three of
16 the Second Judicial District Court. This opposition and motion
17 is based upon the attached Points and Authorities and the
18 pleadings and papers on file herein.

19 On February 3, 2004, the State filed a document with this
20 Court entitled Notice of Intent to Introduce Prior or Other Bad
21 Act Evidence at Sentencing Hearing. The main thrust of the
22 State's present motion is that it will attempt to introduce
23 testimony from the Defendant's ex-wife, Melissa Botelho, at the
24 time of sentencing, concerning "deviant sexual fantasies" the
25 Defendant allegedly made during course of their marriage. The
26 content of these alleged deviant sexual fantasies are set forth

1 in the State's present motion, which include the specific
2 details of Ms. Botelho's expected testimony at the upcoming
3 sentencing hearing. See State's motion, pp. 2, lines 14-26.
4 However, as will be demonstrated below, the State's present
5 motion has violated the Defendant's statutory marital
6 communication privilege set forth in NRS 49.295. This statute
7 reads in pertinent part:

- 8 1. Except as otherwise provided in subsections 2 and
9 3 of NRS 49.305¹:
 - 10 (a) A husband cannot be examined as a witness for or
11 against his wife without his consent, nor a wife
12 for or against her husband without her consent.
 - 13 (b) **Neither a husband nor a wife can be examined,
14 during the marriage or afterwards, without the
15 consent of the other, as to any communications
16 made by one to the other during the marriage.**
- 17 2. The provisions of subsection 1 do not apply to
18 a:
 - 19 (a) Civil proceeding brought by or on behalf of one
20 spouse against the other spouse;
 - 21 (b) Proceeding to commit or otherwise place a
22 spouse, the property of the spouse or both the
23 spouse and the property of the spouse under the
24 control of another because of the alleged mental
25 or physical condition of the spouse;
 - 26 (c) Proceeding brought by or on behalf of a spouse
to establish his competence;
 - (d) Proceeding in the juvenile court or family court
pursuant to chapter 62 of NRS and NRS 4432B.410
to 432B.590, inclusive, and sections 3 to 7,
inclusive, of this act; or
 - (e) Criminal proceeding in which one spouse is
charged with:

24 ¹ NRS 49.305 provides an exception to the privilege, stating that when a
25 husband or wife has been declared insane by a court of competent
26 jurisdiction, the other spouse shall be able to testify under certain
circumstances, but that the insane spouse shall be afforded the marital
privilege set forth in NRS 49.295 once he or she is declared competent by
the court.

- (1) A crime against the person or the property of the other spouse or of a child of either, or of a child in the custody or control of either, whether the crime was committed before or during the marriage.
- (2) Bigamy or incest.
- (3) A crime related to the abandonment of a child or nonsupport of a wife or child.

3. The provisions of subsection 1 do not apply in any criminal proceeding to events that took place before the husband and wife were married. (Emphasis added).

In short, the marital communication privilege discussed above ". . . enable a spouse to refuse to be examined against his or her spouse, and enable one spouse to prevent the other from being examined regarding statements made in reliance on marital confidence." See Franco v. State, 109 Nev. 1229, 266 (1993).

Furthermore, NRS 49.405(1) provides that "[t]he claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by the judge or counsel. No inference may be drawn therefrom." In Hylton v. State, 100 Nev. 539 (1984), the Nevada Supreme Court held that it is improper for the State to attempt to call the defendant's wife as a witness in violation of NRS 49.295; and it is misconduct amounting to reversible error for the Prosecutor to even comment, or make any impermissible inferences on the fact that the defendant invoked the spousal privilege. Citing George v. State, 98 Nev. 196 (1982); NRS 49.405.

1 In the present matter, it is clear that the Defendant has
2 a statutory right to invoke the marital communication privilege
3 set forth above in NRS 49.295 at the time of sentencing, which
4 would prevent the State from calling the ex-wife of the
5 Defendant, Melissa Botelho, at the sentencing proceeding to
6 testify about any alleged deviant sexual fantasies the
7 Defendant may have expressed during the course of their
8 marriage. It is axiomatic that any sexual fantasy expressed by
9 one spouse to another, whether it be deviant or otherwise, is
10 done so within the strict confines of the marriage, and not
11 expressed to anyone else but the other spouse. This is the
12 entire purpose and intent of the marital communication
13 privilege, insofar as a spouse should be able to communicate
14 with his or her spouse without fear of repercussion or reprisal
15 from the State.

16 Furthermore, as the State must now concede, these alleged
17 sexual fantasies, according to the Defendant's ex-wife, were
18 made during the course of the couple's marriage, when the
19 couple would engage in sexual relations, and were ultimately
20 the basis that destroyed the marriage. There is no evidence to
21 suggest that these alleged sexual fantasies, if they were made
22 at all, were made in the presence of another person, or made
23 outside the strict confines of the marriage between the
24 Defendant and Ms. Botelho. Accordingly, the marital
25 communication privilege now applies to the present matter and
26

1 it shall prevent Ms. Botelho from testifying against the
2 Defendant at the upcoming sentencing proceeding.

3 Finally, in light of the fact that the State has already
4 disregarded the marital communication privilege discussed above
5 by outlining the specific content of the alleged sexual
6 fantasies within its motion, it is now impossible for the
7 Defendant to invoke his statutory right of the marital
8 communication privilege so that he may receive a fair
9 sentencing. In short, the sentencing court has now been
10 tainted because it has already learned of the testimony to be
11 excluded at the sentencing proceedings. It would be impossible
12 for the sentencing court to simply disregard the alleged sexual
13 fantasies set forth by the State in its motion, because the
14 proverbial "bell" has already been rung, and it cannot now be
15 undone.

16 These alleged sexual fantasies are so damning and
17 prejudicial to the Defendant's position in light of the nature
18 of his current charges, the Defendant hereby requests that this
19 Court enter an order prohibiting the State from presenting any
20 testimony or evidence at the sentencing hearing regarding any
21 alleged "deviant sexual fantasy" from the Defendant's ex-wife,
22 Melissa Botelho, or from allowing Ms. Botelho to testify at the
23 proceeding in violation of NRS 49.295, NRS 49.405, and the
24 applicable Nevada case law set forth above. Furthermore, the
25 Defendant respectfully requests that this Court enter an order
26 sealing all papers, pleadings, motions, and transcripts

1 pertaining to this present issue. Finally, the Defendant
2 respectfully requests that this Court, upon entertaining the
3 merits of the present motion, refrain from sentencing the
4 Defendant in the present matter, and that it recuse itself from
5 hearing the sentencing, and that it transfer the matter to
6 another court for the purposes of sentencing.

7
8
9
10 Dated this 13th day of February, 2004.

11 MICHAEL R. SPECCHIO
12 WASHOE COUNTY PUBLIC DEFENDER

13 By: 

14 SEAN B. SULLIVAN
15 Deputy Public Defender
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CERTIFICATE OF SERVICE

I, DIANA RICHARDS, hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I forwarded a true copy of the foregoing document, via inter-office mail, addressed to:

Kelli Vilorio, Deputy District Attorney

DATED this 13th day of February, 2004.


DIANA RICHARDS

ORIGINAL

FILED

1 CODE 1250
 2 MICHAEL R. SPECCHIO
 3 BAR# 1017
 4 WASHOE COUNTY PUBLIC DEFENDER
 5 P.O. BOX 30083
 6 RENO, NV 89520-3083
 7 (775) 337-4800
 8 ATTORNEY FOR: DEFENDANT

2004 FEB 17 PM 2:20

RECEIVED A. LUNGTIN, JR.

BY

DEPUTY

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 10
 11 IN AND FOR THE COUNTY OF WASHOE

12 THE STATE OF NEVADA,
 13 Plaintiff,
 14 vs.

Case No. CR03-2156

15 MICHAEL TODD BOTELHO,
 16 Defendant.

Dept. 8

APPLICATION FOR SETTING

17 TYPE OF ACTION: CRIMINAL

18 MATTER TO BE HEARD: MOTION

19 DATE OF APPLICATION: February 17, 2004, MADE BY DEFENDANT

20 COUNSEL FOR PLAINTIFF: BRUCE HAHN, DDA

21 COUNSEL FOR DEFENDANT: SEAN SULLIVAN, DPD

22 CUSTODY STATUS: ___ BAIL ___ O.R. ___ IN CUSTODY

23
 24
 25
 26 Setting at 10:00 a.m., on the 11th day of March, 2004.

DC-09900071844-026
 CR03-2156
 STATE VS. MICHAEL TODD BOTELHO 1 Page
 District Court 02/17/2004 04:48 PM
 1250
 Washoe County
 NV

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RONALD A. LONGSTAFF, JR.

BY

CODE 3790
 Richard A. Gammick
 #001510
 P.O. Box 30083
 Reno, NV 89520-3083
 (775) 328-3200
 Attorney for Plaintiff

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

MICHAEL TODD BOTELHO,

Defendant.

Case No. CR03-2156

Dept. No. 3

REPLY IN OPPOSITION TO DEFENDANT'S OPPOSITION TO STATE'S INTRODUCTION
OF OTHER BAD ACT EVIDENCE; DEFENDANT'S MOTION TO SEAL; AND ANSWER TO
DEFENDANT'S MOTION TO RECUSE AND TRANSFER CASE

COMES NOW, the State of Nevada, by and through RICHARD A.
 GAMMICK, District Attorney of Washoe County, and BRUCE C. HAHN,
 Deputy District Attorney, and hereby offers its formal Reply and
 Answer to the defendant's Opposition Motion filed February 13, 2004.
 This Reply and Answer is based upon the attached Points and

///

///

///

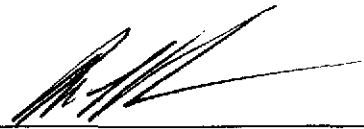
///

///

1 Authorities, all pleadings and papers on file herein and any argument
2 heard on the matter.

3 Dated this 20 day of January, 2004.

4 RICHARD A. GAMMICK
5 District Attorney
6 Washoe County, Nevada

7
8 By 
9 BRUCE C. HAHN
10 5011
11 Deputy District Attorney
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POINTS AND AUTHORITIES

I. STATEMENT OF POSITION

The State opposes the defendant's three claims for relief, namely, the claim of marital privilege to bar relevant sentencing information, his request for Department Three recusal, and request for sealing of all documents concerning the proposed testimony of Melissa Botelho. The State contends that the marital privilege is inapplicable based upon a statutory exception, his request for recusal is not supported by legal authority and unwarranted in fact, and finally, the request for sealing of documents is likewise unsupported by legal authority and unwarranted.

II. AUTHORITY AND ARGUMENT

A. MARITAL PRIVILEGE CLAIM

The State acknowledges the general rule of marital communication privilege under NRS 49.295. The State also acknowledges that the proffered testimony of Melissa Botelho concerns the defendant's communications to her during the course of their marriage. However, this general statutory bar does not apply to our case here because of a statutory exception to the general rule. Therefore, there is no statutory bar to the proffered testimony.

NRS 49.295(2) codifies 5 general exceptions to the marital privilege statute, which contain other subcategories. Ms. Botelho's proffered testimony is admissible because of the fifth general exception - NRS 49.295(2)(e)(1) which states:

(e) Criminal proceeding in which one spouse is charged with:

///

1 (1) A crime against the person or the property
2 of the other spouse or of a child of
3 either, or of a child in the custody or
4 control of either, whether the crime was
5 committed before or during marriage.
6 [Emphasis added].

7 Here, the defendant is charged in a criminal proceeding,
8 our case here. NRS 49.295(2)(e). Further, this criminal proceeding
9 involves a crime against a child in his control, fourteen year old
10 Jane Doe as charged in the instant Information. The express language
11 of NRS 49.295(2)(e)(1), one of five codified exceptions to the
12 general rule of privilege encompasses our case facts here. It is
13 undisputed that the defendant lured the child by a false
14 representation of needing a babysitter whereupon the child-victim
15 entered his vehicle equipped with the innocent apparel of child car-
16 seats but also containing duct-tape used as a binding device. When
17 Jane Doe entered his vehicle and was thereafter driven as a backseat
18 passenger into the hills of Washoe Valley, she was totally under his
19 control for a substantial period of time on August 7, 2003.

20 Of particular interest is the statutory language that our
21 Legislature used in the applicable marital privilege exception.
22 First, NRS 49.295(2)(e)(1) excepts communications involving crimes of
23 one spouse against another or against a child with whom they have a
24 biological relationship ("a child of either"). Second, that
25 subsection then uses broader language that involves a child merely in
26 their custody, or control. This secondary language eliminates the
 need for a biological or legal relationship. The only legal nexus
 that the Legislature expressed is control of a child.

1 The public policy to be served here is really for the
2 benefit of children generally as a protected class. This marital
3 privilege exception essentially protects children by preventing an
4 artificial evidentiary shield being erected between potentially
5 conspiring married partners in crimes against children.¹ Contrary to
6 the often-touted rule of lenity, statutory privileges are to be
7 narrowly construed in favor of the truth-finding process.

8 "Testimonial exclusionary rules and privileges contravene the
9 fundamental principles that 'the public...has a right to every man's
10 evidence.' (citations omitted). As such, they must be strictly
11 construed and accepted 'only to the very limited extent that
12 permitted a refusal to testify or excluding relevant evidence has a
13 public good transcending the normally predominant principle of
14 utilizing all rational means for ascertaining truth." Trammel v.
15 United States, 445 U.S. 40, 50, 100 S.Ct. 906, 912, 63 L.Ed.2d 186,
16 ____ (1980). Likewise, "We have often recognized that statutes
17 establishing evidentiary privileges must be construed narrowly
18 because privileges impede the search for the truth." Pierce County
19 v. Guillen, 537 U.S. 129, 144, 123 S.Ct. 720, 730, 154 L.Ed.2d 610,
20 ____, (2003).

21 ///

22 _____
23 1 The fact that the balance of the NRS 49.295((2)(e)(1) exception states it
24 is irrelevant whether or not "the crime was committed before or during
25 marriage" highlights the State's point. There is no marriage preservation
26 public policy to be served here by protecting the defendant's statements to
Melissa Botelho - the marriage was terminated years ago. In fact, the
marriage was terminated in large part due to the disputed sexual bondage
fantasies involving an underage female.

1 Therefore, under statutory construction rules, NRS 49.295
2 does not apply to our case facts here and, therefore, is no bar to
3 Melissa Botelho's testimony.

4 B. REQUEST TO SEAL DOCUMENTS

5 His request to have "all papers, pleadings, motions and
6 transcripts pertaining to this issue" sealed is offered without any
7 legal authority or meaningful reasoning. Legal arguments made
8 without reference to any supporting legal authority as well as
9 undocumented conclusions are to be summarily rejected. Williams v.
10 State, 88 Nev. 164, 165, 494 P.2d 960 (1972); Cunningham v. State, 94
11 Nev. 128, 130, 575 P.2d 936, 938 (1978); Steese v. State, 114 Nev.
12 479, 496, 960 P.2d 321, 332 (1998); Evans v. State, 117 Nev. 609,
13 627, 28 P.3d 498, 511 (2001). According, the defendant's request for
14 sealing of documents must fail.

15 C. REQUEST FOR DEPARTMENT RECUSAL

16 The defendant's request for this Department to recuse
17 itself should be summarily denied for three primary reasons. First,
18 as with his request to seal, his request for recusal is likewise
19 offered without any legal authority. Accordingly, it should be
20 summarily rejected. See Williams, et.al., supra.

21 Second, his sole factual basis is that this court is
22 somehow irrevocably tainted by routine duties of a trial court in
23 reviewing the admissibility of proposed evidence. If the defendant's
24 argument were sufficient grounds, chaos would result. Theoretically,
25 every trial court would need to recuse itself after denying a
26 defendant's motion to suppress and a conviction resulted. According.

1 to the defendant's rationale, no trial judge would ever be able to
2 preside over a jury trial after the first overruled defense
3 objection. The defendant offers no principled basis or scale to
4 determine how "damning and prejudicial" evidence must be before a
5 trial judge must recuse themselves after considering its
6 admissibility. It is for this reason among others that a judge is
7 presumed to understand their responsibilities, and follow the law.
8 Colwell v. State, 118 Nev.Adv.Op. ___, 59 P.3d 463, 468 (2002); Jones
9 v. State, 107 Nev. 632, 636, 817 P. 2d 1179, 1181 (1991). The
10 defendant cites no evidence to suggest that this Department would be
11 unable to disregard any improper evidence and render a just sentence.
12 Without a legal basis and without any evidence in support, the
13 defendant's request should be denied.

14 Finally, there is no improper taint assuming *arguendo* a
15 marital privilege shield because substantial portions of this same
16 disputed evidence are clearly admissible by the defendant's own
17 admissions to be offered by the State at sentencing. The proposed
18 testimony of Washoe County Sheriff's Detective Greg Herrera will
19 include that the defendant admitted engaging in fantasies about tying
20 up a young female adult or child and raping them.² Therefore, because
21 the defendant cites no legal authority to support his request,
22 because his legal basis is unworkable in practice, and because there
23

24
25 2 See, State's Notice of Intent to Introduce Prior or Other Bad Act
26 Evidence at Sentencing Hearing, filed February 3, 2004, pp.2, 11.14-
18.

1 is no improper taint, his request for Department Three recusal should
2 be denied.

3 The State is confident that this court would render a just
4 sentence. However, in the abundance of caution, the State will not
5 oppose any possible reservations this Department could conceivably
6 have based on the defendant's bald request, in the sole event that
7 this court finds that a marital privilege applies to bar the
8 proffered testimony of Melissa Botelho.

9 **III. CONCLUSION**

10 For the rationale outlined above, and for the legal basis
11 and reasons outlined in the State's formal Notice of Intent, the
12 State requests that the defendant's Opposition³ filed February 13,
13 2004 be denied in its entirety following argument at the scheduled
14 hearing date of March 11, 2004 at 10:00 am. Furthermore, the State
15 requests that this court enter an Order authorizing the State to
16 present the proposed testimony of Melissa Botelho at the scheduled
17 sentencing of April 7, 2004 at 8:30 am.

18 Dated this 20 day of February, 2004.

19 RICHARD A. GAMMICK
20 District Attorney
Washoe County, Nevada

21 By [Signature]
22 BRUCE C. HAHN
5011
23 Deputy District Attorney

24 ³ See defendant's "Opposition to State's Introduction of Prior or Other Bad
25 Act Evidence at Sentencing Hearing; Defendant's Motion to Have the Matter
26 Sealed, to Recuse the Present Sentencing Court, and to have the Matter
transferred to Another Court for Sentencing Purposes" filed February 13,
2004.

CERTIFICATE OF FORWARDING

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

SEAN SULLIVAN
WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
350 S CENTER ST
6TH FLOOR
RENO NV

DATED this 20th day of February, 2004.

Dicki Jui

ORIGINAL

FILED

FEB 24 2004

CODE 4025

RONALD A. LONGSTON, JUDGE
By: *[Signature]*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,

Case No. CR03-2156

vs.


Dept. 3

MICHAEL TODD BOTELHO,
Defendant.STIPULATION AND ORDER FOR CONTINUANCE

COMES NOW, Defendant, MICHAEL TODD BOTELHO, by and through MICHAEL R. SPECCHIO, Washoe County Public Defender and SEAN SULLIVAN, Deputy Public Defender, along with RICHARD A. GAMMICK, Washoe County District Attorney and BRUCE HAHN, Deputy District Attorney, and hereby stipulate to vacate the Sentencing date scheduled for February 18, 2004 and reschedule this Hearing for APRIL 7, 2004 at 8:30 a.m. The basis for this stipulation is due to the defense's recent motions filed on February 13, 2004.

DATED this 17 day of February, 2004.

By


Bruce Hahn
Deputy District Attorney

By


Sean Sullivan
Deputy Public Defender

GOOD CAUSE APPEARING, it is so ORDERED.

DATED this 17th day of February, 2004.

DISTRICT JUDGE

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
02/24/2004 09:37 AM
4025
ACR111

CASE NO. CR03-2156

STATE OF NEVADA VS. MICHAEL TODD BOTELHO

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

03/11/04
HONORABLE
JEROME M.
POLAHA
DEPT. NO. 3
C. Patterson
(Clerk)
J. Dotson
(Reporter)

MOTIONS RE: MEDIA AND SEALING; RECUSAL OF JUDGE AND
MARITAL PRIVILEGE

Deputy District Attorney Bruce Hahn represented the State.
Defendant was present with counsel, Deputy Public Defender Sean
Sullivan. Probation Officer Pat Cerniglia was also present.
Court and counsel met in chambers (not reported) regarding the
media issue relative to this part of the motion.

04/07/04
08:30 am
Sentencing

COURT ORDERED: This part of the motion to be argued relative to
the press being allowed in the courtroom. After decision on it, rest of
motions will be heard. The Court called the media representatives
(Reno Gazette Journal and The Nevada Appeal) in chambers and
advise of status. The Court further advised them that if the ruling is
they will be barred from Courtroom a recess of one hour would be
taken to allow them time to contact counsel.

Court, counsel and Defendant convened in the Courtroom on the
record. Defense counsel presented argument in support of sealing
the records and barring the media; State opposed; Defense replied.

COURT ORDERED: Media permitted in courtroom during
remainder of this proceeding.

Press present. Defense counsel addressed the Court arguing in
support of recusal of this Judge. The Court admonished counsel that
proper procedure for this type of hearing has not been followed.
Defense counsel advised he will withdraw the motion if the Court
believes it can be impartial. State opposed recusal and submitted
the matter. Defense submitted.

COURT ORDERED: **DENIED.** This judge will remain on case.

Counsel for the State submitted the motion regarding marital
privilege on the pleadings and papers. Defense counsel opposed;
State replied.

COURT ORDERED: Ex-wife will not be called. The State is free to
bring other witness who have information on the subject matter.
Defendant remanded to the custody of the Sheriff.

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
DC-09900071886-021
Page 1
04/07/2004 09:11 AM
03/11/04
J. DOTSON
MIN