IN THE SUPREME COURT OF THE STATE OF NEVADA

LYUDMYLA ABID ,

Appellant,

vs.

SEAN ABID,

Respondent.

SC Appeal No.: 69995

MOTION TO SEAL AND STRIKE SELECTED PORTIONS OF DOCKING STATEMENT AND APPENDINX AND MOTION FOR PROTECTIVE ORDER AND CLARIFICATION OF NRS 48.077

COMES NOW, Appellant, LYUDMYLA ABID, appearing in Proper Person, hereby moves for an order to file selected portions of the *Docking Statement Civil Appeals* and *Appendix* to her custody *Fast Track Statement* under seal, pursuant to the Nevada Rules for Sealing and Redacting Court Records (SRCR). More specifically, Appellant requests that the documents identified as Attachment 4 Exhibit #1 under *Docking statement* and Exhibit #7(AA 107-16) in the *Appendix* be filed under seal. Appellant also asks this court to order lower court to seal Exhibit#1 (*Declaration of Plaintiff, Sean Abid, in Support of His Countermotion to Change Custody*) under Countermotion for Primary custody filed in lower court by Respondent on February 12, 2015 be sealed or stricken.

18-25235

SRCR 3(1) provides that any person may request that the court seal or redact court records for a case that is subject to these rules by filing written motion. SRCR 4 (a) and (h) respectfully further outline that the court may order court files and records to be sealed or redacted if (1) the sealing or reduction is permitted or required by federal or state law or (2) the sealing or redaction is justified or required by another compelling circumstance.

Here, the selected portions of the Appendix and Docking Statement contain transcripts of conversations between two minors Iryna and Sasha with their mother that were obtained illegally (Respondent Sean Abid sent minor to Appellant's home with placed recording device in child's school backpack and recorded illegally numerous conversations among family members in Appellant's home and vehicle). Currently Respondent exposed two minors and Appellant to public humiliation and embarrassment by disseminating copy of these transcripts all over the internet with "excuse" that they are public record in court **EXHIBIT # 1.**

This court in its published opinion **only addressed the issue** that it was proper for lower court to provide tapes and transcripts to Dr. Holland for purpose of child interview, **but this court completely ignored** the fact that transcripts **are openly published in court proceedings** and causing ongoing injury to both minors and Appellant. Appellant on numerous times

asked and begged her counsel Radford Smith to seal transcripts from the record **EXHIBIT # 2** but it was ignored. John Jones used the fact that transcripts are public record as blackmail to make Appellant to settle and back off of her custodial time in return he will strike transcripts from the record **EXHIBIT # 3.**

1. Sealing or reduction is required by Federal or Nevada law.

Both Federal and Nevada statutes prohibit disclosure of conversations that were obtained illegally.

> 18 U.S.C.A § 2511. Interception **and disclosure** of wire, oral, or electronic communications prohibited.

Title III prohibits not just the wrongful *interception* of communications, but the *disclosure* of improperly intercepted communications. A disclosure in court of a private conversation violates the privacy of the victim as much as any other kind of disclosure, and the lack of government involvement does not diminish the intrusion into the victim's privacy. *See Vest*, 813 F.2d at 481 ("[A]n invasion of privacy is not over when an interception occurs, but is compounded by disclosure in court or elsewhere.

> Nevada NRS 200.650 Unauthorized, surreptitious intrusion of privacy by listening device prohibited.
>
> Except as otherwise provided in NRS 179.410 to 179.515, inclusive, and 704.195, a person shall not intrude upon the privacy of other persons by surreptitiously listening to, monitoring or recording, or attempting

> to listen to, monitor or record, by means of any mechanical, electronic or other listening device, any private conversation engaged in by the other persons, **or disclose the existence, content, substance, purport, effect or meaning of any conversation** so listened to, monitored or recorded, unless authorized to do so by one of the persons engaging in the conversation.

Congress clearly intended that the provisions of section 2518(10)(a), which defines the class entitled to make a motion to suppress, rather than judicially-developed notions of standing, would control the question of who could bring such a motion. Congress expressly declared in the Senate Report that judicially-developed concepts of directly-obtained and indirectly-obtained evidence and of attenuation were applicable to section 2515. S.Rep. No. 1097 at 96; reprinted in 1968 U.S.Code Cong. & Admin.News at 2185. Moreover, in section 2515 Congress specifically expanded upon fourth amendment jurisprudence as it existed in 1968 (and as it exists today) **by making that section applicable to all federal and state proceedings**, whether characterized as civil, criminal, administrative, legislative, regulatory or otherwise. Compare 1 W. LaFave, Search and Seizure § 1.5 (1978 & Supp.1986).

Per Title III **legally obtained recordings are not for public access.**

In *Villa v. Maricopa Cty.*, 865 F.3d 1224, 1230 (9th Cir. 2017) three panel judges stated:

On the merits, we hold that Ariz. Rev. Stat. § 13-3010(A), as applied by Maricopa County officials, is preempted by Title III, and that Villa's rights under 18 U.S.C.§ 2516(2) were violated because applications for wiretaps were not made by the "principal prosecuting attorney." We hold, further, that Ariz. Rev. Stat. § 13-3010(H) is not preempted by Title III if it is construed to require that recordings of intercepted conversations be submitted to a court for sealing within ten days of the termination of the court's order authorizing a wiretap on each particular target line. **However, Villa's rights under 18 U.S.C. § 2518(8)(a) were violated because the recordings of her intercepted conversations were submitted for sealing more than a month after the termination of the order authorizing the wiretap on the target line on which her conversations were intercepted.**

Therefore transcripts must be sealed or stricken from the record as it is required by both Federal and Nevada Wiretap law. Currently openly published transcripts of illegally obtained tapes violate privacy and constitute ongoing concrete injury to Appellant and her minor kids.

2. Statements by minors in court proceedings. Sealing or redaction is justified or required by another compelling circumstance.

Nevada has long standing in protecting minors from humiliation and embarrassment. As such, all juvenile court proceedings are closed for public and records are sealed.

18 U.S. Code § 3509(d)(3)(A) - Child victims' and child witnesses' rights – provides, that [O]n motion by any person the court may issue an order protecting a child from public disclosure of the name of or any other information concerning the child in the course of the proceedings, if the court

determines that there is a significant possibility that such disclosure would be detrimental to the child.

Further, 18 U.S. Code § 3509(d)(3)(B)(i) and (iii), provides, that [A] protective order issued under subparagraph (A) may provide that the testimony of a child witness, and the testimony of any other witness, when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom; and, [P]rovide for any other measures that may be necessary to protect the privacy of the child.

As such, Eighth Judicial District Court Rule 5.304, provides, that

> (a) A written child interview report or outsource evaluation report (including exhibits), prepared by the Family Mediation Center, an outsource evaluator, or a CASA shall be delivered to the judge in chambers. Only the parties, their attorneys, and such staff and experts as those attorneys deem necessary are entitled to read or have copies of the written reports, which are confidential except as provided by rule, statute, or court order. Statements of a child to a CASA may not be viewed without an order of the court.
>
> (b) No copy of a written report, or any part thereof, may be made an exhibit to, or a part of, the open court file except by court order. A written report may be received as evidence of the facts contained therein that are within the personal knowledge of the person who prepared the report.
>
> (c) Every such report shall include on its first page, a prominent notice in substantially the following form:
>
> DO NOT COPY OR RELEASE THIS REPORT TO ANYONE, INCLUDING ALL PARTIES TO THE ACTION. NEVER

DISCLOSE TO OR DISCUSS THE CONTENTS OF THIS REPORT WITH ANY MINOR CHILD.

In addition, NRCP 16.215(3), provides, that [I]n taking testimony from a child witness, the court shall take special care to protect the child witness from harassment or embarrassment and to restrict the unnecessary repetition of questions. The interviewer must also take special care to ensure that questions are stated in a form that is appropriate given the witness's age or cognitive level. The interviewer must inform the child witness in an age-appropriate manner about the limitations on confidentiality and that the information provided to the court will be on the record and provided to the parties in the case. In the process of listening to and inviting the child witness's input, the interviewer may allow, but should not require, the child witness to state a preference regarding custody or visitation and should, in an age-appropriate manner, provide information about the process by which the court will make a decision.

In so many instances it is very clear Nevada protects minors from embarrassment and harassment. **How it is in the instant case this court completely disregarded all statutory rules to protect privacy of two minor kids?** More to that disclosure of what two minors were discussing with their mom at their home **is more severe violation of privacy of**

children than disclosure of court ordered proceedings such as child interviews or custody evaluation.

THEREFORE, this court must issue protective order for two minor kids from further humiliation and embarrassment by sealing and striking their conversations from the record and restricting public access to those records.

3. Article III standing

The Nevada Supreme Court overlooked an important fact that Iryna is not party to this custody case, she has no relations with Sean Abid, her father Sergey Nezhurbida lives in Ukraine. Iryna's rights are violated as her private conversations are openly published in court proceedings, she is suffering ongoing injury since now clients of Jones re-published minors' conversations all over the internet **and based on Nevada Supreme Court decision Iryna will be exposed to same violations in future as long as her mom continues to have custody of her brother.**

By ignoring main facts of this case, the Nevada Supreme Court exposing itself to equitable relief and injunctive relieve to be filed by Iryna in Federal court, since decision violates her Constitutional rights and privacy.

> A litigant who was not a party to the state court litigation, and therefore was unable to appeal the judgment in state court, is

> not precluded under the Rooker-Feldman doctrine from filing suit in federal district court on the same issue. The Rooker-Feldman doctrine assumes that the proper recourse for an unsuccessful party in state court litigation is to appeal the adverse judgment through the state court system, with discretionary Supreme Court review as the sole possible opportunity for federal review. Thus, it is axiomatic that non-parties in the state court action, with no ability to appeal the state court decision, cannot be bound by the Rooker-Feldman doctrine.

18 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 133.30[3][c][iii] (3d ed. 2002). *See also Exxon Mobil*, 544 U.S. at 284 (Rooker-Feldman doctrine only applies to "cases brought by state court losers."); *see also United States v. Owens*, 54 F.3d 271, 274 (6th Cir. 1995) ("Clearly, a party cannot be said to be appealing a decision by a state court when it was not a party to the case. The *Rooker-Feldman* doctrine does not apply to bar a suit in federal court brought by a party that was not a party in the preceding action in state court."). Because Iryna was not a party to the state court actions she is not barred by the *Rooker-Feldman* doctrine from bringing adversary proceeding.

Minor is turning 18 in couple months and will file for equitable relief against Nevada State as not losing party of appeal in Nevada Supreme Court **if this court fails to protect her rights**. This court and lower court **do not jurisdiction over Iryna** however her conversations with her

mother are openly published in court proceedings and are in possession of Dr. Holland.

4. Clarification of NRS 48.077

In the Supreme Court of the State of Nevada, case no. 48296 (unpublished opinion *Fruit vs. The State of Nevada*) this court used NRS 48.077 as statute that clarifies that only legally obtained recordings are admissible in any court proceedings under Nevada law **EXHIBIT # 4**. Court stated:

"Admission of lawfully intercepted communications in judicial or administrative proceedings is governed by NRS 48.077[1]. Under NRS 48.077, a communication intercepted in accordance with the law of the jurisdiction in which the interception was made is admissible in a Nevada judicial or administrative proceeding, even when the manner of interception would violate Nevada law had the interception taken place in Nevada. This is so even if a party to the communication was in Nevada at the time of the interception. Applying the plain language of NRS 48.077, the district court in this case erred by admitting the recording only if the interception was not obtained in accordance with Colorado law.

As noted above, Colorado permits interception based on the consent of one party to a communication. The State concedes that K.S.'s parents did not obtain the consent of K.S. or her aunts before making the interceptions. The State urges this court to hold that the vicarious consent doctrine applies under Colorado law. The doctrine of vicarious consent allows

[1] NRS 48.077 provides, in full:

> Except as limited by this section, in addition to the matters made admissible by NRS 179.465, the contents of any communication lawfully intercepted under the laws of the United States or of another jurisdiction before, on or after July 1, 1981, if the interception took place within that jurisdiction, and any evidence derived from such a communication, are admissible in any action or proceeding in a court or before an administrative body of this State, including, without limitation, the Nevada Gaming Commission and the State Gaming Control Board. Matter otherwise privileged under this title does not lose its privileged character by reason of any interception.

a parent to consent to interception on behalf of his or her minor child.[2] If the doctrine of vicarious consent applies in this case, K.S.'s parents could consent on her behalf, and their consent would satisfy Colorado's single-party consent requirement.

We decline to hold that the doctrine of vicarious consent applies under Colorado law. The State has offered no authority to suggest that Colorado courts are inclined to accept or have even considered the applicability of the vicarious consent doctrine. We decline to decide what appears to be an issue of first impression in Colorado. Absent the application of this doctrine, K.S.'s parents' interception of K.S.'s telephone conversations with her aunts violated Colorado law because neither party to the communication consented. Because the interception was not conducted in accordance with the law of the jurisdiction in which it took place, the recording cannot be properly admitted in a Nevada judicial proceeding under NRS 48.077. The district court therefore abused its discretion by admitting the recorded communication during Fruit's trial."

This court **clearly stated that absent of the application "vicarious consent doctrine" in State violated law because neither party to the communication consented. Because the interception was not conducted in accordance with the law the recordings cannot be properly admitted.**

Abid v. Abid, 133 Nev. Adv. Opn. No. 94. case has nothing to do with claims abuse of the child, but recordings were used in court proceedings to taint expert and expose private matters to public... on other side case No. 48296 (unpublished opinion *Fruit vs. The State of Nevada*) was dealing with

[2] See generally Daniel R. Dinger, Should Parents Be Allowed To Record A Child's Telephone Conversations When They Believe The Child Is In Danger?: An Examination Of The Federal Wiretap Statute And The Doctrine Of Vicarious Consent In The Context Of A Criminal Prosecution, 28 Seattle U. L. Rev. 955, 968 (2005).

five counts of sexual assault of a minor under the age of fourteen and nine counts of lewdness with a child under age of fourteen. This court failed to protect child when it was necessary in *Fruit vs. The State of Nevada* and instead violated Constitutional rights of two minors and Appellant in *Abid v. Abid*, 133 Nev. Adv. Opn. No. 94 case, where no child abuse was alleged.

Please clarify that NRS 48.077 does not apply to Family Court proceedings in Nevada moving forward based on "Vicarious Consent Doctrine" not being adopted by Nevada.

The Supreme Court has identified four virtues of the consistency that stare decisis brings: predictability, fairness, appearance of justice, and efficiency.[3] Significantly, none of these depend on the precedent being "correct," however defined.[4]

Concern for predictability reflects the recognition that change in the law disturbs the foundation for countless human interactions. Without predictability, contracts and wills drafted under an old legal regime may have different meanings, or no meaning at all.[5] Stable law enables the public

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[3] Hohn v. United States, 524 U.S. 236 (1998) ("Stare decisis is 'the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" (Internal quotation marks omitted)); James C. Rehnquist, Note, *The Power That Shall Be Vested in a Precedent: Stare Decisis, The Constitution and the Supreme Court*, 66 B.U. L. REV. 345, 347 (1986).

[4] Paulsen, *supra* note 32, at 1538 n.8.

[5] Schauer, *supra* note 8, at 595–97; *see also* William O. Douglas, *Stare Decisis*, 49 COLUM. L. REV. 735, 735–36 (1949).

to know and understand what their civic rights and duties are.[6] Stare decisis provides the "moorings so that men may trade and arrange their affairs with confidence."[7]Predictability benefits not just the public, but lower courts as well.[8]

Although predictability is consistency's virtue before a case reaches court, fairness is the virtue once in litigation. Inconsistent application of law is unfair because it violates the fundamental premise in our legal system that similar litigants should be treated similarly.[9] In fact, Justice Douglas observed that "**there will be no equal justice under law if a negligence rule is applied in the morning but not in the afternoon.**"[10] Further, stare decisis constrains judicial discretion to established rules of law rather than allowing judges to operate on whim or caprice.[11]

The negative consequences of stare decisis can be stated more objectively as the cost of judges not being able to judge. Or, put differently, a decision that is ripe for discarding remains law. As a result, stare decisis can

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[6] *See* Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 844 (1992) ("Liberty finds no refuge in a jurisprudence of doubt.").

[7] Douglas, *supra* note 38, at 736.

[8] William M. Landes & Richard A. Posner, *Legal Precedent: A Theoretical and Empirical Analysis*, 19 J.L. & Econ. 249, 273 (1976) ("If the U.S. Supreme Court refuses to accord precedential weight to earlier Supreme Court decisions, it thereby undermines the precedential weight of its own decisions.").

[9] Rehnquist, *supra* note 36, at 347.

[10] Douglas, *supra* note 38, at 736

[11] Nelson, *supra* note 20, at 9 ("To avoid an arbitrary discretion in the courts . . . it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them . . . ." (quoting The Federalist No. 78 (Alexander Hamilton)).

tend to calcify the law, causing age-old precedent to linger despite developments in other areas of law and in society.[12]

DATED this 28 day of June, 2018.

LYUDMYLA ABID
Appellant Appearing in Proper Person

[12] *Prohibiting Non-Precedential Opinions*, *supra* note 2, at 733. There is much debate over whether the balance of interests justifies stare decisis. Rather than wade into this debate, I take a narrower approach: I assume the status quo is justified for the Supreme Court and for circuit courts, and ponder why it has not been extended to district courts.

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June, 2018, the foregoing was served upon the following persons and entities entitled to notice, by mailing a true and complete copy thereof, via US Mail, first class mail, postage prepaid, to the following at their last known address:

John Jones, Esq., Bar No. 006699
Black & LoBello
10777 W. Twain Ave., Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
Attorney for Respondent

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

DATED this 28th day of June, 2018.

LYUDMYLA ABID
Appellant Appearing in Proper Person

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

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July 10

Keith K Marsolek shared a video to the group: Parental Alienation World Wide Support Group.
July 14 ·

Show Attachment

Like Share

12

Dan Gunn I am watching now... I am 8 minutes in and so far it looks like they were talking trash and are pissed that it was discovered...
Like · July 15 at 12:57am

Dan Gunn surprise the transcripts / audio is not included in this report...
Like · July 15 at 12:59am

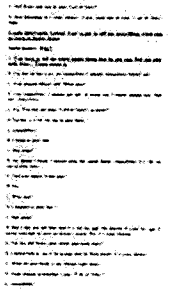
Sean Abid I am the father being referenced who fought alienation and won primary at the district court level. My ex is currently appealing to the Supreme Court, but chances are good the judgement will be affirmed. Keep advocating for super dads across the world.... See More

Abid v Abid NevadaSupremeCourt
John Jones (for the respondent) Attorney...
YOUTUBE.COM

Like · 3 · July 15 at 2:57pm · Edited

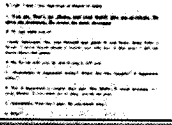
Tim Foye Bitch needs to go back to Russia
Like · July 15 at 10:13am

Mark DiCiero The transcripts are public record. Take a look for yourself.



Like · 1 · July 15 at 10:14am

Mark DiCiero



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Choices

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

Lyuda Pyankovska

Subject: FW: Abid v Abid Nevada Supreme Court.
Attachments: IMG_2614.png; IMG_2616.png

From: Lyuda Pyankovska
Sent: Monday, July 17, 2017 9:04 AM
To: 'Radford Smith' <rsmith@radfordsmith.com>
Subject: Abid v Abid Nevada Supreme Court.

Dear Radford exactly what I was afraid about, happened. My ex gives people link to our case in Nevada Supreme Court and they posting pictures of transcripts all over the internet. If there is a way to seal Sean's Declaration under Docketing Statement. Please do it immediately since it is ongoing injury to my reputation and now it is all over the internet.

Thank you

Lyudmyla Pyankovska
Business Analyst
6555 West Sunset Rd | Las Vegas | NV | 89118
t 1 702 579 1845 | **m** 1 702 208 0633 | freeman.com

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3

Lyuda Pyankovska

Subject: FW: Abid Privileged Settlement Proposal

From: John Jones <jjones@blacklobellolaw.com>

To: Radford Smith

Sent: 9/02/2015 8:06AM

Subject: Abid Privileged Settlement Proposal

Radford,

As discussed the other night, here are the bullet points for a resolution of the pending matter:

1. The parties will maintain joint physical custody.

2. The time share set forth in the most recent stipulation and order with Sean having Sasha from after school until 5:30 on Lyuda?s school week days remains in place.

3. The Summer division set forth in the most recent order shall be modified to give each party two weeks of vacation time in the summer while maintaining the school year schedule the rest of the summer.

4. Sean will begin covering Sasha on his health insurance.

5. Neither parent will pay child support to the other.

6. All references to the recordings contained in Dr. Holland?s report shall be redacted.

7. Sasha will receive counseling from a therapist on Sean?s insurance provider list to reduce costs. The therapist will receive a copy of Dr. Paglini?s report and Dr. Holland?s redacted report. This therapy will be aimed at ensuring that Sasha is comfortable loving both of his parents and eliminating any negative thoughts caused by any alienating statements made by either parent.

8. Lyuda will begin the counseling suggested by Dr. Paglini designed to eliminate alienating ideology. A provider on Lyuda?s insurance will suffice and he/she will be provided with the two reports as well.

9. Sasha?s therapist shall interact with Lyuda?s therapist as he/she deems appropriate based upon any revelations that occur in Sasha?s therapy.

10. Both therapists will be treating therapists only and shall not be asked by either party to make a report to the Court.

11. The recordings at issue and any references to them in the record shall be stricken as if they never existed.

12. Neither Lyuda nor any members of her household shall not pursue any criminal charges against Sean.

13. Lyuda shall pay to Sean the sum of $5,000.00 as and for attorney fees and costs related to this litigation.

Please understand that these terms are firm. This is not a point from which to begin negotiations. Sean will consider any additional terms you suggest, but cannot deviate from the core terms above as the basis of a settlement.

Time is of the essence as this matter should be resolved prior to Friday?s deposition. If you go forward with the deposition, I fear that we will not be able to reach a resolution without completing your client?s deposition as well. That is an addition 8-10k that these parties do not have.

John D. Jones, Esq.

Partner.

Nevada Board Certified Family Law Specialist

10777 West Twain Avenue, Third Floor

Las Vegas, Nevada 89135

Ph: 702.869.8801
Fax: 702.869.2669

EXHIBIT 4

EXHIBIT 4

EXHIBIT 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY RICHARD FRUIT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48296

FILED

MAR 28 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of five counts of sexual assault of a minor under the age of fourteen and nine counts of lewdness with a child under the age of fourteen. Eighth Judicial District Court, Clark County; Valerie Adair, Judge. The district court sentenced appellant Gregory Fruit to life in prison with the possibility of parole after twenty years on the sexual assault counts and life with the possibility of parole after ten years on the lewdness counts, all counts to run concurrently.

Fruit appeals from the judgment of conviction entered pursuant to his trial on charges relating to acts of sexual abuse that he allegedly committed against his granddaughter, K.S. At trial, the district court admitted into evidence a recording of telephone conversations between K.S. and her aunts. K.S.'s parents obtained the recording by surreptitiously recording all incoming and outgoing calls to their Colorado home. K.S.'s parents did not obtain K.S.'s or the aunts' consent before recording the calls. At the time of the calls, K.S.'s aunts lived in Nevada and K.S. lived with her parents in Colorado. On the recording, K.S. accused Fruit of sexual abuse. The State played the recording five times during trial.

08-07682

Fruit argues that the recording was intercepted in violation of Nevada's dual-party consent requirement and was, therefore, inadmissible at his trial. The State responds that since the interception occurred in Colorado and complied with Colorado law, the district court correctly admitted it in a Nevada judicial proceeding. Fruit challenges both the district court's decision to admit the recording and the district court's denial of his motion for a new trial. Fruit argues that the district court abused its discretion by admitting the recording of telephone conversations K.S. had with her aunts, in which she accused Fruit of sexual abuse, and that the error violated his constitutional right to due process, a fair trial, and equal protection.

We review a district court's decision to admit or exclude evidence for an abuse of discretion.[1] We also review a district court's decision to deny a motion for a new trial for an abuse of discretion.[2] However, we review issues of statutory interpretation de novo.[3] If the district court erred in its admission of evidence, we will reverse the conviction unless the error was harmless beyond a reasonable doubt.[4]

Under Nevada law, there are two methods by which a communication may be lawfully intercepted. First, both parties to the

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[1]Thomas v. State, 122 Nev. ___, ___, 148 P.3d 727, 734 (2006), cert. denied, 76 U.S.L.W. 3372 (U.S. Jan. 14, 2008) (No. 06-10347).

[2]Steese v. State, 114 Nev. 479, 490, 960 P.2d 321, 328 (1998).

[3]State v. Catanio, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004).

[4]Manley v. State, 115 Nev. 114, 122, 979 P.2d 703, 708 (1999).

communication can consent to the interception.[5] Second, one party to the communication can consent to the interception if an emergency situation exists such that it is impractical to obtain a court order and judicial ratification is sought within 72 hours.[6] Colorado law permits interception of a conversation based on the consent of "either a sender or a receiver" of the communication.[7]

Admission of lawfully intercepted communications in judicial or administrative proceedings is governed by NRS 48.077.[8] Under NRS 48.077, a communication intercepted in accordance with the law of the

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[5]Lane v. Allstate Ins. Co., 114 Nev. 1176, 1179-80, 969 P.2d 938, 940-41 (1998).

[6]NRS 200.620.

[7]Colo. Rev. Stat. § 18-9-303 (2002); see People v. Watson, 53 P.3d 707, 710 (Colo. Ct. App. 2001) ("[T]he [Wiretapping and Eavesdropping Act] does not require suppression of intercepted communications if one party to the communication consented to the interception.").

[8]NRS 48.077 provides, in full:

> Except as limited by this section, in addition to the matters made admissible by NRS 179.465, the contents of any communication lawfully intercepted under the laws of the United States or of another jurisdiction before, on or after July 1, 1981, if the interception took place within that jurisdiction, and any evidence derived from such a communication, are admissible in any action or proceeding in a court or before an administrative body of this State, including, without limitation, the Nevada Gaming Commission and the State Gaming Control Board. Matter otherwise privileged under this title does not lose its privileged character by reason of any interception.

jurisdiction in which the interception was made is admissible in a Nevada judicial or administrative proceeding, even when the manner of interception would violate Nevada law had the interception taken place in Nevada. This is so even if a party to the communication was in Nevada at the time of the interception. Applying the plain language of NRS 48.077, the district court in this case erred by admitting the recording only if the interception was not obtained in accordance with Colorado law.

As noted above, Colorado permits interception based on the consent of one party to a communication.[9] The State concedes that K.S.'s parents did not obtain the consent of K.S. or her aunts before making the interceptions. The State urges this court to hold that the vicarious consent doctrine applies under Colorado law. The doctrine of vicarious consent allows a parent to consent to interception on behalf of his or her minor child.[10] If the doctrine of vicarious consent applies in this case, K.S.'s parents could consent on her behalf, and their consent would satisfy Colorado's single-party consent requirement.

We decline to hold that the doctrine of vicarious consent applies under Colorado law. The State has offered no authority to suggest that Colorado courts are inclined to accept or have even considered the applicability of the vicarious consent doctrine. We decline to decide what

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[9]Colo. Rev. Stat. § 18-9-303 (2002); see Watson, 53 P.3d at 710.

[10]See generally Daniel R. Dinger, Should Parents Be Allowed To Record A Child's Telephone Conversations When They Believe The Child Is In Danger?: An Examination Of The Federal Wiretap Statute And The Doctrine Of Vicarious Consent In The Context Of A Criminal Prosecution, 28 Seattle U. L. Rev. 955, 968 (2005).

appears to be an issue of first impression in Colorado. Absent the application of this doctrine, K.S.'s parents' interception of K.S.'s telephone conversations with her aunts violated Colorado law because neither party to the communication consented. Because the interception was not conducted in accordance with the law of the jurisdiction in which it took place, the recording cannot be properly admitted in a Nevada judicial proceeding under NRS 48.077. The district court therefore abused its discretion by admitting the recorded communication during Fruit's trial.[11]

In determining whether a nonconstitutional evidentiary error is harmless, we consider "whether the error 'had substantial and injurious effect or influence in determining the jury's verdict.'"[12] Fruit was charged with lewdness and sexually abusing a minor and faced life in prison. The State played the inadmissible recording five times during trial, and because K.S. recanted her allegations of abuse at trial, the recordings were the only method by which the jury heard K.S. make allegations of abuse in her own words. While the State presented other admissible evidence to support the convictions,[13] we are not convinced that the jury's verdict "was

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[11]We also note that the State did not provide Fruit with a transcript of the recording as required by NRS 179.500. Because we reverse Fruit's conviction on the ground that the recording was not intercepted in accordance with the law of the jurisdiction in which it was obtained, we do not address whether the State's failure to comply with NRS 179.500 provided a separate basis for excluding the recording.

[12]Tavares v. State, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001) (quoting Kotteakos v. United States, 328 U.S. 750, 776 (1946)).

[13]For this reason, we reject Fruit's challenge to the sufficiency of the evidence supporting the convictions. See Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

not substantially swayed by the error"[14] in admitting the recording. Accordingly, the error in admitting the recording was not harmless, and the judgment of conviction therefore cannot stand.[15] Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Hardesty, J.

Parraguirre, J.

Douglas, J.

cc: Hon. Valerie Adair, District Judge
Megan C. Hoffman
JoNell Thomas
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[14]Kotteakos, 382 U.S. at 764-65.

[15]Fruit makes numerous other assignments of error on appeal. Because we are reversing Fruit's convictions on the basis of the improperly admitted recording, we do not reach the merits of Fruit's additional assignments of error on appeal except to conclude that the charging information adequately put Fruit on notice of the charges against him. See Wilson v. State, 121 Nev. 345, 368-69, 114 P.3d 285, 301 (2005); Cunningham v. State, 100 Nev. 396, 400, 683 P.2d 500, 502 (1984).