

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

No. 70587

Electronically Filed
Oct 02 2017 08:24 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

THE STATE OF NEVADA,

Respondent.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

INDEX
JASON RICHARD LOFTHOUSE
Case No. 70587

PAGE NO.

1	Amended Criminal Complaint filed 07/09/15	9-14
2	Amended Information filed 07/16/15	21-27
3	Amended Jury List filed 03/24/16	235
4	Amended Reply to State's Response to Defendant's Motion to Correct Illegal Sentence	
5	Date of Hrg: 06/08/17	1537-1547
6	Amended Supplemental Notice of Witnesses And/Or Expert Witnesses filed 02/24/16	221-225
7	Certification filed 06/16/17	1582-1584
8	Correspondence from Nevada Department of Corrections Requesting Correction of Judgment of Conviction dated 05/18/17	1485-1487
9	Correspondence Regarding Amended Judgment of Conviction dated 07/24/17	1585-1589
10	Court's Exhibits List	1466
11	Court Exhibit 6 dated 03/25/16	1467
12	Criminal Complaint filed 06/05/15	1-2
13	Defendant's Motion in Limine to Preclude the State from Introducing or Attempting to Introduce Evidence of Any Other Actual or Potential Victims filed 03/16/16	229-233
14	Defendant's Opposition to Motion to Preclude Defense Presentation of Jury Nullification Arguments filed 02/02/16	207-209
15	Defendant's Proposed Jury Instructions Not Used at Trial filed 03/20/16	263-264
16	Defendant's Sentencing Memorandum filed 05/12/16	269-379
17	District Court Minutes from 07/20/15 through 06/21/16	393-417
18	Information filed 07/16/15	15-20
19	Instructions to the Jury filed 03/25/16	236-262
20	Judgment of Conviction filed 05/20/16	380-382
21	Judgment of Conviction filed 05/20/16	1488-1490
22		
23		
24		
25		
26		
27		
28		

1	Jury List filed 03/21/16.....	234
2	Justice Court Minutes from 06/04/15 through 07/09/15	3-8
3	Motion to Associate Counsel	
4	Date of Hrg: 10/15/15.....	180-197
5	Motion to Correct Illegal Sentence	
6	Date of Hrg: 06/08/17.....	1491-1520
7	Motion to Withdraw as Counsel of Record and for an Order Appointing the Office of the Public Defender	
8	Date of Hrg: 06/09/16.....	383-388
9	Notice of Appeal filed 06/09/16	389-390
10	Notice of Motion and Motion to Preclude Defense Presentation of Jury Nullification Arguments	
11	Date of Hrg: 01/12/16.....	202-206
12	Notice of Witnesses And/Or Expert Witnesses filed 12/29/15	210-212
13	Order Admitting to Practice filed 10/01/15	200-201
14	Order Granting Motion to Withdraw filed 06/14/16	391-392
15	Order that Writ of Habeas Corpus Issue filed 09/18/15	172
16	Petition for Writ of Habeas Corpus (Pre-Trial) filed on 08/20/15	124-171
17	Petitioner's Traverse filed 09/15/15	173-179
18	Presentence Investigation Report dated 05/03/16	1468-1475
19	Reply to State's Response to Defendant's Motion to Correct Illegal Sentence	
20	Date of Hrg: 06/08/17.....	1526-1536
21	Second Amended Information filed 01/13/16	213-217
22	Second Supplemental Notice of Witnesses And/Or Expert Witnesses filed 03/04/16.....	226-228
23	State's Exhibits List.....	1464-1465
24	State's Response to Defendant's Motion to Correct Illegal Sentence	
25	Date of Hrg: 06/08/17.....	1521-1525
26	Substitution of Attorney filed 10/01/15.....	198-199
27	Supplemental Notice of Witnesses And/Or Expert Witnesses filed 02/22/16.....	218-220
28	Supplemental Presentence Investigation Report dated 05/13/16	1476-1484
	Verdict filed 03/25/16.....	265-268

TRANSCRIPTS

1		
2		
3	Recorder's Transcript	
3	Preliminary Hearing	
4	Date of Hrg: 07/09/15.....	28-123
5	Recorder's Transcript	
5	Defendant's Motion to Correct Illegal Sentence	
6	Date of Hrg: 06/08/17.....	1560-1571
7	Recorder's Transcript	
7	Defendant's Motion to Correct Illegal Sentence	
8	Date of Hrg: 06/22/17.....	1572-1574
9	Recorder's Transcript	
9	Defendant's Motion to Correct Illegal Sentence	
10	Date of Hrg: 07/13/17.....	1575-1581
11	Recorder's Transcript	
11	Initial Arraignment	
12	Date of Hrg: 07/20/15.....	418-420
13	Recorder's Transcript	
13	Status Check: Clarification of Sentence	
14	Date of Hrg: 05/18/17.....	1548-1559
15	Reporter's Transcript	
15	Date of Hrg: 09/22/15.....	421-429
16	Reporter's Transcript	
17	Date of Hrg: 10/01/15.....	430-446
18	Reporter's Transcript	
18	Date of Hrg: 11/10/15.....	447-456
19	Reporter's Transcript	
20	Date of Hrg: 12/02/15.....	457-488
21	Reporter's Transcript	
21	Date of Hrg: 01/12/16.....	489-501
22	Reporter's Transcript	
23	Date of Hrg: 02/09/16.....	502-507
24	Reporter's Transcript	
24	Jury Trial Day 1	
25	Date of Hrg: 03/21/16.....	508-866
26	Reporter's Transcript	
26	Jury Trial Day 2	
27	Date of Hrg: 03/22/16.....	867-1005
28		

1	Reporter's Transcript	
2	Jury Trial Day 3	
	Date of Hrg: 03/23/16.....	1006-1219
3	Reporter's Transcript	
4	Jury Trial Day 4	
	Date of Hrg: 03/24/16.....	1229-1398
5	Reporter's Transcript	
6	Jury Trial Day 5	
	Date of Hrg: 03/25/16.....	1399-1407
7	Reporter's Transcript	
8	Jury Verdict	
	Date of Hrg: 03/25/16.....	1408-1421
9	Reporter's Transcript	
10	Sentencing	
	Date of Hrg: 05/17/16.....	1422-1463
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

JUSTICE COURT, NORTH LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA
North Las Vegas Justice Court
FILED IN OPEN COURT

Plaintiff
Clerk

DATE 5/15/15
CASE NO: 15FN0939X

-VS-

DEPT NO: 3

JASON RICHARD LOFTHOUSE
#7019775,

Defendant.

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR VOLUNTEERS OF SCHOOL AND PUPIL (Category C Felony - NRS 201.540 - NOC 51067) and FIRST DEGREE KIDNAPPING (Category A Felony - NRS 200.310, 200.320 - NOC 50053), in the manner following, to-wit: That the said Defendant, on or between May 14, 2015 and May 28, 2015, at and within the County of Clark, State of Nevada,

COUNT 1 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR VOLUNTEERS OF SCHOOL AND PUPIL

did on or between May 14, 2015 and May 15, 2015 then and there wilfully, unlawfully, and feloniously, while employed or volunteering or having been previously employed or volunteering in a position of authority at a public or private school, to-wit: a teacher, at Rancho High School, Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which Defendant was or previously had been employed or volunteering.

COUNT 2 - FIRST DEGREE KIDNAPPING

did on or about May 20, 2015 wilfully, unlawfully, and feloniously, lead, take, entice, carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T., from her parents, guardians, or other person or persons having lawful custody of M.T., or with the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any unlawful act, to-wit: sexual intercourse.

1 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
2 school at which Defendant was or previously had been employed or volunteering.

3 All of which is contrary to the form, force and effect of Statutes in such cases made and
4 provided and against the peace and dignity of the State of Nevada. Said Complainant makes
5 this declaration subject to the penalty of perjury.

6
7
8 06/05/15
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27 15FN0939X/jjd
28 CCSDPD EV# 150603963
(TK)

JUSTICE COURT. NORTH LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA
DOCKET SHEET...CRIMINAL

CASE # 15CRN000941-0000 15FN0939X

State LOFTHOUSE, JASON

7019775 (SCOPE)

DATE, JUDGE, OFFICERS OF COURT PRESENT	PROCEEDINGS APPEARANCES - HEARING	EVENTS
June 04, 2015	<p>BAIL AMOUNT Charge #7: CONTRIBUTE TO DELINQUENCY OR NEGLECT OF MINOR</p> <p>BAIL AMOUNT Charge #8: CONTRIBUTE TO DELINQUENCY OR NEGLECT OF MINOR</p> <p>BAIL AMOUNT Charge #2: SCH EMP/VOLUNTEER IN AUTHORITY POSITION/AGE 21+ ENGAGING IN SEXUAL CONDUCT W/PUPIL AGE 16-17</p> <p>BAIL AMOUNT Charge #3: SCH EMP/VOLUNTEER IN AUTHORITY POSITION/AGE 21+ ENGAGING IN SEXUAL CONDUCT W/PUPIL AGE 16-17</p> <p>BAIL AMOUNT Charge #4: SCH EMP/VOLUNTEER IN AUTHORITY POSITION/AGE 21+ ENGAGING IN SEXUAL CONDUCT W/PUPIL AGE 16-17</p> <p>BAIL AMOUNT Charge #1: SCH EMP/VOLUNTEER IN AUTHORITY POSITION/AGE 21+ ENGAGING IN SEXUAL CONDUCT W/PUPIL AGE 16-17</p> <p>BAIL AMOUNT Charge #5: KIDNAPPING, 1ST DEGREE - SEX MOTIVATED</p> <p>BAIL AMOUNT Charge #6: KIDNAPPING, 1ST DEGREE - SEX MOTIVATED</p> <p>SET FOR FIRST APPEARANCE Event: 72 HOUR HEARING (VIDEO) NLV Date: 06/05/2015 Time: 9:30 am Judge: HOO, KALANI Location: DEPARTMENT 1</p> <p>Result: FIRST APPEARANCE HELD</p>	

JUSTICE COURT. NORTH LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA
DOCKET SHEET...CRIMINAL

CASE # 15CRN000941-0000 15FN0939X

State LOFTHOUSE, JASON

7019775 (SCOPE)

DATE, JUDGE, OFFICERS OF COURT PRESENT	PROCEEDINGS APPEARANCES - HEARING	EVENTS
June 05, 2015	<p>MEDIA REQUEST (KTNV) GRANTED PER JUDGE HOO</p> <hr/> <p>FIRST APPEARANCE HELD BAIL SET 250,000 PAD DUE DATE 6-12-16 The following event: 72 HOUR HEARING (VIDEO) NLV scheduled for 06/05/2015 at 9:30 am has been resulted as follows:</p> <p>Result: FIRST APPEARANCE HELD Judge: HOO, KALANI Location: DEPARTMENT 1</p> <hr/> <p>MEDIA REQUEST AND ORDER (FOX 5) SIGNED BY JUDGE HOO. STATION NOTIFIED.</p>	
June 08, 2015	<p>MEDIA REQUEST AND ORDER (CHANNEL 3) SIGNED BY TERAAMES FOR JUDGE LEE. ATTORNEY AND STATION NOTIFIED.</p> <hr/> <p>SET FOR COURT APPEARANCE Event: FELONY ARRAIGNMENT NLV Date: 06/09/2015 Time: 8:30 am Judge: LEE, CHRIS Location: DEPARTMENT 3</p> <hr/> <p>Result: ARRAIGNMENT HEARING HELD</p>	

JUSTICE COURT, NORTH LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA
DOCKET SHEET...CRIMINAL

CASE # 15CRN000941-0000 15FN0939X

State LOFTHOUSE, JASON

7019775 (SCOPE)

DATE, JUDGE, OFFICERS OF COURT PRESENT	PROCEEDINGS APPEARANCES - HEARING	EVENTS
June 09, 2015 C. Lee, JP V. Villegas, DDA R. Mayo, CLK R. Draskovich, ESQ. L. Schneider, ESQ. JAVS Recording	COMPLAINT SWORN TO AND FILED: ARRAIGNMENT HEARING HELD INITIAL ARRAIGNMENT Defendant PRESENT in CCDC custody Criminal Complaint filed in open court Complaint presented, advised, waives reading Louis Schneider and Robert Draskovich confirm as retained counsel Received discovery Defense motion for bail reduction \$20,000 and house arrest Objection by State. Defense motion for bail reduction DENIED BAIL STANDS at \$250,000 COURT ORDERS if bail posted, defendant to be placed on house arrest, surrender passport and have no contact with victim or minor children. PRELIMINARY HEARING DATE SET CCDC/\$250,000 SET FOR COURT APPEARANCE Event: PRELIMINARY HEARING NLV Date: 06/23/2015 Time: 9:00 am Judge: LEE, CHRIS Location: DEPARTMENT 3	
June 10, 2015	MEDIA REQUEST AND ORDER (8 NEWS NOW) SIGNED BY JUDGE LEE. STATION NOTIFIED.	

JUSTICE COURT. NORTH LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA
DOCKET SHEET...CRIMINAL

CASE # 15CRN000941-0000 15FN0939X

State LOFTHOUSE, JASON

7019775 (SCOPE)

DATE, JUDGE, OFFICERS OF COURT PRESENT	PROCEEDINGS APPEARANCES - HEARING	EVENTS
June 23, 2015 C. Lee, JP B. Schifalacqua, DDA M. Howard, CLK R. Draskovich, ESQ L. Schneider, ESQ JAVS Recording	PRELIMINARY HEARING CONTINUED - PROSECUTION REQUEST THIS IS THE TIME SET FOR PRELIMINARY HEARING Defendant PRESENT in CCDC custody Preliminary hearing was called off. State's request to continue. Defense is ready, but has no objection. Motion Granted. State provided additional discovery to Defense, including audio and video statements, DVDs and a 4,000 page report. The State has four to six witnesses and the preliminary hearing will be going forward. PRELIMINARY HEARING DATE SET CCDC/\$250,000 TOTAL BAIL (If bail posted, defendant to be placed on house arrest, surrender passport and have no contact with victim or minor children.) SET FOR COURT APPEARANCE Event: PRELIMINARY HEARING NLV Date: 07/09/2015 Time: 9:00 am Judge: LEE, CHRIS Location: DEPARTMENT 3	
July 07, 2015	MEDIA REQUEST AND ORDER (LAS VEGAS SUN) GRANTED	
July 08, 2015	MEDIA REQUEST AND ORDER (ACTION 13 NEWS KTNV) GRANTED	

JUSTICE COURT. NORTH LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA
DOCKET SHEET...CRIMINAL

CASE # 15CRN000941-0000 15FN0939X
State LOFTHOUSE, JASON 7019775 (SCOPE)

DATE, JUDGE, OFFICERS OF COURT PRESENT	PROCEEDINGS APPEARANCES - HEARING	EVENTS
<p>July 09, 2015</p> <p>C. Lee, JP R. Scow, DDA A. Cater, CLK JAVS Recording R. Draskovich, ESQ (Bar #6275) L. Schneider, ESQ (Bar #9683)</p>	<p>THIS IS THE TIME SET FOR PRELIMINARY HEARING:</p> <p>DEFENDANT PRESENT IN CCDC CUSTODY COURT ALLOWS FILING OF THE AMENDED CRIMINAL COMPLAINT IN OPEN COURT 2 COUNTS OPEN OR GROSS LEWDNESS AND AN ADDITIONAL 7 COUNTS SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR VOLUNTEERS OF SCHOOLAND PUPIL. COURT RESERVES ANY OBJECTION BY DEFENSE. STATE NOTES THAT BY INTERLINEATION, IN COUNT 4, LINE 14, SHE HAS LINED THROUGH SEXUAL INTERCOUSE AND REPLACED IT WITH CUNNILINGUS. STATE FURTHER NOTES THAT SHE RECEIVED ADDITIONAL DISCOVERY YESTERDAY, WHICH WAS PROVIDED TO DEFENSE. DEFENSE IS READY TO PROCEED. COURT INFORMS PARTIES THAT THE MEDIA HAS BEEN ALLOWED IN THE COURTROOM AND REFERS TO STATE REGARDING AGE OF ALLEGED VICTIM. STATE MOTION TO CLEAR COURTROOM AND OBJECTS TO CAMERAS DURING VICTIM'S TESTIMONY AS SHE IS ONLY 17 YEARS OF AGE. COURT TAKES MATTER UNDER ADVISEMENT. STATE REFERS TO NRS 171.204, STATING THAT A MAGISTRATE, IF GOOD CAUSE IS SHOWN, MAY EXCLUDE ANYONE FROM COURTROOM.</p> <p>MATTER TRAILED BY COURT.</p> <p>CASE RECALLED:</p> <p>DEFENSE DOES NOT OBJECT TO COURTROOM BEING CLEARED FOR TESTIMONY OF UNDER AGE WITNESS. COURTROOM/CAMERAS CLEARED BY COURT.</p> <p>STATE'S WITNESS: MICHELLE TORRES</p> <p>STATE'S EXHIBITS: 1-4 COPY OF PHOTOS. EXHIBITS 1, 2 & 3 OFFERED BY STATE, NO OBJECTION BY DEFENSE, EXHIBITS ADMITTED. EXHIBIT 4 MARKED FOR IDENTIFICATION PURPOSES ONLY, BUT NOT OFFERED FOR EVIDENCE (STATE HAS CLERK RETAIN EXHIBIT WITH THOSE ADMITTED).</p> <p>AFTER DIRECT EXAMINATION OF WITNESS, COURT TAKES BRIEF RECESS TO RESOLVE OTHER MATTERS ON CALENDAR.</p> <p>CASE RECALLED:</p> <p>WITNESS RESUMES WITNESS STAND, DEFENSE</p>	<p>DISTRICT COURT</p> <p>ARRAIGNMENT NLV</p> <p>Date: July 20, 2015</p> <p>Time: 10:00 am</p> <p>Location: DISTRICT COURT</p> <p>ARRAIGNMENT</p>

JUSTICE COURT. NORTH LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA
DOCKET SHEET...CRIMINAL

CASE # 15CRN000941-0000 15FN0939X

State LOFTHOUSE, JASON

7019775 (SCOPE)

DATE, JUDGE, OFFICERS OF COURT PRESENT	PROCEEDINGS APPEARANCES - HEARING	EVENTS
	<p>PROCEEDS WITH CROSS EXAMINATION. COURT TAKES BRIEF RECESS TO ALLOW CAMERAS AND ANY OTHER REMAINING PARTIES BACK INTO COURTROOM. CASE RECALLED: STATE MOTION TO VOLUNTARILY DISMISS COUNT 8 - GRANTED. STATE RESTS DEFENDANT WAIVES RIGHT TO TESTIFY/PRESENT EVIDENCE DEFENSE RESTS STATE WAIVES OPENING ARGUMENT. MOTION TO DISMISS AND ARGUMENT IN FAVOR OF SAID MOTION BY DEFENSE. ARGUMENT AGAINST SAID MOTION BY STATE. MOTION TO DISMISS DENIED. WITH OMITTING COUNT 8, COURT RE-NUMBERS AMENDED COMPLAINT TO REFLECT COUNTS 1-14. THEREUPON THE COURT ORDERED DEFENDANT HELD TO ANSWER TO SAID CHARGES, AS AMENDED, IN THE EIGHTH JUDICIAL DISTRICT COURT. CCDC/\$250.00 TOTAL (RESET BY COURT) SET FOR COURT APPEARANCE Event: DISTRICT COURT ARRAIGNMENT NLV Date: 07/20/2015 Time: 10:00 am Judge: Location: DISTRICT COURT ARRAIGNMENT</p>	

ORIGINAL

JUSTICE COURT, NORTH LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

North Las Vegas Justice Court

THE STATE OF NEVADA

Plaintiff
Clerk

DATE 7/1/15
CASE NO: 15FN0939X

DEPT NO: 3

JASON RICHARD LOFTHOUSE
#7019775,

Defendant.

AMENDED

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of **SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR VOLUNTEERS OF SCHOOL AND PUPIL** (Category C Felony - NRS 201.540 - NOC 51067), **OPEN OR GROSS LEWDNESS** (Gross Misdemeanor - NRS 201.210 - NOC 50971) and **FIRST DEGREE KIDNAPPING** (Category A Felony - NRS 200.310, 200.320 - NOC 50053) in the manner following, to-wit:

That the said Defendant, on or between May 6, 2015 and May 28, 2015, at and within the County of Clark, State of Nevada,

COUNT 1 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
VOLUNTEERS OF SCHOOL AND PUPIL

did, on or between May 6, 2015 and May 19, 2015, then and there, willfully, unlawfully and feloniously, while employed or volunteering or having been previously employed or volunteering in a position of authority at a public or private school, to-wit: a teacher, at Rancho High School, Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which Defendant was or previously had been employed or volunteering.

COUNT 2 - OPEN OR GROSS LEWDNESS

did, on or between May 6, 2015 and May 19, 2015, willfully and unlawfully commit an act of open or gross lewdness by said Defendant having the said M.T. rub and/or touch the body and/or genital area of Defendant and/or said M.T. engage in fellatio with Defendant in a classroom of Rancho High School.

1 COUNT 3 - FIRST DEGREE KIDNAPPING

2 did, on or about May 20, 2015, willfully, unlawfully and feloniously, lead, take, entice,
3 carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T.,
4 from her parents, guardians, or other person or persons having lawful custody of M.T., or with
5 the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any
6 unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T which constitute
7 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual
8 intercourse and/or fellatio and/or cunnilingus.

9 COUNT 4 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
10 VOLUNTEERS OF SCHOOL AND PUPIL

11 did, on or about May 20, 2015, then and there, willfully, unlawfully, and feloniously,
12 while employed or volunteering or having been previously employed or volunteering in a
13 position of authority at a public or private school, to-wit: a teacher, at Rancho High School,
14 Clark County, Nevada, and who is over 21 years of age, engage in ^{cunnilingus} ~~sexual intercourse~~, with
15 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
16 school at which Defendant was or previously had been employed or volunteering.

17 COUNT 5 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
18 VOLUNTEERS OF SCHOOL AND PUPIL

19 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
20 while employed or volunteering or having been previously employed or volunteering in a
21 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
22 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
23 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which
24 Defendant was or previously had been employed or volunteering.

25 //

26 //

27 //

28 //

1 COUNT 6 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
4 while employed or volunteering or having been previously employed or volunteering in a
5 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
6 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
7 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
8 school at which Defendant was or previously had been employed or volunteering.

9 COUNT 7 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
10 VOLUNTEERS OF SCHOOL AND PUPIL

11 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
12 while employed or volunteering or having been previously employed or volunteering in a
13 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
14 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
15 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
16 school at which Defendant was or previously had been employed or volunteering.

17 COUNT 8 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
18 VOLUNTEERS OF SCHOOL AND PUPIL

19 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
20 while employed or volunteering or having been previously employed or volunteering in a
21 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
22 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
23 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
24 school at which Defendant was or previously had been employed or volunteering.

25 //

26 //

27 //

28 //

1 COUNT ~~8~~ - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 8 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or between May 21, 2015 and May 27, 2015, then and there willfully,
4 unlawfully, and feloniously, while employed or volunteering or having been previously
5 employed or volunteering in a position of authority at a public or private school, to-wit: a
6 teach, at Rancho High School, , Clark County, Nevada, and who is over 21 years of age, engage
7 in fellatio, with M.T., who was 16 or 17 years of age at the time, and who was enrolled in or
8 attending the school at which Defendant was or previously had been employed or volunteering.

9 COUNT ~~10~~⁹ - OPEN OR GROSS LEWDNESS

10 did, on or between May 21, 2015 and May 27, 2015, willfully and unlawfully commit
11 an act of open or gross lewdness by said Defendant having the said M.T. rub and/or touch the
12 body and/or genital area of Defendant and/or said M.T. engage in fellatio with Defendant in a
13 classroom of Rancho High School.

14 COUNT ~~11~~¹⁰ - FIRST DEGREE KIDNAPPING

15 did, on or about May 28, 2015, willfully, unlawfully and feloniously, lead, take, entice,
16 carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T.,
17 from her parents, guardians, or other person or persons having lawful custody of M.T., or with
18 the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any
19 unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T. which constitute
20 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual
21 intercourse and/or fellatio and/or cunnilingus.

22 COUNT ~~12~~¹¹ - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
23 11 VOLUNTEERS OF SCHOOL AND PUPIL

24 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
25 while employed or volunteering or having been previously employed or volunteering in a
26 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
27 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
28 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which

1 Defendant was or previously had been employed or volunteering.

2 COUNT ~~13~~ - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
3 ¹² VOLUNTEERS OF SCHOOL AND PUPIL

4 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
5 while employed or volunteering or having been previously employed or volunteering in a
6 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
7 Clark County, Nevada, and who is over 21 years of age, engage in cunnilingus, with M.T.,
8 who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at
9 which Defendant was or previously had been employed or volunteering.

10 COUNT ~~14~~ - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
11 ¹³ VOLUNTEERS OF SCHOOL AND PUPIL

12 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
13 while employed or volunteering or having been previously employed or volunteering in a
14 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
15 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
16 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
17 school at which Defendant was or previously had been employed or volunteering.

18 COUNT ~~15~~ - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
19 ¹⁴ VOLUNTEERS OF SCHOOL AND PUPIL

20 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
21 while employed or volunteering or having been previously employed or volunteering in a
22 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
23 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
24 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
25 school at which Defendant was or previously had been employed or volunteering.

26 //

27 //

28 //


CLERK OF THE COURT

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**I.A. 07/20/2015
10:00 AM
SCHNEIDER**

THE STATE OF NEVADA,

Plaintiff,

-vs-

JASON RICHARD LOFTHOUSE,
#7019775

Defendant.

CASE NO: C-15-307937-1

DEPT NO: XX

INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That JASON RICHARD LOFTHOUSE, the Defendant above named, having committed the crimes of **SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR VOLUNTEERS OF SCHOOL AND PUPIL (Category C Felony - NRS 201.540 - NOC 51067)**, **OPEN OR GROSS LEWDNESS (Gross Misdemeanor - NRS 201.210 - NOC 50971)** and **FIRST DEGREE KIDNAPPING (Category A Felony - NRS 200.310, 200.320 - NOC 50053)** in the manner following:

That the said Defendant, on or between May 6, 2015 and May 28, 2015, at and within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

//

1 COUNT 1 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or between May 6, 2015 and May 19, 2015, then and there, willfully, unlawfully
4 and feloniously, while employed or volunteering or having been previously employed or
5 volunteering in a position of authority at a public or private school, to-wit: a teacher, at Rancho
6 High School, Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with
7 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
8 school at which Defendant was or previously had been employed or volunteering.

9 COUNT 2 - OPEN OR GROSS LEWDNESS

10 did, on or between May 6, 2015 and May 19, 2015, willfully and unlawfully commit an
11 act of open or gross lewdness by said Defendant having the said M.T. rub and/or touch the
12 body and/or genital area of Defendant and/or said M.T. engage in fellatio with Defendant in a
13 classroom of Rancho High School.

14 COUNT 3 - FIRST DEGREE KIDNAPPING

15 did, on or about May 20, 2015, willfully, unlawfully and feloniously, lead, take, entice,
16 carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T.,
17 from her parents, guardians, or other person or persons having lawful custody of M.T., or with
18 the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any
19 unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T. which constitute
20 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual
21 intercourse and/or fellatio and/or cunnilingus.

22 COUNT 4 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
23 VOLUNTEERS OF SCHOOL AND PUPIL

24 did, on or about May 20, 2015, then and there, willfully, unlawfully, and feloniously,
25 while employed or volunteering or having been previously employed or volunteering in a
26 position of authority at a public or private school, to-wit: a teacher, at Rancho High School,
27 Clark County, Nevada, and who is over 21 years of age, engage in cunnilingus, with M.T.,
28 who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at

1 which Defendant was or previously had been employed or volunteering.

2 COUNT 5 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
3 VOLUNTEERS OF SCHOOL AND PUPIL

4 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
5 while employed or volunteering or having been previously employed or volunteering in a
6 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
7 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
8 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which
9 Defendant was or previously had been employed or volunteering.

10 COUNT 6 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
11 VOLUNTEERS OF SCHOOL AND PUPIL

12 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
13 while employed or volunteering or having been previously employed or volunteering in a
14 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
15 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
16 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
17 school at which Defendant was or previously had been employed or volunteering.

18 COUNT 7 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
19 VOLUNTEERS OF SCHOOL AND PUPIL

20 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
21 while employed or volunteering or having been previously employed or volunteering in a
22 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
23 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
24 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
25 school at which Defendant was or previously had been employed or volunteering.

26 //

27 //

28 //

1 COUNT 8 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or between May 21, 2015 and May 27, 2015, then and there willfully,
4 unlawfully, and feloniously, while employed or volunteering or having been previously
5 employed or volunteering in a position of authority at a public or private school, to-wit: a
6 teach, at Rancho High School, , Clark County, Nevada, and who is over 21 years of age, engage
7 in fellatio, with M.T., who was 16 or 17 years of age at the time, and who was enrolled in or
8 attending the school at which Defendant was or previously had been employed or volunteering.

9 COUNT 9 - OPEN OR GROSS LEWDNESS

10 did, on or between May 21, 2015 and May 27, 2015, willfully and unlawfully commit
11 an act of open or gross lewdness by said Defendant having the said M.T. rub and/or touch the
12 body and/or genital area of Defendant and/or said M.T. engage in fellatio with Defendant in a
13 classroom of Rancho High School.

14 COUNT 10 - FIRST DEGREE KIDNAPPING

15 did, on or about May 28, 2015, willfully, unlawfully and feloniously, lead, take, entice,
16 carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T.,
17 from her parents, guardians, or other person or persons having lawful custody of M.T., or with
18 the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any
19 unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T. which constitute
20 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual
21 intercourse and/or fellatio and/or cunnilingus.

22 COUNT 11 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
23 VOLUNTEERS OF SCHOOL AND PUPIL

24 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
25 while employed or volunteering or having been previously employed or volunteering in a
26 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
27 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
28 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which

1 Defendant was or previously had been employed or volunteering.

2 COUNT 12 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
3 VOLUNTEERS OF SCHOOL AND PUPIL

4 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
5 while employed or volunteering or having been previously employed or volunteering in a
6 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
7 Clark County, Nevada, and who is over 21 years of age, engage in cunnilingus, with M.T.,
8 who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at
9 which Defendant was or previously had been employed or volunteering.

10 COUNT 13 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
11 VOLUNTEERS OF SCHOOL AND PUPIL

12 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
13 while employed or volunteering or having been previously employed or volunteering in a
14 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
15 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
16 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
17 school at which Defendant was or previously had been employed or volunteering.

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

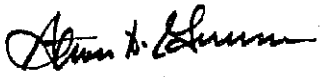
1 COUNT 14 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
4 while employed or volunteering or having been previously employed or volunteering in a
5 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
6 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
7 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
8 school at which Defendant was or previously had been employed or volunteering.

9 STEVEN B. WOLFSON
10 Clark County District Attorney
Nevada Bar #001565

11 BY /s/ STACEY KOLLINS
12 STACEY KOLLINS
13 Chief Deputy District Attorney
Nevada Bar #005391

14
15
16
17
18
19
20
21
22
23
24
25
26
27 DA#15FN0939X/hjc/SVU
28 CCSDPD EV#150603963


CLERK OF THE COURT

AINF
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**I.A. 07/20/2015
10:00 AM
SCHNEIDER**

THE STATE OF NEVADA,

Plaintiff,

--VS--

JASON RICHARD LOFTHOUSE,
#7019775

Defendant.

CASE NO: **C-15-307937-1**

DEPT NO: **XX**

**AMENDED
INFORMATION**

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That **JASON RICHARD LOFTHOUSE**, the Defendant above named, having committed the crimes of **SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR VOLUNTEERS OF SCHOOL AND PUPIL (Category C Felony - NRS 201.540 - NOC 51067)**, **OPEN OR GROSS LEWDNESS (Gross Misdemeanor - NRS 201.210 - NOC 50971)** and **FIRST DEGREE KIDNAPPING (Category A Felony - NRS 200.310, 200.320 - NOC 50053)** in the manner following:

That the said Defendant, on or between May 6, 2015 and May 28, 2015, at and within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

//

1 COUNT 1 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or between May 6, 2015 and May 19, 2015, then and there, willfully, unlawfully
4 and feloniously, while employed or volunteering or having been previously employed or
5 volunteering in a position of authority at a public or private school, to-wit: a teacher, at Rancho
6 High School, Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with
7 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
8 school at which Defendant was or previously had been employed or volunteering.

9 COUNT 2 - OPEN OR GROSS LEWDNESS

10 did, on or between May 6, 2015 and May 19, 2015, willfully and unlawfully commit an
11 act of open or gross lewdness by said Defendant having the said M.T. rub and/or touch the
12 body and/or genital area of Defendant and/or said M.T. engage in fellatio with Defendant in a
13 classroom of Rancho High School.

14 COUNT 3 - FIRST DEGREE KIDNAPPING

15 did, on or about May 20, 2015, willfully, unlawfully and feloniously, lead, take, entice,
16 carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T.,
17 from her parents, guardians, or other person or persons having lawful custody of M.T., or with
18 the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any
19 unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T. which constitute
20 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual
21 intercourse and/or fellatio and/or cunnilingus.

22 COUNT 4 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
23 VOLUNTEERS OF SCHOOL AND PUPIL

24 did, on or about May 20, 2015, then and there, willfully, unlawfully, and feloniously,
25 while employed or volunteering or having been previously employed or volunteering in a
26 position of authority at a public or private school, to-wit: a teacher, at Rancho High School,
27 Clark County, Nevada, and who is over 21 years of age, engage in cunnilingus, with M.T.,
28 who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at

1 which Defendant was or previously had been employed or volunteering.

2 COUNT 5 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
3 VOLUNTEERS OF SCHOOL AND PUPIL

4 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
5 while employed or volunteering or having been previously employed or volunteering in a
6 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
7 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
8 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which
9 Defendant was or previously had been employed or volunteering.

10 COUNT 6 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
11 VOLUNTEERS OF SCHOOL AND PUPIL

12 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
13 while employed or volunteering or having been previously employed or volunteering in a
14 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
15 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
16 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
17 school at which Defendant was or previously had been employed or volunteering.

18 COUNT 7 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
19 VOLUNTEERS OF SCHOOL AND PUPIL

20 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
21 while employed or volunteering or having been previously employed or volunteering in a
22 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
23 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
24 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
25 school at which Defendant was or previously had been employed or volunteering.

26 //

27 //

28 //

1 COUNT 8 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or between May 21, 2015 and May 27, 2015, then and there willfully,
4 unlawfully, and feloniously, while employed or volunteering or having been previously
5 employed or volunteering in a position of authority at a public or private school, to-wit: a
6 teach, at Rancho High School, , Clark County, Nevada, and who is over 21 years of age, engage
7 in fellatio, with M.T., who was 16 or 17 years of age at the time, and who was enrolled in or
8 attending the school at which Defendant was or previously had been employed or volunteering.

9 COUNT 9 - OPEN OR GROSS LEWDNESS

10 did, on or between May 21, 2015 and May 27, 2015, willfully and unlawfully commit
11 an act of open or gross lewdness by said Defendant having the said M.T. rub and/or touch the
12 body and/or genital area of Defendant and/or said M.T. engage in fellatio with Defendant in a
13 classroom of Rancho High School.

14 COUNT 10 - FIRST DEGREE KIDNAPPING

15 did, on or about May 28, 2015, willfully, unlawfully and feloniously, lead, take, entice,
16 carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T.,
17 from her parents, guardians, or other person or persons having lawful custody of M.T., or with
18 the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any
19 unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T which constitute
20 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual
21 intercourse and/or fellatio and/or cunnilingus.

22 COUNT 11 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
23 VOLUNTEERS OF SCHOOL AND PUPIL

24 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
25 while employed or volunteering or having been previously employed or volunteering in a
26 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
27 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
28 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which

1 Defendant was or previously had been employed or volunteering.

2 COUNT 12 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
3 VOLUNTEERS OF SCHOOL AND PUPIL

4 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
5 while employed or volunteering or having been previously employed or volunteering in a
6 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
7 Clark County, Nevada, and who is over 21 years of age, engage in cunnilingus, with M.T.,
8 who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at
9 which Defendant was or previously had been employed or volunteering.

10 COUNT 13 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
11 VOLUNTEERS OF SCHOOL AND PUPIL

12 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
13 while employed or volunteering or having been previously employed or volunteering in a
14 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
15 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
16 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
17 school at which Defendant was or previously had been employed or volunteering.

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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

BY /s/ STACEY KOLLINS
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391

Names of witnesses known to the District Attorney's Office at the time of filing this
Information are as follows:

ABBOTT; CCSDPD#0199

ALEMAN, MARIA; 2237 DEMETRIUS AVE, LVN 89101

BROWNLEE, BELISA; 3612 SHAWN REYNOLDS CT #203, LVN 89129

BUTLER, VERNON; CANNERY CASINO, 2121 E CRAIG RD, NLV 89030

CASTILLO, ZUREMA; 6212 CRATERS EDGE ST, NLV 89031

COR or Designee; CCDC

COR or Designee; CCSD

COR or Designee; CCSDPD COMMUNICATIONS

COR or Designee; CCSDPD RECORDS

COR or Designee; RANCHO HIGH SCHOOL

HIBNER; CCSDPD#0243

JONES; CCSDPD#0323

KUZMA, JAMES; 2158 FOUNTAIN SPRINGS DR, HND 89074

LNU, NATHAN; SECURITY SUPERVISOR; ALIANTE HOTEL/CASINO

M.T.; c/o CCDA-SVU/VWAC

MACISZAK; CCSDPD#0308

NORDSTROM, R.; ALIANTE HOTEL/CASINO

PATTY; CCSDPD#0520

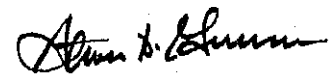
PRINCIPAL; RANCHO HIGH SCHOOL

TORRES, ISIDIRO; 5722 COLEMAN ST, NLV 89031

TORRES, MRS. FNU; 5722 COLEMAN ST, NLV 89031

TROXELL; CCSDPD#0373

DA#15FN0939X/hjc/SVU
CCSDPD EV#150603963



CLERK OF THE COURT

1 DEPARTMENT 3

2 DISTRICT COURT CASE NO. C-15-307937-1

3 IN THE JUSTICE'S COURT OF NORTH LAS VEGAS TOWNSHIP

4 CLARK COUNTY, STATE OF NEVADA

5 * * * * *

6
7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

CASE NO. 15FN0939X
15CRN000941-0000

10 JASON LOFTHOUSE,

11 Defendant.

12
13 **RECORDED TRANSCRIPT**

14 OF

15 PRELIMINARY HEARING

16 BEFORE THE HONORABLE CHRISTOPHER K. LEE
17 JUSTICE OF THE PEACE

18 THURSDAY, JULY 9, 2015, 9:00 A.M.

19
20 **APPEARANCES:**

21 For the State:

BARBARA SCHIFALACQUA, ESQ.
STACY KOLLINS, ESQ.
Deputy District Attorneys

22
23 For the Defendant:

ROBERT DRASKOVICH, ESQ.
LOUIS SCHNEIDER, ESQ.

24
25 **TRANSCRIBED BY: NORMA JEAN SILVERMAN, COURT RECORDER**

I N D E X

WITNESSES FOR THE STATE

PAGE

MICHELLE TORRES

Direct Examination by Ms. Schifalacqua	12
Cross-Examination by Mr. Draskovich	70
Cross-Examination by Mr. Schneider	77
Redirect Examination by Ms. Schifalacqua	80

1 NORTH LAS VEGAS, CLARK COUNTY, NEVADA

2 THURSDAY, JULY 9, 2015, 9:00 A.M.

3 * * * * *

4 PROCEEDINGS

5
6 THE COURT: Good morning, Ms. Schifalacqua. Are we waiting on
7 defense counsel on your case?

8 MS. SCHIFALACQUA: Yes, judge.

9 THE COURT: Is that the Lofthouse matter?

10 MS. SCHIFALACQUA: That is. And we will be going forward
11 today so....

12 THE COURT: Okay. Um, all right. So that -- the Lofthouse
13 preliminary hearing is going forward.

14 How many -- how many witnesses are we looking at?

15 MS. SCHIFALACQUA: Um, your Honor, potentially it can be done
16 with one, but I do have (indiscernible) detectives, so one to three.

17 THE COURT: Okay. Perfect. Then, uh, just let me know when
18 you're ready get going. Um, I -- I intend on calling your preliminary hearing as
19 soon as possible here. Um --

20 MS. SCHIFALACQUA: And, judge, I do have an Amended. I spoke
21 -- Mr. Draskovich wasn't here (indiscernible) --

22 THE COURT: Okay.

23 MS. SCHIFALACQUA: -- (indiscernible).

24 THE COURT: All right. Good. Then let's wait on that until the
25 attorney gets here since we're just handling some housekeeping matters. Um,

1 okay.

2 (Whereupon other matters were heard in open court.)

3 THE COURT: It's nine o'clock. Let me see if I can call this
4 Lofthouse preliminary hearing.

5 State of Nevada versus Jason Richard Lofthouse, 15FN939X.

6 MS. SCHIFALACQUA: Good morning, your Honor. Barbara
7 Schifalacqua (indiscernible).

8 THE COURT: Let me, if you can, um, let me ask my bailiff to go
9 pull-- is it Mr. Draskovich or Mr. Schneider or both?

10 MS. KOLLINS: Both.

11 MS. SCHIFALACQUA: Both.

12 THE COURT: If you can grab the defense attorneys, then we'll see
13 where we are.

14 (Pause in proceedings.)

15 THE COURT: Good morning, Mr. Draskovich, Mr. Schneider.

16 UNIDENTIFIED SPEAKER: Good morning.

17 UNIDENTIFIED SPEAKER: (Indiscernible).

18 THE COURT: This is on State of Nevada versus Jason Richard
19 Lofthouse, 15FN939X.

20 Just wanna take care of a couple housekeeping matters before we
21 go forward on this matter. I'm in receipt of an Amended Criminal Complaint
22 this morning.

23 Mr. Draskovich, Schneider, have you received that as well?

24 MR. DRASKOVICH: Uh, yes, we just received a copy of it.

25 THE COURT: All right. So I'm gonna go ahead and allow for its

1 filing at this time and reserve any objections that you may have to it down the
2 road at any point if the preliminary hearing goes forward or after you consult
3 with, um, the witnesses this morning.

4 UNIDENTIFIED SPEAKER: And, your Honor --

5 THE COURT: Yeah, sure.

6 MS. SCHIFALACQUA: -- I appreciate it. (Indiscernible) as to
7 regards to Count 4 so that interlineation, Count 4, line 14, (indiscernible) all the
8 copies I changed it -- instead of -- if it's described as a sexual conduct as you
9 can see (indiscernible) --

10 THE COURT: All right. Looks like you interlineated sexual
11 intercourse and wrote in cunnilingus; is that correct?

12 MS. SCHIFALACQUA: (Indiscernible).

13 THE COURT: All right.

14 MS. SCHIFALACQUA: (Indiscernible) change on all the copies.

15 MR. DRASKOVICH: And it appears the State is trying to tease out
16 multiple counts of sexual conduct between certain employees for the same
17 conduct or the same course of conduct that occurred on the same day so we
18 are going to object --

19 THE COURT: Okay.

20 MR. DRASKOVICH: -- (indiscernible) we have the State
21 (indiscernible).

22 THE COURT: Okay. All right. So we'll certainly take up that
23 argument and see if the State meets their burden regarding how it's pled.

24 Currently on -- according to the Amended Criminal Complaint we
25 have, um, we have 15 counts in total.

1 All right. Um, the State has indicated that they're prepared to go
2 forward this morning.

3 Mr. Draskovich, is the defense ready as well?

4 MR. DRASKOVICH: We are prepared to go forward as well.

5 THE COURT: All right. No other discovery issues or no other
6 matters? Okay.

7 MS. SCHIFALACQUA: (Indiscernible) the last time (indiscernible)
8 the State -- any witnesses that we call today -- yesterday I was in receipt of
9 transcribed -- a transcription of certain statements. I provided all to the
10 (indiscernible) that I obtained yesterday to defense counsel this morning.

11 THE COURT: Okay. Perfect. And as far as the preliminary
12 hearing goes, um, any audio-visual equipment needed this morning?

13 UNIDENTIFIED SPEAKER: No.

14 THE COURT: Okay. All right. Perfect.

15 Um, and I know that -- so -- so I signed and granted the media
16 request regarding this preliminary hearing. Is your -- is your alleged victim still a
17 minor?

18 UNIDENTIFIED SPEAKER: Yes, she is, judge.

19 THE COURT: Okay.

20 MS. SCHIFALACQUA: At this time obviously in terms of statutes
21 I'm gonna ask that the media be (indiscernible), um, the courtroom cleared.
22 Um, there is another reason why (indiscernible). The main victim in this case is
23 a minor child, she is only 17 years old. You can imagine that she's
24 (indiscernible) to be able to come forward and testify here today but more
25 importantly she still has another year of high school (indiscernible). This has

1 been all over the media. She goes to that same school. She will still attend the
2 same school, and so for those parts it is obviously -- we're not gonna want
3 specifically cameras in there.

4 If your Honor is inclined to let any person stay and not have the
5 courtroom cleared when a minor is testifying, um, you know, I at a minimum
6 ask to make sure that there is zero cameras that are allowed to be up at all,
7 that no one (indiscernible) her voice, nothing, which they're not allowed
8 anyway, but that it's not even capable that they record her in any way.

9 THE COURT: Just so that I know that we're doing the least
10 restrictive access -- is that right, the least restrictive means of access possible,
11 you're -- the rules that you're citing would simply be for her portion of the
12 testimony that the media would be allowed full access with cameras and
13 everything for any remaining part of the preliminary hearing?

14 MS. SCHIFALACQUA: We may potentially have a couple of
15 witnesses we will call, as I indicated, up to three witnesses potentially, and the
16 adults we have no objection to. Obviously our concern is the minor child.

17 THE COURT: Okay. And she, um -- is she gonna be testifying on
18 her own this morning?

19 UNIDENTIFIED SPEAKER: Yes.

20 THE COURT: Okay. All right. So let me take that issue under
21 advisement and for members of the media we'll make sure that we have some
22 clear direction on -- on going forward on this, um, um, and, State, if you
23 wouldn't mind, you know, I know that the statute regarding the, um, the
24 motion or the request to clear the courtroom regarding sexual assault cases
25 involving minors, but if you could get me the specific rule for -- that affects the

1 media as well and what grammar that they may have I'd appreciate that during
2 the break.

3 And then, um, we'll get going as soon possible. I only have a few
4 more cases from the morning calendar to wrap up so hopefully we'll get going
5 on this preliminary hearing by -- by, let's say, 9:35?

6 MS. SCHIFALACQUA: Okay. And, your Honor, for the record --

7 THE COURT: Mm-hmm?

8 MS. SCHIFALACQUA: -- pursuant to N.R.S. 171.204,
9 (indiscernible), um, even specific to sexual assault, (indiscernible) let them know
10 that there's one that covers that, but it does indicated that a magistrate may
11 (indiscernible) anything obviously (indiscernible) continue to go to school, et
12 cetera, (indiscernible) in this case, judge, and the nature of those things she's
13 gonna have to talk about (indiscernible), but (indiscernible) any party, actually
14 (indiscernible) anyone from the courtroom but for (indiscernible) person, an that
15 includes (indiscernible) Nevada counsel, defendant, prosecutors, et cetera. So
16 that's under N.R.S. 171.204.

17 MR. DRASKOVICH: And just so we make the record clear this is
18 not a sexual assault case.

19 We actually take issue with this girl being referred to as a victim.
20 She's reached the age of consent; however, we do concur with the State's
21 request in that we would like to have the cameras excluded during her
22 testimony but not for the purposes or for reasons the State has claimed she's --
23 she's some victim of some sexual abuse. She's not.

24 THE COURT: Okay. All right. Just -- simply based on her status
25 as a minor?

1 MR. DRASKOVICH: As a student, yes.

2 THE COURT: Okay. All right. So we'll go ahead and make sure
3 we, um, take care of that during the break so we can go forward without any
4 interruptions.

5 Then court'll be in recess and let's plan on getting going at 9:35
6 then. Court's in recess. Thank you.

7 THE BAILIFF: Court is in recess.

8 (Recess taken.)

9 (Whereupon other matters were heard in open court.)

10 THE COURT: Okay. That takes us to this is the time, day, and
11 place set for the preliminary hearing in the matter of the State of Nevada versus
12 Jason Richard Lofthouse, 15FN939X.

13 We'll have Mr. Lofthouse come down and sit next to his counsels.
14 And just so, um, the other members or individuals here in the courtroom can at
15 least have a heads-up, State, at what point do you intend on calling your minor
16 victim? Is it first up or last?

17 UNIDENTIFIED SPEAKER: (Indiscernible).

18 MR. DRASKOVICH: And, judge, she's not a victim.

19 THE COURT: Okay. Alleged victim.

20 MR. DRASKOVICH: Well, it's not even that --

21 UNIDENTIFIED SPEAKER: (Indiscernible) the named victim. There's
22 no (indiscernible) --

23 MR. DRASKOVICH: He's charged with (indiscernible) contact under
24 N.R.S. 201 540. That's crimes as against decency and moral conduct. It's not
25 crimes against a person so it's --

1 THE COURT: All right. Okay. So -- so the minor individual
2 involved in this case will be first up?

3 UNIDENTIFIED SPEAKER: Yes. The named victim.

4 THE COURT: Okay. All right. So --

5 UNIDENTIFIED SPEAKER: She's not a victim by statute.

6 THE COURT: So what we'll do is, um --

7 UNIDENTIFIED SPEAKER: (Indiscernible).

8 THE COURT: So, uh, the State having made the request to have
9 the courtroom cleared for the testimony of the minor, there being no objection
10 by the defense, we'll have the courtroom cleared once the first witness is called
11 and then our bailiff will come get everyone and let everyone know when they
12 can come back in then. All right?

13 MR. DRASKOVICH: Thank you.

14 UNIDENTIFIED SPEAKER: Thank you.

15 THE COURT: Okay. If there aren't any other preliminary matters
16 then, State, please call your first witness.

17 UNIDENTIFIED SPEAKER: Your Honor, the State calls Michelle
18 Torres.

19 THE COURT: All right. All right, then, um, uh, bailiff, I guess
20 Officer McDowell, I guess we'll have to clear the courtroom since that's the
21 (indiscernible) --

22 THE BAILIFF: May I have everybody leave the courtroom, please.

23 MR. GARDNER: Your Honor, is it all right if we stay. I --

24 THE COURT: Yeah, yeah, no, you can.

25 MR. GARDNER: -- I'm just thinking of my clients. They have

1 (indiscernible) --

2 THE COURT: Yeah, no, sure.

3 Okay. Go ahead and make your way up around here to the
4 witness stand, please. Remain standing if you can, raise your right hand for our
5 bailiff.

6

7

MICHELLE TORRES,

8

having been first duly sworn, was examined

9

and testified as follows:

10

11 THE COURT: Go ahead and say your name and spell your last
12 name into that microphone, please.

13

THE WITNESS: Michelle Torres, T-o-r-r-e-s.

14

15 THE COURT: Okay. Thanks. And then, Michelle, uh, if you can,
16 just to let you know so everything needs to be recorded here so try to talk as
17 loudly and clearly as you can into that microphone right in front of you. Okay?
Okay?

18

THE WITNESS: (Inaudible.)

19

THE COURT: I need it a little bit louder than that. Okay?

20

THE WITNESS: Okay.

21

THE COURT: Okay. Perfect.

22

All right, Ms. Schifalacqua.

23

MS. SCHIFALACQUA: Thank your Honor.

24

* * *

25

* * *

DIRECT EXAMINATION

BY MS. SCHIFALACQUA:

Q. Michelle, how old are you?

A. Seventeen.

Q. What's your date of birth?

A. October 22nd, 1987.

Q. Okay. And, as the judge says, I know these microphones move all the way up, but your voice is pretty quiet and I'm gonna need you to speak as loud as you can. Is that all right?

A. Okay.

Q. Um, you said that you're 17 years old.

Where do you go to school?

A. Rancho High School.

Q. Okay. And how long have you gone to Rancho High School?

A. Three years.

Q. All three years?

A. Yes.

Q. So it's obviously July right now. Is it fair to say you're on a summer break?

A. Yes.

Q. What year were you in school, this prior school year?

A. Um, 2014-2015.

Q. Okay. And what were you? Freshman? Sophomore?

A. A junior.

Q. You were a junior. Okay.

1 And so is it -- you have one more year to go, senior year still?

2 A. (No audible response).

3 Q. Is that -- I'm sorry?

4 A. Yes.

5 Q. Okay. With regard to your junior year, um, you went the entire
6 year at Rancho; is that right?

7 A. Yes.

8 Q. And do you know a person by the name of Jason Lofthouse?

9 A. Yes.

10 Q. Do you see Jason Lofthouse in the courtroom today?

11 A. Yes.

12 Q. Can you please point to him --

13 MR. DRASKOVICH: We'll stipulate to I.D. for the purpose of
14 preliminary hearing.

15 MS. SCHIFALACQUA: That's fine, judge.

16 BY MS. SCHIFALACQUA:

17 Q. Can you please point to him identify something that he's wearing
18 here today in court?

19 A. Wearing blue.

20 Q. I couldn't hear you, Michelle.

21 A. He's wearing blue.

22 Q. And can you please point to where he's seated.

23 MR. DRASKOVICH: We'd object as to relevance. We've stipulated
24 to I.D. for the purpose of preliminary hearing.

25 MS. SCHIFALACQUA: Judge, I can obviously prove up my case. I

1 appreciate the stipulation but I can have her identify for purpose of later on,
2 whether or not he's observing her, et cetera.

3 THE COURT: Sure. I'll -- I'll accept the stipulation, um, but
4 overrule the objection so you can go ahead and ask your question.

5 BY MS. SCHIFALACQUA:

6 Q. Can you please point to Mr. Lofthouse and identify what he's
7 wearing today in court?

8 A. He's wearing blue.

9 MS. SCHIFALACQUA: And, your Honor, let the record reflect the
10 witness has identified Jason Lofthouse.

11 THE COURT: Did you -- Michelle, did you point over there who --
12 where is he in blue?

13 THE WITNESS: In the middle between....

14 THE COURT: I need you to speak up a little bit more for me,
15 Michelle. What did you say?

16 THE WITNESS: In the middle.

17 MS. KOLLINS: She said he was in the middle.

18 THE COURT: All right. The record will reflect identification of the
19 defendant.

20 BY MS. SCHIFALACQUA:

21 Q. And how did you know Jason Lofthouse?

22 A. He was my A.P. U.S. history teacher.

23 Q. And I can barely hear you, Michelle, so if you have to shout that's
24 what I'm gonna need you to do. Okay?

25 A. He was my A.P. U.S. history teacher.

1 Q. Okay. For your junior year of high school at Rancho High School
2 he was your A.P. U.S. history teacher?

3 A. Yes.

4 Q. Do you remember what, um, hour of the school day you had his
5 classes?

6 A. Um, fourth period.

7 Q. Okay. And so you first met him at the beginning of the school
8 year?

9 A. Correct.

10 Q. Okay. Does Rancho have a school year where you have the same
11 classes the entire year or do you have different classes for each semester?

12 A. Same classes.

13 Q. Okay. You had first met the defendant Mr. Lofthouse at, what,
14 August of 2014; is that about right?

15 A. Yes.

16 Q. Okay. Now and you stayed in his class throughout 'til June of
17 2015; is that right?

18 A. Yes.

19 Q. When you first met him how old were you?

20 A. Sixteen.

21 Q. Okay. And then when you still had his class throughout the end of
22 the school year (indiscernible) now you're 17?

23 A. Yes.

24 Q. I wanna talk to you about, um, your contact with Mr. Lofthouse.
25 During that first semester, um, how would you describe your

1 relationship with him?

2 A. (Indiscernible) beginner teacher-student relationship.

3 Q. Okay. And did there come a time where that kinda changed?

4 A. Yes.

5 Q. Okay. I wanna talk to you again -- was the student-teacher

6 relationship the same the whole first semester?

7 A. Um, yes.

8 Q. Okay. So the first semester of your junior year that relationship

9 was like a teacher-student relationship?

10 A. Yes.

11 Q. What time frame did it start to change?

12 A. Um, second semester.

13 Q. Your second semester?

14 So did you have a winter break?

15 A. Yes.

16 Q. When you came back from winter break was Mr. Lofthouse your

17 teacher?

18 A. Yes.

19 Q. Was there ever a time that he was out on leave?

20 A. Yes.

21 Q. Describe that for the court, please.

22 A. Um, he was out 'cause he had -- had a child recently.

23 Q. I couldn't hear you, Michelle.

24 A. Recently had a child.

25 Q. (Indiscernible) --

1 A. Had recently had a child.

2 Q. Okay.

3 THE COURT: Thank you, Michelle. There you go.

4 BY MS. SCHIFALACQUA:

5 Q. And that -- did he have to do that -- and I'm sorry, I know you're
6 soft spoken -- if -- permission, your Honor -- if I can move this up as far as I can

7 --

8 THE COURT: Yeah.

9 BY MS. SCHIFALACQUA:

10 Q. -- but we're gonna have to have you close to the mike. Okay?

11 A. Okay.

12 Q. Okay. And if you need to lean forward please do so.

13 A. Okay.

14 Q. Um, you said he had had a child so did you have a substitute
15 teacher during that time?

16 A. Yes.

17 Q. Was that January of 2015?

18 A. I think so.

19 Q. Okay. Um, but then did Mr. Lofthouse come back to be your
20 teacher again?

21 A. Yes.

22 Q. And what time frame was that?

23 A. Some time after winter break.

24 Q. Um, did you ever have contact -- and I wanna specifically talk about
25 that winter break time frame -- did you ever have contact, uh, with Mr.

1 Lofthouse through any kind of social media?

2 A. No, not during winter break.

3 Q. What was that, Michelle?

4 A. Not during winter break.

5 Q. Not during winter break.

6 Was there some time after winter break that you did?

7 A. Um, yeah.

8 Q. Describe that, please, for the court.

9 A. Um, I started following him on Twitter.

10 Q. Okay? And did you ever send messages to him?

11 A. Yes.

12 Q. What kind of messages?

13 A. What do you mean?

14 Q. When you first followed him on Twitter what kind of messages did

15 you send to Mr. Lofthouse?

16 A. Um, like tweeted --

17 Q. Sure.

18 A. -- him?

19 Q. What kind? Explain that for the court, please.

20 A. Um, I said come back, um, from his absence since we didn't enjoy

21 the substitute teacher.

22 Q. So it's fair to say you didn't like the substitute teacher when Mr.

23 Lofthouse was gone?

24 A. No.

25 Q. Was that just you yourself or were there other friends of yours in

1 classes (indiscernible)?
2 A. There were other people.
3 Q. Okay. Was that one of the first times that you tweeted a message
4 to Mr. Lofthouse you wanted him to come back to school?
5 A. A tweet, yes.
6 Q. And, um, did you have time where you started talking to him more
7 than just with some friends?
8 A. Yes.
9 Q. Describe that for the court, please.
10 A. Um, we began direct messaging.
11 Q. Okay. Direct messaging?
12 For those of us who are a little bit older can you explain what direct
13 messaging means?
14 A. It's direct messaging.
15 Q. So would you send a message to someone personally?
16 A. Yes.
17 Q. And did you do that with Mr. Lofthouse?
18 A. Yes.
19 Q. Would he do that to you back?
20 A. Uh, yes.
21 Q. Okay. What was the time frame on this when the direct
22 messaging began?
23 A. Um, probably like March.
24 Q. March of 2015?
25 A. Yes.

1 Q. Okay. Was Mr. Lofthouse back at school teaching during that
2 time?
3 A. Yes.
4 Q. Okay. And did there come a point that your relationship changed
5 from a teacher-student relationship to something else?
6 A. Yes.
7 Q. Can you describe for the court how that progressed?
8 A. Um, we began direct messaging on a daily basis.
9 Q. Okay. So you would talk to Mr. Lofthouse or direct message to
10 Mr. Lofthouse every day?
11 A. Um, yeah.
12 Q. Is that a yes?
13 A. Yes.
14 Q. What types of things would you tell him about?
15 A. Um, anything.
16 Q. I can't hear you, Michelle, I'm sorry.
17 A. Everything.
18 Q. Everything? Like what?
19 A. Like school stuff.
20 Q. Okay. Did you ever talk about stuff that wasn't about school?
21 A. Yes.
22 Q. Like what?
23 A. Um, like music.
24 Q. Music? Okay. Anything else?
25 A. Um, yeah.

1 Q. Would you describe that for the court.
2 A. Um, like our.... I don't know.
3 Q. You don't know? Okay.
4 When you would talk to him -- let me ask it this way. When you
5 would talk to him on a daily basis did you tell him your -- like how you're feeling
6 on that -- every day?
7 A. I suppose.
8 Q. You suppose or you did?
9 A. I suppose.
10 Q. Okay. Did he tell you what was going on in his day?
11 A. I would talk about our days.
12 Q. Okay. So you would talk about your days and you said you would
13 talk about music.
14 Um, how old is he?
15 A. Thirty-two.
16 Q. Thirty-two years old?
17 And is he married?
18 A. Yes.
19 Q. Does he have any kids?
20 A. Yes.
21 Q. How many?
22 A. Three.
23 Q. Um, did you ever see pictures of them?
24 A. Yes. On Twitter.
25 Q. On Twitter?

1 A. Mm-hmm.

2 Q. Now you started talking daily, you said that was about March of
3 2015; is that right?

4 A. About.

5 Q. Okay. Um, did it -- you continue to talk daily with Mr. Lofthouse
6 through April of 2015?

7 A. Yes.

8 Q. What about May?

9 A. Yes.

10 Q. Okay. Did there come a point, um, where you started to like Mr.
11 Lofthouse different than just liking a teacher?

12 A. Yes.

13 Q. Describe that for the court.

14 A. Describe....

15 Q. Yeah. How did it change?

16 A. Um, I began to like him.

17 Q. Okay. Did he ever tell you he began to like you?

18 A. Yes.

19 Q. How did he do that?

20 A. Uh, that he was attracted to me.

21 Q. Okay. Did he tell you anything else?

22 A. Like?

23 Q. Uh, like your personality --

24 A. Yes.

25 Q. -- did he tell you anything about that?

1 A. Yes.

2 Q. What would he say?

3 A. That I was funny.

4 Q. Okay. Would he tell you anything about your looks?

5 A. Yes.

6 Q. What would he say?

7 A. I was pretty.

8 Q. Okay. What time frame was it when you told Mr. Lofthouse that

9 he told you that you guys liked each other? When was that?

10 A. I believe late April.

11 Q. April of 2015?

12 A. Yes.

13 Q. Okay. Were you still in his class in fourth period during that time?

14 A. Yes.

15 Q. Okay. Did you end up getting -- did you have Mr. Lofthouse's

16 phone number?

17 A. Yes.

18 Q. In your phone?

19 A. Yes.

20 Q. Was it saved?

21 A. Yes.

22 Q. What was it saved under?

23 A. An emoji.

24 Q. An emoji? What kind of emoji was it saved under?

25 A. A smiley face.

1 Q. Okay. Did you ever have it saved under his name?
2 A. Yeah.
3 Q. What did you have -- what name did you have?
4 A. Jason.
5 Q. Okay. And then at what point did you change it to the emoji?
6 A. I don't recall.
7 Q. Was it after or before the name? Like which came first?
8 A. After.
9 Q. Okay. Why did you do that?
10 A. Um, didn't want anyone to see it.
11 Q. Didn't want anyone to see what?
12 A. His name.
13 Q. Why?
14 A. I didn't want them to find out.
15 Q. What time frame was this, do you remember?
16 A. No.
17 Q. Okay. Well, I wanna turn your attention to then that time frame
18 you said late April or May after Mr. Lofthouse told you he liked you.
19 THE COURT: Ms. Schifalacqua, I apologize. Let me, if I can, that
20 seems like a good stopping point. Let me take -- wrap up this one last case and
21 then we'll continue going on with this. Okay? Do you have it? All right.
22 So we'll take a brief recess from this preliminary hearing.
23 (Whereupon other matters were heard in open court.)
24 THE COURT: We'll get back on the record. Um, the continuation
25 of the preliminary hearing in the State of Nevada versus Richard -- I'm sorry -- in

1 the matter of the State of Nevada versus Jason Richard Lofthouse, 15FN939X.

2 We took a brief recess from this preliminary hearing to wrap up
3 some remaining cases -- or a remaining case that I had from an earlier calendar.

4 I apologize, Ms. Schifalacqua.

5 If you can, uh, go ahead and continue with direct examination.

6 MS. SCHIFALACQUA: Thank your Honor.

7 THE COURT: Mm-hmm.

8 BY MS. SCHIFALACQUA:

9 Q. You talked about having, um, the defendant Mr. Lofthouse's phone
10 number saved in your phone with an emoji. Do you remember that?

11 A. Yes.

12 Q. Okay. And did you text message Mr. Lofthouse?

13 A. Yes.

14 Q. Did he text message you?

15 A. yes.

16 Q. How often?

17 A. Often.

18 Q. Was it every day?

19 A. Pretty much.

20 Q. Okay. I wanna turn your attention in to May of 2015.

21 And did there come a time where your relationship with Mr.
22 Lofthouse started to get physical?

23 A. Yes.

24 Q. Describe the first time it got physical for you.

25 A. We kissed.

1 Q. Where were you when you kissed?
2 A. In his classroom.
3 Q. At Rancho High School?
4 A. Correct.
5 Q. And was the door open to your classroom?
6 A. No.
7 Q. Was it locked?
8 A. Probably.
9 Q. Okay. And, um, did you guys kiss each other at the same time or
10 how did it happen?
11 A. Same time.
12 Q. Okay. And which side of the classroom were you in? Describe it
13 for the court, please.
14 A. In the right corner.
15 Q. Why were you in the right corner?
16 A. To not be seen.
17 Q. What was that?
18 A. To not be seen.
19 Q. To not be seen.
20 Where -- so you kissed that day. Did you do anything else in May
21 during that (indiscernible)?
22 A. Yes.
23 Q. Describe it for the court, please.
24 A. It began to get more physical.
25 Q. So at the times that you would on different days have physical

1 contact with Mr. Lofthouse in the classroom?

2 A. Yes.

3 Q. How many times?

4 A. Couple.

5 Q. Was that -- did that include kissing?

6 A. Yes.

7 Q. Did it ever include anything else?

8 A. Yes.

9 Q. Describe what else did it include?

10 A. I gave him oral.

11 Q. What do you mean when you say you gave him oral?

12 A. Um, mouth to penis.

13 Q. So let's go back. I want you to try and describe where were you

14 when this first happened?

15 A. What first happened?

16 Q. When you gave him oral.

17 A. In the classroom.

18 Q. Okay. Was it Mr. Lofthouse's classroom?

19 A. Yes.

20 Q. Was anyone else in the classroom?

21 A. No.

22 Q. Was the door shut?

23 A. Yes.

24 Q. Was it locked?

25 A. Probably.

1 Q. Were you outside the view of the window and the door?
2 A. Yes.
3 Q. Um, and before you gave him oral sex was -- did you kiss him?
4 A. Yes.
5 Q. Did he kiss you?
6 A. Yes.
7 Q. Did you guys touch each other?
8 A. Yes.
9 Q. Describe that for the court, please, (indiscernible).
10 A. We kissed each other and touched each other, exactly like you said.
11 Q. Okay. What parts of your body did he touch what parts of his
12 body?
13 A. Um, all over.
14 Q. Okay. So did it include your breast area?
15 A. Yes.
16 Q. And your vagina?
17 A. I don't know.
18 Q. No? Okay. What about your (indiscernible)?
19 A. Yes.
20 Q. Um, and what about your hands? Did you touch his chest area?
21 A. Yes.
22 Q. Um, his genital area?
23 A. Yes.
24 Q. Um, his (indiscernible)?
25 A. I don't know.

1 Q. Okay. Um, when you touched his genital area was there -- did he
2 have clothes on at first?

3 A. Yes.

4 Q. Okay. And did there come a point in time --

5 MR. DRASKOVICH: Objection. Leading. I think....

6 THE COURT: You wanna restate that?

7 MS. SCHIFALACQUA: I said did he have clothes on at first so
8 (indiscernible) --

9 MR. DRASKOVICH: Every question suggests the answer.

10 MS. SCHIFALACQUA: That's not suggesting.

11 THE COURT: I'll go ahead and sustain for now. I'll allow you to --
12 to establish little bit more foundation if need be. I understand it's, um....

13 MS. SCHIFALACQUA: Sure.

14 BY MS. SCHIFALACQUA:

15 Q. Did he have clothes on?

16 THE COURT: (Indiscernible) you go.

17 THE WITNESS: Yes.

18 BY MS. SCHIFALACQUA:

19 Q. Okay. Did there come a point in time where you didn't have
20 clothes on any more?

21 A. Um, pulled down his pants.

22 Q. Okay. So --

23 THE COURT: I'm sorry, Michelle, did you only his pants?

24 THE WITNESS: He pulled off his -- he pulled down his pants.

25 THE COURT: He pulled down his pants. Okay.

1 BY MS. SCHIFALACQUA:
2 Q. So his pants were down.
3 Was he wearing underwear?
4 A. Yeah.
5 Q. Is that a yes, Michelle?
6 A. Yes.
7 Q. Um, and at some point you indicated that his penis was exposed so
8 did his underwear stay on or off?
9 A. Came down I guess.
10 Q. Pulled down, is that what you said?
11 A. Pulled down I guess.
12 Q. Okay. And at some point his penis was -- was it outside of --
13 A. Yes.
14 Q. -- his underwear? Yes? Okay.
15 And then you indicated you gave him oral sex and your mouth was
16 on Mr. Lofthouse's penis; is that right?
17 A. Yes.
18 Q. 'Til when?
19 A. Well, what?
20 Q. 'Til when? How long?
21 A. I don't -- couple minutes.
22 Q. Okay. Why did it stop?
23 MR. DRASKOVICH: Objection. Vague. Why did it stop? It's
24 assuming facts not in evidence, there's a (indiscernible) for stopping.
25 THE COURT: Um, well, I think -- her last answer was that it --

1 MS. SCHIFALACQUA: (Indiscernible) --

2 THE COURT: But it did stop so I think -- I don't think it assumes
3 facts not in evidence because her answer -- previous answer indicated that it
4 stopped so I'm gonna overrule it and allow it. You can ask it the same way or
5 you can rephrase it, however you want --

6 MS. SCHIFALACQUA: (Indiscernible) clarify it (indiscernible) .

7 THE COURT: Okay.

8 BY MS. SCHIFALACQUA:

9 Q. Did at some point your mouth stop being on Mr. Lofthouse's penis?

10 A. Yes.

11 Q. How did that happen?

12 A. It stopped.

13 Q. Okay. Did he ejaculate?

14 A. Yes.

15 Q. Where?

16 A. In my mouth.

17 Q. Thereafter is that the time frame that your mouth -- that you
18 removed your mouth from Mr. Lofthouse's penis?

19 A. Yes.

20 Q. After that occurred what did you do next?

21 A. (Indiscernible).

22 Q. Did you say (indiscernible)?

23 A. Probably.

24 Q. Okay. Did Mr. Lofthouse keep his clothes down or did he pull them
25 up?

1 A. Pulled 'em up.

2 Q. How long did you stay with him in the classroom?

3 A. I don't recall.

4 Q. And that day did you continue to have communications with Mr.

5 Lofthouse?

6 A. Yes.

7 Q. Okay. That was in early May; is that right?

8 A. I don't recall.

9 Q. Okay. Did there come a time where --

10 THE COURT: Ms. Schifalacqua, I'm sorry to interrupt, so we have

11 our court recorder here. I think she's indicating that she picks you up much

12 better if you stand behind the table where that microphone is right there or

13 even move down.

14 MS. SCHIFALACQUA: (Indiscernible).

15 THE COURT: Yeah.

16 There you go.

17 MS. SCHIFALACQUA: Court's brief indulgence.

18 THE COURT: I guess in a few weeks we won't need this -- we

19 won't have this problem, right, they all need to be transcribed; is that right?

20 MS. SCHIFALACQUA: All set.

21 THE COURT: Okay. All right. Much better.

22 And, then, Michelle, you, too, if you can just speak up a little bit

23 more for us. Okay. Thanks.

24 MS. SCHIFALACQUA:

25 Q. Uh, I wanna direct your attention to May 20th of 2015.

1 Did you have occasion to go to a hotel with Mr. Lofthouse?
2 A. Yes.
3 Q. What hotel was that?
4 A. Aliante.
5 Q. What?
6 A. Aliante.
7 Q. Okay. I gonna need you to speak all the way into that mike,
8 Michelle.
9 A. Aliante.
10 Q. Okay. How did you -- was there a plan to go to Aliante?
11 A. Yes.
12 Q. Was that plan with Mr. Lofthouse?
13 A. Yes.
14 Q. And describe the plan for the court, please.
15 A. He would pick me up and we would go.
16 Q. Okay. Where was Mr. Lofthouse gonna pick you up?
17 A. He picked me up on Ranch House Street.
18 Q. Okay. And Ranch House Street, where is that in relation to your
19 home?
20 A. Close; nearby.
21 Q. Okay. Um, what time did he pick you up on May 20th of 2015?
22 A. Around 7:15.
23 Q. In the morning?
24 A. In the morning.
25 Q. Did you have school that day?

1 A. Yes.

2 Q. Did you go to school that day?

3 A. No.

4 Q. How did you normally get to school, Michelle?

5 A. My mom would drive me.

6 Q. And did your -- your mom obviously didn't drive you that day; is

7 that right?

8 A. No.

9 Q. Okay. What did you tell her?

10 A. I was gonna get a ride --

11 Q. A ride --

12 A. -- from a friend.

13 Q. From a friend to where?

14 A. To school.

15 Q. Okay. Did you ever tell your mom you were gonna go with Mr.

16 Lofthouse anywhere?

17 A. No.

18 Q. Did you ever get a permission to not go to school that day?

19 A. No.

20 Q. And to go with Mr. Lofthouse to Aliante (indiscernible)?

21 MR. DRASKOVICH: Objection. Relevant. Her mother's permission

22 as to whether or not she would be with this gentleman is irrelevant. There's no

23 element in this crime.

24 MS. SCHIFALACQUA: Absolutely there's no (indiscernible) of a

25 crime. It's called first-degree kidnapping and it's pursuant to statute, um, that

1 obviously he took her, she went with him without permission of the legal
2 guardian and/or parent --

3 MR. DRASKOVICH: I would --

4 MS. SCHIFALACQUA: -- and so it's directly relevant.

5 MR. DRASKOVICH: -- I would -- I would ask the State to point to
6 which element the statute they're referring to concerning (indiscernible).

7 MS. SCHIFALACQUA: Sure. Court's indulgence.

8 N.R.S. 200.310, um, a person who leads, takes, entices, or carries
9 away or detains any minor with the intent to hold the minor to either unlawful
10 surface or perpetrate upon the person of a minor any unlawful act is guilty of
11 kidnapping; however, it is with -- excuse me -- uh, the -- away from the minor
12 from his or her parents, guardians, or any other person having the lawful
13 custody of the minor.

14 MR. DRASKOVICH: Once again there is no element of permission
15 of parents.

16 MS. SCHIFALACQUA: Right.

17 MR. DRASKOVICH: Again, too, this case does not involve -- this is
18 not the victim. This man is charged with sexual conduct between certain
19 employees or volunteers to school and pupil. It's charged under N.R.S. 201
20 540.

21 You know, as you know, your Honor, our statutes are broken down
22 (indiscernible) --

23 MS. SCHIFALACQUA: Judge, am I gonna be able to finish my
24 direct examination --

25 THE COURT: Right, right. Hold on a second, Ms. Schifalacqua.

1 Let me -- let me let Mr. Draskovich finish his objection. It sounds like an issue
2 that we're gonna have to flush out here anyways. Go ahead, Mr. Draskovich.

3 MR. DRASKOVICH: As your Honor's well aware the crimes in this
4 state, the Nevada Revised Statutes are broken up into categories. There's
5 transient public justice, crimes against public sovereignty, crimes against the
6 person, and there's also a section concerning crimes against public decency and
7 good morals.

8 This man is charged for having unlawful contact with a pupil and
9 that's charged under N.R.S. 201 540. Once again that's not crimes against the
10 person. That's crimes against the public decency.

11 And the State's trying to make a victim out of a nonvictim --

12 THE COURT: And, Mr. Draskovich, I'm gonna let you get into that
13 part of your argument in your case or in any other objection but at this point I'm
14 gonna overrule the objection. I find it relevant as to Count 3. In Count 3 it's
15 clearly aside from the arguments that you're making right now, is she's the
16 named victim in Count 3, and that is to a person so I'm gonna go ahead and
17 allow that at this point but certainly allow you to have a continuing objection
18 throughout regarding that.

19 Okay. Ms. Schifalacqua.

20 MS. SCHIFALACQUA: Thank you, your Honor.

21 BY MS. SCHIFALACQUA:

22 Q. So it's clear you didn't have permission from either of your parents
23 to go with Mr. Lofthouse on May 20th of 2015; is that right?

24 A. Correct.

25 Q. Okay. When you told your mom that you were getting a ride from

1 a friend to school on May 20th you didn't get that ride from a friend; is that
2 right?

3 A. No.

4 Q. Okay. Um, who picked you up?

5 A. Mr. Lofthouse.

6 Q. Can you describe what he was driving?

7 Presumably he was driving a car; is that right?

8 A. (Indiscernible).

9 Q. Okay. Describe it for me, please.

10 A. Blue, four-car -- four-door car.

11 Q. A blue four-door car.

12 Do you know about, uh, make of the car?

13 A. (Indiscernible).

14 Q. What?

15 A. Toyota.

16 Q. It was a Toyota. Okay.

17 When you -- you indicated what street did he pick you up by?

18 A. Rancho.

19 Q. Okay. And was anybody else in the car with Mr. Lofthouse at that
20 time?

21 A. No.

22 Q. Where did you guys go?

23 A. Aliante --

24 Q. Okay.

25 A. -- Casino.

1 Q. What'd you do when you got to Aliante?
2 A. We went to the room.
3 Q. Okay. Did you check into the room with Mr. Lofthouse?
4 A. No.
5 Q. How'd you get in if you didn't check in?
6 A. He already had a keys.
7 Q. Okay. Mr. Lofthouse had already had the keys.
8 Describe the room for the court, please.
9 A. Um, two bed, normal -- basic room.
10 Q. Basic room?
11 Did it have a window?
12 A. Yes.
13 Q. And you said two beds.
14 Did it have a TV?
15 A. Yes.
16 Q. Let me ask you this, Michelle. Before you went to the room, um,
17 did Mr. Lofthouse ever send you a picture of the room?
18 A. Yes.
19 Q. How?
20 A. (Indiscernible) message, text message.
21 Q. Okay.
22 MS. SCHIFALACQUA: And if I may approach with State's
23 proposed Exhibit 1 which I've previously shown to counsel?
24 THE COURT: Sure. Yeah, you may approach.
25 MS. SCHIFALACQUA: Thank you.

1 BY MS. SCHIFALACQUA:

2 Q. Michelle, I've been showing you what's been marked as State's
3 proposed Exhibit 1. Do you recognize what's depicted in that photograph?

4 A. Yes.

5 Q. What is it?

6 A. The room.

7 Q. What room?

8 A. The one he got at Aliante.

9 Q. Okay. Is that a fair and accurate copy of the photograph the
10 defendant text messaged you of the room at Aliante?

11 A. Yes.

12 MS. SCHIFALACQUA: I move for admission of State's Exhibit 1.

13 THE COURT: Any objection?

14 MR. DRASKOVICH: (Indiscernible).

15 THE COURT: All right. State's proposed Exhibit 1 will be
16 admitted.

17 (State's proposed Exhibit 1 admitted.)

18 BY MS. SCHIFALACQUA:

19 Q. When you got to the room what did you do?

20 A. We had sex.

21 Q. Okay. Describe for me where you were when you had sex.

22 A. Um, the bed closest to the window.

23 Q. What kind of sex did you have?

24 A. Um, first oral sex and then penis in vagina.

25 Q. Let me go back and take first oral sex.

1 Did you perform oral sex on Mr. Lofthouse?

2 A. Yes.

3 Q. And so the record is clear was that -- describe what you mean by

4 that.

5 A. Um, penis in mouth.

6 Q. Okay. So his penis was in your mouth?

7 A. Yes.

8 Q. Is that right?

9 Did he ejaculate?

10 A. Yes.

11 Q. Okay. Did Mr. Lofthouse perform oral sex on you?

12 A. Yes.

13 Q. Describe what you mean by that.

14 A. Um, mouth to vagina (indiscernible).

15 Q. Okay. And it was the defendant's mouth on your vagina; is that

16 right?

17 A. Correct.

18 Q. Okay. After that what did you do?

19 A. I think we showered.

20 Q. Did you shower together?

21 A. Yes.

22 Q. And was there any sexual contact in the shower?

23 A. No.

24 Q. After you got outta the shower what did you do?

25 A. Uh, we had sex.

1 Q. Describe that for the court, please.
2 A. Penis to vagina.
3 Q. Okay. Were you lying on the bed?
4 A. Yes.
5 Q. Which bed?
6 A. The one closest to the window.
7 Q. And, um, did Mr. Lofthouse ejaculate when you had sexual
8 intercourse on the bed?
9 A. Yes.
10 Q. Where?
11 A. My stomach.
12 Q. Okay. So at some point before ejaculation Mr. Lofthouse pulled
13 out of your vagina?
14 A. Yes.
15 Q. Um, is that the last time you had sexual intercourse?
16 A. No.
17 Q. Okay. Describe for the court what happened next.
18 A. We had sex again.
19 Q. Was it back to back or was there time in between?
20 A. There's probably time in between.
21 Q. How much time was in between?
22 A. I don't recall.
23 Q. Okay. You had sex again. Describe what type of sex you had
24 again.
25 A. Penis in vagina.

1 Q. Okay. Was it still on the same (indiscernible)?
2 A. Yes.
3 Q. And did Mr. Lofthouse ejaculate?
4 A. Um, yes.
5 Q. Where?
6 A. On my stomach.
7 Q. Okay. And what did you do after that?
8 A. Um, we talked.
9 Q. How long did you talk?
10 A. Don't recall.
11 Q. What'd you talk about?
12 A. Don't recall.
13 Q. Did you have -- did you just talk and then leave or was there
14 anything else that happened?
15 A. I don't recall.
16 Q. How many times in a total did you have sexual intercourse with Mr.
17 Lofthouse on May 20th at the Aliante? And when I say that I mean penis in
18 vagina.
19 A. About twice.
20 Q. Twice?
21 Did Mr. Lofthouse use a condom?
22 A. No.
23 THE COURT: Sorry, Ms. Schifalacqua. Sure. Let me take that
24 brief....
25 (Pause in proceedings.)

1 THE COURT: Go ahead, please.

2 MS. SCHIFALACQUA: Thank you.

3 THE COURT: Mm-hmm.

4 BY MS. SCHIFALACQUA:

5 Q. Today, Michelle, you said that you had two sexual intercours with
6 Mr. Lofthouse, two times.

7 Do you recall having an interview with the detective about this
8 case?

9 A. Yes.

10 Q. Do you remember telling him that you had sexual intercourse with
11 Mr. Lofthouse three different times?

12 A. Maybe.

13 Q. Okay. So do you not remember the third time or is --

14 A. Don't remember.

15 MR. DRASKOVICH: She didn't say she doesn't remember. She
16 said it was twice. It mischaracterizes her testimony.

17 MS. SCHIFALACQUA: Actually, if I will, your Honor --

18 THE COURT: Sure.

19 MS. SCHIFALACQUA: -- I asked her if she remembers telling me
20 three, she said maybe; so, my follow-up question is do you not remember the
21 third time or --

22 MR. DRASKOVICH: And that's assuming there is a third time and
23 she already testified today it was twice.

24 THE COURT: But I'll -- I'm gonna allow this line of questioning
25 only 'cause it -- it's either a follow-up, a legitimate follow-up, to her previous

1 answer or I believe Ms. Schifalacqua could also be bringing up a prior --

2 MS. SCHIFALACQUA: A prior --

3 THE COURT: -- consistent or inconsistent statement so I'm gonna
4 allow this line of questioning.

5 Objection overruled.

6 MS. SCHIFALACQUA: Thank you.

7 BY MS. SCHIFALACQUA:

8 Q. Michelle, you indicated sex two times; you said that you remember
9 giving an interview where, um, there were three times.

10 Can you describe (indiscernible) the different?

11 A. I don't remember.

12 Q. Okay. So you don't remember having sex a third time with Mr.
13 Lofthouse?

14 A. No.

15 Q. Okay. Do you remember telling Detective Troxil that you did have
16 sex three different times with Mr. Lofthouse?

17 A. Not really.

18 Q. How long were you at the Aliante Hotel with the defendant?

19 A. Couple hours.

20 Q. But -- well, let me go back.

21 What time did you leave?

22 A. The hotel?

23 Q. Yes, the hotel.

24 A. Around two.

25 Q. 2 p.m.?

1 A. Yeah.

2 Q. And he picked you up -- it was 7 a.m.?

3 A. Uh, past 7.

4 Q. Okay. What'd you do after 2 p.m.?

5 A. I went home.

6 Q. Okay. How'd you get there?

7 A. He drove me home.

8 Q. And were you dropped off at your house?

9 A. By my house.

10 Q. What street?

11 A. Ranch House.

12 Q. And how far is Ranch House from your actual home?

13 A. Couple feet.

14 Q. I'm sorry?

15 A. Couple feet.

16 Q. Um, that was on May 20th of 2015.

17 After that did you continue to talk to Mr. Lofthouse on a daily

18 basis?

19 A. Yes.

20 Q. Okay. And did you ever have any -- let me direct you specifically

21 from May 21st to May 27th did you ever have any other physical contact with

22 Mr. Lofthouse?

23 A. Yes.

24 Q. Describe that for the court, please.

25 A. I gave him oral sex again.

1 Q. I'm sorry, I couldn't hear you, Michelle.
2 A. Gave him oral sex.
3 Q. Okay. And where was that?
4 A. In his classroom.
5 Q. Describe, um, the circumstances of the oral sex in Mr. Lofthouse's
6 classroom.
7 A. Describe how?
8 Q. Was there anyone else in the classroom?
9 A. No.
10 Q. Was it during a school day?
11 A. Yes.
12 Q. Do you remember the time frame?
13 A. Probably seventh period.
14 Q. Okay. Seventh period, did you actually have a class you were
15 supposed to be at?
16 A. Yes.
17 Q. Um, and so when you went into the classroom was the door open
18 or shut?
19 A. Don't recall.
20 Q. Okay. When you went into the classroom did you have clothes
21 on?
22 A. Yes.
23 Q. Did Mr. Lofthouse have clothes on?
24 A. Yes.
25 Q. Was there a point that some of those clothes were removed?

1 A. Um, yes. Not very -- not completely.
2 Q. Okay. Not completely.
3 So did you kiss Mr. Lofthouse?
4 A. Yes.
5 Q. Did he kiss you?
6 A. Yes.
7 Q. Can you describe for the court what if anything you were doing
8 with your hands?
9 A. Um, they're on him.
10 Q. Okay. Where?
11 A. Um, all over his body.
12 Q. Including his genital area?
13 A. Yes.
14 Q. Chest? Was it the chest area as well?
15 A. Yeah.
16 Q. Was that a yes, Michelle?
17 A. Maybe.
18 Q. Okay. Buttocks area?
19 A. I don't know.
20 Q. Okay. And did his clothing -- you said part of clothing came off.
21 Whose clothing came off?
22 A. His.
23 Q. Okay. How?
24 A. His pants were pulled down.
25 Q. Who pulled 'em down?

1 A. Don't recall.

2 Q. What about his underwear? Was he wearing underwear?

3 A. Yes.

4 Q. Okay. Were -- eventually was his penis exposed?

5 A. Yes.

6 Q. So did his underwear stay on?

7 A. Don't recall.

8 Q. Um --

9 MR. DRASKOVICH: Your Honor, I wanna make a record right now
10 to I object to the form of the question.

11 You basically have the State standing or peering over the witness.
12 Ms. Schifalacqua keeps getting closer and closer. I can see in this young lady's
13 face that she's very uncomfortable (indiscernible).

14 THE COURT: Yeah. We'll --

15 MS. SCHIFALACQUA: I'm gonna object to him indicating that I am
16 making this witness uncomfortable. Absolutely ridiculous, your Honor.

17 MR. DRASKOVICH: It's very clear and if we have a camera I'd like
18 to show her face.

19 THE COURT: And certainly it -- it -- both counsel will be able to see
20 what is being recorded on JAVS through the video. Certainly I'll allow Mr.
21 Draskovich to make his record of what he appears to -- to feel is happening.

22 Ms. Schifalacqua, I understand that you obviously don't agree with
23 him.

24 We'll allow both comments to be a part of the record but you can
25 certainly continue your questioning in the manner in which you have been

1 questioning.

2 BY MS. SCHIFALACQUA:

3 Q. Michelle, let me ask you this. How do you feel today about having
4 to testify here in open court?

5 A. Annoyed.

6 Q. What?

7 A. Annoyed.

8 Q. Annoyed?

9 Do you wanna be here?

10 A. No.

11 Q. Do you wanna be talking about the subject matter that we're talking
12 about right now?

13 A. No. I wish my -- my, um, my choice was respected.

14 Q. So let's go back to talking about and you were describing what you
15 referred to as oral --

16 A. Yes.

17 Q. -- Mr. Lofthouse.

18 You indicated that you don't remember if his underwear was down;
19 is that right?

20 A. Yes.

21 Q. But at some point do you -- is his penis exposed?

22 A. Yes.

23 Q. Describe what you do and what he does.

24 A. Penis to vagina -- to mouth.

25 Q. Okay. And how long was Mr. Lofthouse's penis in your mouth?

1 A. Minutes.

2 Q. Okay. And did he ejaculate?

3 A. Yes.

4 Q. Where?

5 A. In my mouth.

6 Q. After Mr. Lofthouse ejaculated in your mouth what happens next?

7 A. Um, we talked.

8 Q. Okay. Did he pull his pants up (indiscernible)?

9 A. Yeah.

10 Q. Is that a yes?

11 A. Yes.

12 Q. How long do you think you talked with him in the classroom?

13 A. I don't recall.

14 Q. Okay. Do you eventually go back to your seventh grade class?

15 A. I don't recall.

16 Q. Um, was there any more physical contact at Rancho High School on

17 that day with you and Mr. Lofthouse?

18 A. No.

19 Q. I wanna turn your attention to May 28th of 2015.

20 Did you have occasion to go to a hotel room with Mr. Lofthouse on

21 that day?

22 A. Yes.

23 Q. Okay. Between all of this time are you continuing to talk with Mr.

24 Lofthouse on a daily basis?

25 A. Yes.

1 Q. And text message him?
2 A. Yes.
3 Q. And is he text messaging you?
4 A. Yes.
5 Q. Um, how do you get to the hotel? Is there a plan again with Mr.
6 Lofthouse?
7 A. Yeah.
8 Q. Okay. What's the plan?
9 A. Same plan.
10 Q. Same plan as last time?
11 A. Yes.
12 Q. So it was a school day?
13 A. Yes.
14 Q. Um, what did you tell your mom about going to school on May 28th
15 of 2015?
16 A. Same thing. (Indiscernible) to get a ride.
17 Q. And were you picked up by Mr. Lofthouse?
18 A. Yes.
19 Q. Where?
20 A. Rancho.
21 Q. Okay. And what type of vehicle?
22 A. Same one.
23 Q. The blue Toyota?
24 A. Yeah.
25 Q. Is that a yes, Michelle?

1 A. Yes.

2 Q. Okay. Around what time did Mr. Lofthouse pick you up at Ranch

3 House?

4 A. Same time.

5 Q. What was that?

6 A. Around -- after seven.

7 Q. Okay. After 7 a.m.?

8 A. Yes.

9 Q. Where do you go?

10 A. The Cannery.

11 Q. Okay. And is --

12 MS. SCHIFALACQUA: Court's indulgence.

13 THE COURT: Sure.

14 (Whereupon other matters were heard in open court.)

15 THE COURT: Just for the record we're taking a brief pause from

16 our preliminary hearing because counsel on a previous matter is submitting

17 some documents to the court at this time.

18 Mr. Melgar obviously is --

19 MS. SCHIFALACQUA: (Indiscernible) I just wanted to make sure.

20 THE COURT: Okay. Perfect. So with that, Ms. Schifalacqua, you

21 can continue.

22 MS. SCHIFALACQUA: Thank your Honor.

23 BY MS. SCHIFALACQUA:

24 Q. Michelle, I wanna go back briefly before we talk about the Cannery,

25 Rancho High School, is that located in North Las Vegas, Clark County, Nevada?

1 A. Yeah.

2 Q. Is that a yes?

3 A. Yes.

4 Q. Okay. How about, um, the Aliante Hotel that you were at, is that

5 also in North Las Vegas, Clark County, Nevada?

6 A. Yes.

7 Q. And with regard to the Cannery, where was the Cannery located?

8 A. On Craig and Losee. On Craig and Losee I think.

9 Q. Okay. And is that here in North Las Vegas, Clark County, Nevada?

10 A. I think so.

11 Q. Describe what happens when you get to the Cannery with the

12 defendant (indiscernible)?

13 A. Um, we go up to the room.

14 Q. Okay. Did you check into this hotel room with him?

15 A. No.

16 Q. How'd you get in the room?

17 A. He already had the keys.

18 Q. Who already had the keys?

19 A. Um, Mr. Lofthouse.

20 Q. Okay. And describe this room for the court, please.

21 A. It was a basic room.

22 Q. How many beds?

23 A. Two.

24 Q. Did you say two?

25 A. Two.

1 Q. And I'm sorry, I'm struggling to hear you.
2 Um, was this room different from the room at Aliante?
3 A. Um, just different how?
4 Q. Well, was there anything different? You described it as the same
5 two -- two beds. Was there anything different about it?
6 A. Not really.
7 Q. Okay. Was one of the hotels nicer than the other?
8 A. Yeah.
9 Q. Which one?
10 A. Aliante.
11 Q. So the Cannery is it fair to say was an older hotel?
12 A. Um, yes.
13 Q. When you go into the room -- well, let me back up.
14 When you go to the Cannery, just so it's clear, you indicated you
15 told your mom you were getting a ride to school.
16 Did your mom know that you were going anywhere with Mr.
17 Lofthouse?
18 A. No.
19 Q. How about your dad?
20 A. No.
21 Q. Did you ever ask permission to go with Mr. Lofthouse anywhere on
22 May 28th of 2015?
23 A. No.
24 Q. So when you enter into the Cannery, the room in the Cannery, did
25 this hotel room also have a window?

1 A. Yes.

2 Q. Okay. What do you do when you get in the room?

3 A. Um, talk.

4 Q. Okay. Where do you talk? Physically where are you located?

5 A. By the TV.

6 Q. Okay. What were you talking about?

7 A. He was showing me that he got me something.

8 Q. What did he get you?

9 A. Frozen mangos and some records.

10 Q. Frozen mangos and what else? I'm sorry?

11 A. Some records.

12 Q. Some records like, um, like you play like music records?

13 A. Yes.

14 Q. Okay. What type of records did he have?

15 A. Um, Lana Del Rey.

16 Q. Lana Del Rey?

17 A. Yes.

18 Q. A musical artist?

19 A. Yeah.

20 Q. Is that a yes?

21 A. Yes.

22 Q. Okay. She's taking down -- obviously they're taking down

23 everything you say.

24 Um, frozen mangos, do you like frozen mangos?

25 A. Yes.

1 Q. Had you told Mr. Lofthouse that?
2 A. Yes.
3 Q. How were the frozen mangos packaged if you will?
4 A. In a plastic bag.
5 Q. I'm sorry?
6 A. In a plastic bag.
7 Q. And so when you go in where are those placed?
8 A. In the refrigerator.
9 MS. SCHIFALACQUA: I'm gonna approach with your permission,
10 your Honor, with State's proposed Exhibits 2 and 3 which have been previously
11 provided in discovery and shown to counsel this morning. If I may?
12 THE COURT: Sure.
13 MS. SCHIFALACQUA: Thank you.
14 BY MS. SCHIFALACQUA:
15 Q. I'm gonna show you, Michelle, what's been marked as State's
16 proposed Exhibits 2 and 3.
17 Can you please look at those.
18 Do you recognize what's depicted in State's proposed Exhibits 2
19 and 3?
20 A. Yes.
21 Q. And what -- let's start with 2. What does that show?
22 A. Us kissing.
23 Q. And when you say us kissing, you and who else?
24 A. Jason and I.
25 Q. Okay. Is that the defendant?

1 A. Yes.

2 Q. Is that at the Cannery Hotel?

3 A. Yes.

4 Q. Is that a fair and accurate picture of how you looked on May 28th of
5 2015 at the Cannery Hotel kissing Mr. Lofthouse?

6 A. Yes.

7 MS. SCHIFALACQUA: I'd move for admission of State's 2.

8 THE COURT: Any objection?

9 UNIDENTIFIED SPEAKER: No.

10 THE COURT: All right. State's proposed Exhibit 2 will be
11 admitted.

12 (State's proposed Exhibit 2 admitted.)

13 BY MS. SCHIFALACQUA:

14 Q. With regard to State's proposed Exhibit 3 do you recognize what's
15 depicted in that exhibit?

16 A. Yes

17 Q. What do you see?

18 A. Us walking out of the elevator.

19 Q. Okay. And by us who do you mean by us?

20 A. Mr. Lofthouse and I.

21 Q. And is Mr. Lofthouse carrying anything?

22 A. A bag.

23 Q. Okay. Is that a fair and accurate picture of you and Mr. Lofthouse
24 at the Cannery Hotel & Casino on May 28th of 2015?

25 A. Yes.

1 MS. SCHIFALACQUA: I'd move for admission of State's 3.

2 THE COURT: Any objection?

3 UNIDENTIFIED SPEAKER: (Indiscernible).

4 THE COURT: All right. State's proposed Exhibit 3 will also be
5 admitted.

6 (State's proposed Exhibit 3 admitted.)

7 BY MS. SCHIFALACQUA:

8 Q. That bag that's shown in State's 3 that Mr. Lofthouse is carrying, is
9 that the -- what the frozen mangoes were being carried in that you described?

10 A. Yes.

11 Q. Okay. Now describe what happens after you put the frozen
12 mangoes into the refrigerator.

13 A. Um, we started kissing.

14 Q. Okay. Does anything else happen?

15 A. Um, I gave him oral sex.

16 Q. Okay. Describe what you mean when you say you gave him oral
17 sex.

18 A. Penis in mouth.

19 Q. Mr. Lofthouse's penis in your mouth?

20 A. Yes.

21 Q. Where were you positioned physically in a hotel room?

22 A. On the bed I think.

23 Q. Okay. You said there were two beds. Do you remember which
24 bed you were in?

25 A. The one closest to the window.

1 Q. Okay. And how were you physically positioned and how was Mr.
2 Lofthouse physically positioned when you were giving him oral sex?
3 A. We were both on the bed I think.
4 Q. Okay. And did Mr. Lofthouse ejaculate?
5 A. Yes.
6 Q. Where?
7 A. In my mouth.
8 Q. Did he ever give you oral sex at the Cannery?
9 A. Yes.
10 Q. Describe what you mean by that for the court.
11 A. His mouth to my vagina.
12 Q. And where were you positioned physically in the hotel room at that
13 time?
14 A. Same bed I think.
15 Q. Okay. Was that all of the physical contact you had between each
16 other?
17 A. No.
18 Q. Okay. Describe for the court what happens after the, um -- after
19 the oral sex happened.
20 A. We had sex, um, penis in vagina.
21 Q. Okay. Where were you when you had sex? Physically in the room
22 (indiscernible).
23 A. Um, the same bed.
24 Q. Okay. Do you remember what position you were in?
25 A. I was on top.

1 Q. Okay. And did Mr. Lofthouse ejaculate?
2 A. Yes.
3 Q. Okay. Where?
4 A. My stomach.
5 Q. So did he pull his penis out of your vagina at some point?
6 A. Yes.
7 Q. Okay. What did you do after you had sexual intercourse that time?
8 A. Um, we talked.
9 Q. Okay. What'd you talk about?
10 A. Uh, don't recall.
11 Q. How long do you think you talked?
12 A. A while.
13 Q. And what did you do after that?
14 A. We had sex again.
15 Q. Okay. You had sex again.
16 Where (indiscernible) when you had sex again?
17 A. In the same bed.
18 Q. What type of sex are you referring to?
19 A. Um, penis in vagina.
20 Q. Okay. Did Mr. Lofthouse through any of this wear a condom?
21 A. No.
22 Q. Okay. The second time at the Cannery that you had sexual
23 intercourse, um, did Mr. Lofthouse ejaculate?
24 A. Yes.
25 Q. Where?

1 A. On my stomach.
2 Q. So at some point again did he remove the penis from your vagina?
3 A. Yeah.
4 Q. Is that a yes?
5 A. Yes.
6 Q. And what did you do after that?
7 A. Talked some more.
8 Q. Talked some more?
9 And what'd you talk about at this time?
10 A. I don't recall.
11 Q. Um, did you ever do anything else that day at the Cannery?
12 A. No.
13 Q. Hmm?
14 A. No.
15 Q. How long did you stay at the hotel on May 28th of 2015?
16 A. Until two o'clock.
17 Q. What'd you do at two o'clock?
18 A. I went home.
19 Q. How'd you get home?
20 A. He drove me.
21 MS. SCHIFALACQUA: Court's indulgence, please.
22 THE COURT: Sure.
23 MS. SCHIFALACQUA: Thank you.
24 THE COURT: Mm-hmm.
25 BY MS. SCHIFALACQUA:

1 Q. Did you continue to, um, talk with Mr. Lofthouse on a daily basis --
2 A. Yes.
3 Q. -- after that? Okay.
4 I wanna talk to you about June 3rd of 2015. Do you remember that
5 day?
6 A. Yes.
7 Q. Okay. On that day did you go to school?
8 A. Yes.
9 Q. And was Mr. Lofthouse at school?
10 A. Yes.
11 Q. What's significant about the timing of that day? When -- when did
12 the school year end?
13 A. The 4th.
14 Q. I'm sorry?
15 A. The 4th.
16 Q. Okay. So the school year was supposed to end the day -- that day
17 after, June 4th?
18 A. Yes.
19 Q. Do you need to take a break?
20 A. I'm fine.
21 Q. Okay. And on June 3rd did you, uh, have occasion to be in Mr.
22 Lofthouse's classroom?
23 A. Yes.
24 Q. Describe it for the court, please.
25 A. Um, I left seventh period.

1 Q. What class did you have seventh period?
2 A. Precalculus A.B.
3 Q. Okay. And where'd you go?
4 A. His classroom.
5 Q. Describe for the court who's in the classroom.
6 A. I think -- there were several people I think.
7 Q. Did it remain that way?
8 A. No.
9 Q. Did there come a point in time where it was just you and Mr.
10 Lofthouse in the classroom?
11 A. Yes.
12 Q. Okay. And was the door open or shut?
13 A. Shut.
14 Q. Was it locked or unlocked?
15 A. Locked.
16 Q. And what were you doing with Mr. Lofthouse?
17 A. We were talking.
18 Q. Okay. Did you ever have (indiscernible) contact with
19 (indiscernible)?
20 MR. DRASKOVICH: And I would just clarify as to foundation what
21 date are we talking about?
22 MS. SCHIFALACQUA: June 3rd.
23 MR. DRASKOVICH: Okay.
24 THE WITNESS: Um, yeah, we kissed.
25 BY MS. SCHIFALACQUA:

1 Q. Okay. Where were you positioned physically in that classroom?
2 A. Um, when? When?
3 Q. On June 3rd of 2015. Where were you in the classroom when the
4 door was locked and shut?
5 A. Um, in the right corner.
6 Q. Why were you in the right corner?
7 A. Um, so no one can see.
8 Q. Did there come a time where someone, um, came and knocked on
9 the door?
10 A. Um, I don't think they knocked.
11 Q. Okay. What happened then? Describe it, please, for the court.
12 A. They walked in.
13 Q. Okay. Who was that?
14 A. Officer Patty and another security.
15 Q. Okay. And, um, where did you go after Officer Patty and another
16 security officer came into the classroom?
17 A. Uh, they took me to the -- their office.
18 Q. Did you eventually meet with a Detective Troxil or an Officer Troxil?
19 A. Yes.
20 Q. And another officer?
21 A. Yes.
22 Q. Did you while you were at school gave him a statement?
23 A. Yes.
24 Q. Um, when they first talked to you about what happened were you
25 truthful?

1 A. No.

2 Q. Okay. So your first statement, um, at the school wasn't the truth?

3 A. No.

4 Q. How was it not truthful?

5 A. Um, I denied our relationship.

6 Q. Can you say that louder, Michelle, because I can barely hear you.

7 A. I denied having a thing with Mr. Lofthouse.

8 Q. After you left school where did you go?

9 A. Home.

10 Q. And when you went home what happened?

11 A. Um, my dad took all of my electronics and then I called my mom.

12 She came home.

13 Q. And then what happened?

14 A. And then I -- my dad told my mom.

15 Q. What did you tell your parents?

16 A. That it was true.

17 Q. Did after that you talk with the Detective Troxil and another

18 detective, female detective, again?

19 A. Yes.

20 Q. Did you give a statement the second time detailing your relationship

21 with Mr. Lofthouse?

22 A. Yes.

23 Q. Okay. Um, and that included talking about Aliante, is that right,

24 the hotel?

25 A. Yes.

1 Q. Now you indicated today that you didn't remember how many times
2 or you didn't remember having sexual intercourse and by that I mean penis in
3 the vagina three times, um, with Mr. Lofthouse.

4 Would looking at your statement help refresh your memory?

5 A. Yes.

6 Q. Okay.

7 MS. SCHIFALACQUA: If I may approach, your Honor?

8 THE COURT: Yes, please.

9 BY MS. SCHIFALACQUA:

10 Q. I'm showing counsel --

11 THE COURT: Mr. Draskovich, you obviously have this?

12 MR. DRASKOVICH: We do.

13 THE COURT: Okay.

14 MS. SCHIFALACQUA: For the record I'm specifically showing
15 page 27; however, the detailing begins, um --

16 MR. DRASKOVICH: And just for the record is she attempting to
17 refresh her recollection because this is not a prior inconsistent statement. We
18 shouldn't be presenting it as a prior inconsistent statement.

19 MS. SCHIFALACQUA: Absolutely. She said she doesn't
20 remember, your Honor. I'm going to refresh. If she thereafter obviously still
21 doesn't remember or denies the Nevada Supreme Court has clearly delineated
22 that any prior inconsistent statement with that nonremembrance or indicating I
23 don't know is in fact just that.

24 MR. DRASKOVICH: And there appears to be a muddling of two
25 different bases so I'm trying to clarify that for the record.

1 MS. SCHIFALACQUA: At -- at this point my first step will be to
2 see if it refreshes her memory, yes.

3 THE COURT: All right. Overruled and I'll allow this line of
4 questioning.

5 BY MS. SCHIFALACQUA:

6 Q. It starts on 20 upward through 27. If you go ahead and read
7 through that and when you're done please feel free to look up at me as you
8 cannot read beyond the statement that you (indiscernible).

9 And I'm gonna take that away from you, Michelle.

10 Did looking at your statement help refresh your memory as to how
11 many times you had sexual intercourse with Mr. Lofthouse at Aliante?

12 A. Pretty sure it was just twice.

13 Q. Okay.

14 MS. SCHIFALACQUA: Court's indulgence.

15 THE COURT: Sure.

16 BY MS. SCHIFALACQUA:

17 Q. Let me ask this with regard to Aliante Hotel and the Cannery Hotel.
18 Um, what was the plan of why you and Mr. Lofthouse were going?

19 A. Um, the plan?

20 Q. Yeah. Why'd you -- why -- why were you going there? Did he --
21 did Mr. Lofthouse ever tell you why you were going there?

22 A. Um, we were planning on having sex.

23 Q. Okay. So have you talked about it with Mr. Lofthouse?

24 A. Yes.

25 Q. Okay. And how did you -- how many times did you talk about it?

1 A. A lot of times.

2 Q. A lot of times? And that was before you went to the Aliante Hotel?

3 A. Yes.

4 Q. As well as the Cannery?

5 A. Yes.

6 Q. What types of things would he say?

7 A. Sexual things.

8 Q. What kind of sexual things? Describe it, Michelle.

9 A. Um, he wanted me and I -- I would say I want him too.

10 Q. Okay. Did he say anything else besides he wanted you?

11 A. Yes.

12 Q. Describe that for the court, please.

13 A. Um, he'd say sexual things like I wanna rip your clothes off.

14 Q. Did he say any other type of sexual things?

15 A. Yes.

16 Q. What kind?

17 A. I can't recall any right now.

18 Q. And the things that Mr. Lofthouse that you just described that he

19 said to you was that before you guys went to the Aliante?

20 A. Yes.

21 Q. Would he say those sexual type of things before you went to the

22 Cannery?

23 A. Yes.

24 MS. SCHIFALACQUA: Court's indulgence.

25 THE COURT: Sure.

1 MS. SCHIFALACQUA: I have no more questions.

2 THE COURT: All right. Um, you know, this witness considering her age
3 and everything she's been on the stand for about an hour and a half now let's
4 take maybe a five-minute comfort break and then we'll pick up on cross-
5 examination when we come back.

6 All right. Court's in recess for five minutes.

7 THE BAILIFF: Court's in recess.

8 THE COURT: So, Michelle, um, just to let you know, you're still
9 gonna be remaining under oath. Make sure that you don't talk about the case
10 while we're on this five-minute break. Okay? And then we'll come right back.
11 Okay.

12 (Recess taken.)

13 THE COURT: All right. Then we'll go ahead and get back on the
14 record. This is a continuation of the preliminary hearing in the matter of the
15 State of Nevada versus Jason Richard Lofthouse, 15FN939X.

16 We took a brief recess after direct examination of our first witness,
17 um, Michelle Torres is resuming the witness stand.

18 Michelle, as I indicated previously just remember you're still under
19 oath. Okay? All right.

20 Mr. Draskovich, please.

21 MR. DRASKOVICH: Thank you.

22 THE COURT: Mm-hmm.

23 * * *

24 * * *

25 * * *

CROSS-EXAMINATION

BY MR. DRASKOVICH:

Q. Hello, Michelle.

A. Hello.

Q. You were asked a number of questions concerning sexual conduct between yourself and Jason. Do you remember all of those questions that you've been asked in the last hour and a half?

A. Yes.

Q. These events all occurred in May --

A. Mm-hmm.

Q. -- essentially; is that correct?

A. Yes.

Q. And you'd agree with me that none of these actions were forced upon yourself?

A. No.

Q. They're consensual?

A. Yes. Completely.

Q. You were a consensual participant in these sexual acts?

A. Yes.

Q. At no time did Jason ever give you any alcohol?

A. No.

Q. At no time did he give you any type of drugs?

A. No.

Q. You're completely sober?

A. Yes.

1 Q. And completely aware of what you were doing?
2 A. Yes.
3 Q. In reference to the first time that you and he went to a hotel was
4 the Aliante that was on May 2015; correct?
5 A. Correct.
6 Q. You went with him willingly?
7 A. Yes.
8 Q. He did not imprison you in any way?
9 A. No.
10 Q. He did not confine you in any way?
11 UNIDENTIFIED SPEAKER: Objection --
12 THE WITNESS: No.
13 UNIDENTIFIED SPEAKER: -- your Honor. That calls for a legal
14 conclusion.
15 MR. DRASKOVICH: If he imprisoned her it's -- I wish we would
16 stick to the law in this case --
17 THE COURT: Right.
18 MR. DRASKOVICH: -- (indiscernible) major appropriate
19 (indiscernible).
20 THE COURT: I'm gonna -- I'll allow that question based on her
21 understanding of what it means.
22 BY MR. DRASKOVICH:
23 Q. At no point in time did he try and keep you from your parents?
24 A. No.
25 UNIDENTIFIED SPEAKER: Objection. Move to strike, calls for

1 speculation as to what he intended to do with her, your Honor.

2 BY MR. DRASKOVICH:

3 Q. Did he ever tell you that he wanted to keep you from your parents?

4 MS. SCHIFALACQUA: I'd like a ruling on that --

5 THE COURT: Sustained. Sustained.

6 MS. SCHIFALACQUA: Thank you.

7 BY MR. DRASKOVICH:

8 Q. Did he ever tell you he wanted to keep you from your parents?

9 A. No.

10 Q. Did you ever feel like he was trying to keep you from his parents?

11 A. No.

12 Q. Your parents?

13 A. No.

14 Q. No?

15 You'd go and do things without your parents' permission all the
16 time; correct?

17 A. Yes.

18 Q. You're 17 years old --

19 A. Yes.

20 Q. -- is that right?

21 You don't tell them every time you're with a particular person who
22 that person is?

23 A. No.

24 Q. You're not a slave to your parents, are you?

25 A. No.

1 Q. In reference to the second time that you and he went to a hotel
2 room that was the Cannery; correct?
3 A. Correct.
4 Q. At no point in time on that day of May 28th did he confine you?
5 A. (No audible response).
6 Q. I'm sorry?
7 A. No.
8 Q. At no point in time on the 28th did you feel imprisoned by him?
9 A. No.
10 Q. At any point in time on May 28th did he tell you he was trying to
11 keep you from your parents?
12 A. No, never.
13 Q. You felt like you were free to leave him at any time?
14 A. Yes.
15 Q. You were asked some questions a few minutes ago concerning how
16 you feel today.
17 You're not happy to be here, are you?
18 A. No.
19 Q. Had you met with these two prosecutors before today?
20 A. Yes. With her.
21 Q. Is it Ms. Schifalacqua?
22 A. Yes.
23 Q. Have you felt intimidated by her during the course of this case?
24 MS. SCHIFALACQUA: Objection, your Honor. Is that
25 (indiscernible)?

1 MR. DRASKOVICH: There will be --

2 MS. SCHIFALACQUA: And obviously --

3 THE COURT: Um --

4 MS. SCHIFALACQUA: -- unless there's some showing of proof are
5 we serious that Mr. Draskovich is gonna stand in this courtroom and say that
6 I'm intimidating a witness that's come here to court?

7 MR. DRASKOVICH: Yes.

8 THE COURT: Well --

9 MR. DRASKOVICH: (Indiscernible) her conduct in her direct, yes.

10 THE COURT: -- yeah -- listen, I don't think Mr. Draskovich is at
11 least at this point saying that you intimidating the witness. He's asking the
12 witness if she felt intimidated.

13 Certainly she's, uh, allowed to answer that question. It's relevant I
14 guess to, um, because I allowed certain questions regarding prior contact and,
15 um, although credibility of the witnesses is always at issue and may be limited
16 at the preliminary hearing.

17 I'll allow this line of questioning. The answer will stand for itself
18 and we'll see where we are.

19 BY MR. DRASKOVICH:

20 Q. You (indiscernible) intimidated by this prosecutor (indiscernible)?

21 A. I feel intimidated by anyone who questions what I do with my body.

22 Q. Have you felt forced to participate in this case?

23 A. Yes. Completely.

24 Q. Have you felt coerced?

25 A. (No audible response).

1 Q. Is that -- I see you're shaking your head (indiscernible). I don't
2 wanna --

3 A. Yes.

4 Q. -- put answers in mouth but are you feeling coerced?

5 A. Yes.

6 Q. Yes?

7 A. Yes.

8 Q. Are you being forced to cooperate in this case against your consent
9 or against your free will?

10 A. Um --

11 MS. SCHIFALACQUA: Your Honor, at this point I'm gonna object.
12 If Mr. Draskovich thinks there's a problem with a court order to appear and a
13 subpoena whether or not she wants to be here that's fine, but whether or not
14 she feels coerced and against her will, you know, judge, but whether or not she
15 has to comply with the law are two separate things and I'd ask that the record
16 be clarified with the same.

17 THE COURT: Sure. I'll let you clean it up on redirect. I don't think
18 this line of questioning is any different from a domestic violence case that we
19 have with an uncooperative witness. I'm gonna allow it. Overruled.

20 BY MR. DRASKOVICH:

21 Q. Do you feel like you've been placed in a position where you're
22 suffering unjustifiable mental harm or suffered?

23 MS. SCHIFALACQUA: Objection. Legal conclusion, unjustifiable
24 legal -- excuse me -- unjustifiable mental harm --

25 THE COURT: Yeah, yeah. I was worried about the -- the -- the

1 coercion question and that was kind of on the line but I'm gonna go ahead and
2 sustain this objection.

3 BY MR. DRASKOVICH:

4 Q. Is this -- is your -- and you feel coerced or forced participation in
5 this prosecution?

6 A. (Indiscernible) to be here because of a subpoena.

7 Q. I'm sorry??

8 A. I'm only here 'cause of the subpoena.

9 Q. Have there been any threats made to you concerning your
10 unwillingness to participate?

11 A. No.

12 Q. Okay. Do you feel in any way victimized by this?

13 A. No. Not at all.

14 MR. DRASKOVICH: Your Honor, I had to just be -- she requested
15 from Mr. Schneider would like to ask --

16 MS. SCHIFALACQUA: I'm gonna object, your Honor.

17 MR. DRASKOVICH: -- some questions.

18 Well, we can sit here and I can have him ask me to ask her on a
19 question-by-question basis if we want to do that.

20 THE COURT: What is the basis of the objection?

21 MS. SCHIFALACQUA: Judge, obviously we have one counsel
22 asking her questions. I wouldn't have Ms. Kollins get up in the middle of my
23 direct and ask additional questions and keep on going.

24 Obviously Mr. Draskovich is -- done this quite long enough. I don't
25 see why we have to change counsel in the (indiscernible) or what the legal

1 basis is for them to do so.

2 MR. DRASKOVICH: There's no conclusion to my (indiscernible).

3 THE COURT: Um, I mean if there's -- if there's -- I understand that
4 the custom and the practice we've done one lawyer one witness, um, it is
5 highly unusual. I just don't know if there's a specific prohibition to it other than
6 custom and practice. Is there?

7 MS. SCHIFALACQUA: I've never seen it any other way, your
8 Honor.

9 THE COURT: Right. I know. I understand that -- that it has
10 traditionally been one witness, one lawyer.

11 Mr. Schneider, I'll allow you to ask some questions in the interest of
12 from making sure that we give the benefit of the doubt to the defendant in
13 these types of instances but please try to keep it as brief and to the point as
14 possible.

15 UNIDENTIFIED SPEAKER: Absolutely, your Honor. Thank you.

16 MS. KOLLINS: And, your Honor, with your permission, may I give
17 the witness some water?

18 THE COURT: Yeah, please do.

19 Okay, Mr. Schneider.

20

21 CROSS-EXAMINATION

22 BY MR. SCHNEIDER:

23 Q. (Indiscernible)?

24 A. Yes.

25 Q. Okay. I'm Louis.

1 Michelle, I just have (indiscernible) couple questions.

2 You stated a few minutes ago that you have your -- you don't like
3 having to answer for what you do with your own body. Is that fair?

4 A. Yes.

5 Q. You were a student of my client Jason Lofthouse?

6 A. Yes.

7 Q. And did you feel that because he was your teacher you had to enter
8 into this sort of relationship with him?

9 A. (Indiscernible).

10 Q. I'm sorry (indiscernible).

11 A. No.

12 Q. So it was entirely a voluntarily relationship on your part?

13 A. Yes.

14 Q. Was it a honest relationship?

15 A. Yes.

16 Q. Do you regret that relationship?

17 A. If it wasn't for the situation we're in now legally.

18 Q. So I think what you're saying is that because Jason's in trouble you
19 regret it?

20 A. Yes.

21 Q. (Indiscernible)?

22 A. I believe we're both equally responsible.

23 Q. (Indiscernible). Is there anything else you'd like this court to know
24 about that relationship?

25 THE COURT: Hold on, Mr. Schneider. One second.

1 (Discussion off the record between bailiff and Judge Lee.)
2 THE COURT: Mr. Schneider, is that -- do you (indiscernible)?
3 MR. SCHNEIDER: No, I don't.
4 THE COURT: All right. Please continue.
5 MR. SCHNEIDER: Your Honor, the last question I asked Michelle
6 was whether or not there was anything else that she wanted this court to know
7 about the relationship she had with my client Jason.
8 MS. SCHIFALACQUA: Objection. Vague.
9 THE COURT: Sustained.
10 BY MR. SCHNEIDER:
11 Q. Is there anything you want to tell the judge today about this case?
12 MS. SCHIFALACQUA: Objection. Relevance, vagueness --
13 MR. SCHNEIDER: Your Honor --
14 MS. SCHIFALACQUA: -- I mean I'm not --
15 THE COURT: Yeah. It -- it seems pretty -- pretty well legal
16 (indiscernible). Um, unless there's a specific area where she, um, feels like she
17 needs to answer some sort of question that you might have, Mr. Schneider, is
18 there anything else?
19 MR. SCHNEIDER: Your Honor, I'm trying to go down -- forcing the
20 issue too hard throughout this -- this young lady's opinion about her relationship
21 --
22 THE COURT: We will --
23 MR. SCHNEIDER: -- (indiscernible) --
24 THE COURT: -- yeah, we can leave that up to argument then as
25 far that question then I'm gonna go ahead and sustain the objection.

It sounds like, um, there's some -- some hardware here that the media left in when we excused them that they need to come and get back.

MR. SCHNEIDER: I don't have any other questions.

THE COURT: Okay. All right. Then, um, cross-examination, that concludes cross-examination.

Let me take a brief recess to allow a member of the media to get their equipment and then we'll move to redirect.

All right. Court's in recess.

THE BAILIFF: Court is in recess.

(Recess taken.)

THE COURT: For the record this is the continuation of the State of Nevada versus Jason Richard Lofthouse, 15FN939X.

We took a brief recess to allow members of the media access back into the courtroom to get their equipment. The courtroom has been cleared once again.

And, Ms. Schifalacqua, redirect.

MS. SCHIFALACQUA: Thank your Honor.

REDIRECT EXAMINATION

BY MS. SCHIFALACQUA:

Q. Michelle, I wanna, um, talk about some things you were asked on cross-examination.

Um, you're 17 years old; right?

A. Yeah.

Q. And --

1 A. Yes.

2 Q. Okay. And let's talk about school, um, in general.

3 Have you ever gone on a school fieldtrip?

4 A. Yes.

5 Q. Okay. Um, do you have to get your parents' permission to be

6 taken by any person from school?

7 A. Um, yes.

8 Q. Okay. And what do they have to do?

9 A. Sign a consent form.

10 Q. So even though you're 17 they still have to sign a consent form; is

11 that right?

12 A. Yeah.

13 Q. Is that a yes, Michelle?

14 A. Yes.

15 Q. Okay. Um, with regard to you going to either of the hotels with

16 Mr. Lofthouse, um, let me ask you this. The defense counsel asked you a

17 number of questions about you feeling confined or forced.

18 You said you didn't feel forced; right?

19 A. (Indiscernible).

20 Q. I'm sorry?

21 A. No.

22 Q. Okay. But you didn't tell your mom; right?

23 A. About?

24 Q. About going to those hotels with Mr. Lofthouse?

25 A. No.

1 Q. Why?

2 A. I didn't want to.

3 Q. Why didn't you want to?

4 A. I don't know.

5 Q. You don't know? Okay.

6 Let me ask you this. Um, you didn't not only not tell your mom, is

7 that right, what did you tell her?

8 A. That I was getting a ride.

9 Q. Where were you going?

10 A. (No audible response).

11 Q. Where did you tell your mom that you were going?

12 A. I didn't. I just said I was gonna get a ride.

13 Q. To school or not?

14 A. She assumed.

15 Q. She assumed.

16 Did you leave out the details that you weren't going to school that

17 day?

18 A. Yeah.

19 Q. Is that a yes, Michelle?

20 A. Yes.

21 Q. Okay. Let me ask you this because you were asked specifically if

22 you had an honest relationship with Mr. Lofthouse, you said you did; right?

23 A. Yes.

24 Q. Okay. So did your parents know about your relationship with Mr.

25 Lofthouse?

1 A. No.

2 Q. Okay. Would they have wanted you to have an (indiscernible)?

3 MR. DRASKOVICH: Objection. Relevance.

4 THE COURT: I think Mr. Schneider opened the door with the
5 honesty questions so I'm gonna allow it. Overruled.

6 THE WITNESS: Um, can you repeat the question?

7 BY MS. SCHIFALACQUA:

8 Q. Would they have wanted you to have a relationship? You said it
9 was honest and --

10 MR. DRASKOVICH: Calls for speculation.

11 BY MS. SCHIFALACQUA:

12 Q. -- you didn't tell your parents --

13 MR. SCHNEIDER: Your Honor, how can she possibly answer what
14 her parents wanted?

15 THE COURT: Right. Hold on. I allowed you to ask questions, Mr.
16 Schneider, but I can't also have you pile on an objection.

17 Um --

18 MS. SCHIFALACQUA: I can rephrase it actually, your Honor.

19 THE COURT: Okay. All right. Thank you.

20 BY MS. SCHIFALACQUA:

21 Q. Would you have gotten in trouble by your parents if they knew that
22 you were going with Mr. Lofthouse to hotels?

23 MR. DRASKOVICH: I'd object as to relevance.

24 THE COURT: Overruled.

25 THE WITNESS: I -- um, yes, if I was going with anyone to any

1 hotel they wouldn't like it.

2 BY MS. SCHIFALACQUA:

3 Q. Okay. So when you told Mr. Schneider or Mr. Draskovich that you
4 went places all the time without your parents' permission, there were still times
5 that your parents had a say in where you went. Is that fair?

6 A. Yeah.

7 Q. Is that a yes, Michelle?

8 A. Yes.

9 Q. Okay. So specifically with regard to you saying you had an honest
10 relationship did you ever talk to Mr. Lofthouse's wife?

11 A. No.

12 Q. Okay. You never talked to her about your relationship with Mr.
13 Lofthouse, did you?

14 A. No.

15 Q. No. So no -- so -- in fact did you tell any person that was an adult
16 18 years of age or older about your relationship with Mr. Lofthouse?

17 A. No.

18 Q. Michelle, did you know your relationship with Mr. Lofthouse was
19 wrong because he was a teacher?

20 MR. DRASKOVICH: Objection. Calls for a legal conclusion.

21 THE COURT: Sustained.

22 MS. SCHIFALACQUA: (Indiscernible).

23 BY MS. SCHIFALACQUA:

24 Q. Let's go back. Why didn't you tell any adult person about your
25 sexual relationship with Mr. Lofthouse?

1 A. I don't tell any adult about my sexual relationships --
2 Q. Okay.
3 A. -- in general.
4 Q. Was there a particular reason why for example, um, in the
5 classroom you were in a particular spot in that corner, you described the right
6 corner?
7 A. Yes.
8 Q. Why?
9 A. So no one could see.
10 Q. So what?
11 A. No one could see.
12 Q. No one could see your honest relationship? Why? Why did you
13 want no one to see --
14 MR. DRASKOVICH: Object as to relevance. (Indiscernible) --
15 THE COURT: I think -- I think you made our point. I'll go ahead
16 and sustain that objection.
17 MS. SCHIFALACQUA: Thank your Honor.
18 THE COURT: Mm-hmm.
19 MS. SCHIFALACQUA: Court's indulgence.
20 BY MS. SCHIFALACQUA:
21 Q. Let's talk about how you feel about being here today because I
22 wanna make something very clear for this record before the court.
23 Has anybody made any threat to you whatsoever to have you come
24 testify?
25 A. No.

1 Q. Okay. Do you have a court order to appear for this criminal case?
2 A. Yes.
3 Q. Is it your understanding that you have to abide by that court order?
4 A. Yeah. That's why I'm here.
5 Q. Okay. It's fair to say you don't wanna be here?
6 A. No.
7 Q. You still have feelings for Mr. Lofthouse?
8 A. I suppose.
9 Q. You suppose. Okay.
10 How many --
11 MS. SCHIFALACQUA: Court's indulgence.
12 BY MS. SCHIFALACQUA:
13 Q. And, Michelle, I know you said at least on cross-examination that
14 you felt intimidated about talking to anybody about your sexual relationship
15 with Mr. Lofthouse. Do you remember that?
16 MR. DRASKOVICH: Object. That mischaracterizes her testimony.
17 MS. SCHIFALACQUA: No, it does not.
18 BY MS. SCHIFALACQUA:
19 Q. So do you remember that?
20 A. Yes.
21 THE COURT: Uh, overruled.
22 Mm-hmm. Go ahead.
23 MS. SCHIFALACQUA: Thank you.
24 THE WITNESS: Yes, it's personal.
25 * * *

1 BY MS. SCHIFALACQUA:

2 Q. Okay. And so you feel intimidated about talking about your
3 personal body. Is that fair?

4 A. What I do with it and when I get questioned why.

5 Q. That intimidates you?

6 A. I don't see why.

7 Q. So you don't understand why it is you have to explain what
8 happened in your relationship?

9 MR. DRASKOVICH: Objection. Leading.

10 THE COURT: Overruled. I'll allow it.

11 BY MS. SCHIFALACQUA:

12 Q. Describe for me what you mean by you don't see why.

13 A. It's my body and I'm over 16. Way over essentially.

14 Q. Did you say way over?

15 A. A year.

16 Q. Okay. What -- what -- why does that mean something to you?

17 A. Because I should be able to control what I do with whomever I
18 choose and....

19 Q. Is that partly why you're upset to testify here today?

20 A. I don't see how it concerns what I do with anyone else.

21 Q. Did you ever talk or meet with either of the defense counsel in this
22 case?

23 A. No.

24 Q. Did you ever talk or meet with any of their investigators in this
25 case?

1 A. (Indiscernible) who? The detectives?
2 Q. No. Of defense investigators?
3 A. No.
4 Q. Did you talk with anybody that's been associated with Mr.
5 Lofthouse as to how the case began?
6 A. No.
7 Q. Let me ask you this. I ant -- because Mr. Draskovich asked you.
8 You met with me, Barbara Schifalacqua, prior to testimony --
9 A. Yes.
10 Q. -- today; is that correct?
11 A. Yes.
12 Q. You did not meet with Ms. Kollins; is that right?
13 A. No.
14 Q. Okay. Anything about what I talked with you about before you had
15 come to testify personally intimidate you?
16 A. (Indiscernible).
17 Q. Okay. Is it the subject matter? Is it my actions? Describe for the
18 court.
19 A. Just the whole case in general.
20 Q. Okay. The whole case.
21 MS. SCHIFALACQUA: Nothing further, your Honor,
22 THE COURT: Thank you. Any redirect -- I'm sorry -- recross based
23 on that redirect?
24 MR. DRASKOVICH: No, your Honor.
25 THE COURT: All right. All right. Thank you, Michelle, for your

1 testimony this morning. You are excused.

2 Uh, State, any more witnesses?

3 MS. SCHIFALACQUA: No, your Honor.

4 The State. um, is not gonna call any more witnesses, and prior to
5 resting, with regard to Count 8, your Honor --

6 THE COURT: Well, let me do this. Because there's a, um -- there's
7 a media request that was granted, at this time since the minor witness has
8 stepped down, we'll go ahead and allow whoever is remaining back into the
9 courtroom.

10 All right. For the record, uh, while testimony of the minor witness
11 was on the record we had cleared the courtroom and at this point since that
12 witness has stepped down from the witness stand the courtroom has been
13 reopened to members of the general public and the media.

14 All right. With that then, Ms. Schifalacqua, um, did you have any
15 more witnesses at this time?

16 MS. SCHIFALACQUA: Your Honor, the State is not gonna call any
17 further witnesses for the preliminary hearing; however, prior to resting with
18 regard to Count 8 the State is going to voluntarily move to not go forward on
19 that count, um, at this time. We move to voluntarily dismiss Count 8 and so
20 that would bring the total counts up to 14.

21 THE COURT: Fourteen? Okay.

22 All right. And then we'll --

23 MS. SCHIFALACQUA: And the State would rest.

24 THE COURT: Okay. Then at least at for now we'll work on
25 renumbering all the counts to be one less than what they're currently indicated

1 at after Count --

2 MS. SCHIFALACQUA: Eight.

3 THE COURT: -- starting with Count 9 I guess.

4 Okay. All right. The State has rested. Mr. Draskovich, do you
5 have any witnesses for today?

6 MR. DRASKOVICH: We do not. I've discussed with my client the
7 standard of proof that's required at this juncture. I've informed him that it
8 would be contrary to my advice and Mr. Schneider's advice for him to testify.

9 (Indiscernible) not going to present to him any testimony or
10 evidence we'll be resting as to the evidentiary portion of this preliminary
11 hearing.

12 THE COURT: All right. The defense has rested.

13 Ms. Kollins or Ms. Schifalacqua, argument?

14 UNIDENTIFIED SPEAKER: Judge, we'll reserve for rebuttal.

15 THE COURT: Okay. Uh, Mr. Draskovich, any argument?

16 MR. DRASKOVICH: (Indiscernible) addressed my arguments as to
17 each count --

18 THE COURT: Okay. Thank you. I'd appreciate that. That's
19 (indiscernible) --

20 MR. DRASKOVICH: -- in order to make it simple.

21 As to Count 2 we have an open or gross lewdness. And once again
22 all of these counts concerning either sexual conduct between certain employees
23 or volunteers at school and people and open and gross lewdness are victimless
24 crimes in the sense that they're not crimes against the person per N.R.S. 200.
25 That's crimes against public decency and good morals which is N.R.S. 201.

1 An element of open and gross lewdness is that in the sexual
2 conduct that occurs must be in view of the public.

3 We have heard here that if this conduct did in fact occur it was in --
4 hidden from the public; therefore, the open and gross lewdness counts, which
5 would be 2 -- I know there was one other --

6 MR. SCHNEIDER: 10.

7 MR. DRASKOVICH: -- and 10 should not stand.

8 Once again 2, open and gross lewdness is alleged consensual
9 conduct between two people. If the State were to actually treat this case
10 appropriately both the pupil and the teacher should be charged, and that has
11 not occurred.

12 In reference to Count 3, the first-degree kidnapping, here again we
13 have the State trying to stretch this law over circumstances this law was never
14 meant to address.

15 We do not have the defendant in this case keeping this young lady,
16 imprisoning this young lady, prying this young lady away from her parents or
17 guardians. If there was in fact movement it was incidental to the sexual
18 conduct.

19 Our Nevada Supreme Court has stated that in order for a separate
20 charge of first-degree kidnapping to stand that movements must be so great
21 and so substantial that it substantially increases the risk of harm to the alleged
22 victim but in this case we don't have a victim so it doesn't apply.

23 And this whole idea of asking parental consent, that's approaching
24 the statute from the wrong angle. That's not what this statute was intended to
25 be. Otherwise, we would have every person who is speaking to a person under

1 18 without consent of the parent or going someplace with a 17-year-old
2 without the consent of the parent conducting a (indiscernible) felony that's not
3 what our Nevada legislature intended.

4 As far as the rest of the counts and in my comments concerning the
5 first-degree kidnapping were as to Count 3 and as to Counts former 11 which
6 would be now Count 10.

7 As the remaining counts outside of the open and gross lewdness
8 count and the kidnapping counts I'd submit are questions for a jury and I'll
9 submit it.

10 THE COURT: Thank you, Mr. Draskovich.

11 Uh, Ms. Schifalacqua.

12 MS. SCHIFALACQUA: Thank your Honor.

13 I will first address (indiscernible) the supreme court has clearly
14 stated (indiscernible) this state and that's 109 Nev. 205, your Honor, that a
15 conviction under obviously an open or gross lewdness did not require proof of
16 the intent to offend an observer or even that the exposure was observed.

17 In fact, uh, go on to -- and let me make it clear -- in Ransom v.
18 State, 99 Nev. 766, for the record, actually talks about that the definition was
19 to include those acts which are even committed in a private place but which
20 nevertheless are committed open as opposed to a secretive matter.

21 In this place the public place is Rancho High School. No one
22 pursuant to Nevada Supreme Court have to actually observe the conduct but
23 the conduct was clearly testified to and so that is of course a question of fact
24 for the jury and we provided sufficient probable cause to have him stand to
25 both counts.

1 With regard to count of the first-degree kidnapping, um, there's a
2 couple of distinguishing things that need to be addressed here, your Honor, and
3 that is for purposes of first-degree kidnapping.

4 There are different theories under our statute and as to the first of
5 one that Mr. Draskovich is talking about where, um, it really talks about
6 confining, inveigle, enticing, abducting, et cetera, kidnapping a person with the
7 intent to have one of the enumerated offenses occur.

8 And what's an enumerated offense (indiscernible), robbery, sexual
9 assault, substantial bodily harm, or murder, or attempted murder to the person's
10 body, but there is also a second portion of the first-degree kidnapping statute
11 and that's what theory which -- which we have presented here today so I do
12 not have to show that there is some movement above and beyond this
13 enumerated offense because I don't have to enumerate a specific offense
14 'cause that's not what we're going under.

15 Our theory that we're going under is a person who leads, takes,
16 entices, or carries away or detains any minor with the intent to keep, imprison,
17 or confine the minor from his or her parents and it is for an unlawful purpose.
18 The unlawful purpose as we've pled is the sex with a pupil.

19 And then I further enumerated that in our pleading just so that
20 there's no confusion to obviously have sexual intercourse and/or cunnilingus
21 and/or fellatio with the named victim and she in fact testified to the same.
22 Right?

23 She testified, your Honor, that it was the plan that they were going
24 there to have sex, that they wanted to have sex, they -- he was taken from
25 these hotel -- to these hotels, excuse me, to have sex, an idea that, um, we

1 have to -- the intent of the victim is at issue. It's not. The intent of the
2 defendant -- and we've provided sufficient evidence and probable cause for that
3 to be a question of fact for a jury.

4 The intent is not the victim. The intent is not whether the victim
5 felt a certain way but it is intent by the defendant to keep from her parents
6 which that's why the permission comes into play.

7 And let's make something very clear. We're not talking about
8 persons talking to minor children, your Honor. The testimony that was given by
9 the -- obviously the named student in this case was that they -- he took her in
10 his vehicle and she told her mother that she had a ride to school, right, and he
11 took her to go to a hotel to have sexual intercourse and/or other sexual conduct
12 with her which is the (indiscernible) and he kept her from her parent. She didn't
13 have permission to do so and that's why it's important.

14 And so we have obviously met our burden for purposes of the
15 preliminary hearing. We have sufficient probable cause to, um, bind the
16 defendant over on the amended as interlineated -- excuse me -- by myself
17 dismissing Count 8 here today for him to face a jury on these charges.

18 THE COURT: All right. Thank you, Ms. Schifalacqua.

19 I certainly understand, Mr. Draskovich, your nature of the ongoing
20 argument that you've presented regarding, uh, the counts of sexual conduct
21 between certain employees or volunteers of school on pupil and I believe you
22 made a clear record of that.

23 I also understand your arguments regarding the open and gross
24 lewdness and the case law that states cites, um, certainly counter any sort of
25 specific requirement as to open and as a testimony you produced here today I

1 guess even with the counts that that refers to in the classroom they're
2 eventually discovered by school security.

3 And your arguments regarding first-degree kidnapping, um, can
4 certainly be more appropriately taken up in future proceedings.

5 So with that, Mr. Lofthouse, please stand. It appears to me from
6 the complaint on file herein and from the testimony adduced at this preliminary
7 examination that the crimes of Counts 1, 4, 9, 12, 13, 14, 15 of sexual
8 conduct between certain employees or volunteers of school and pupil, Counts 2
9 and 10 of the open and gross lewdness, and Counts 3 and 11 of first-degree
10 kidnapping have been committed and that there's sufficient cause to believe the
11 defendant named herein has committed the same -- the said crimes.

12 I hereby order that the defendant be bound over to the Eighth
13 Judicial District Court, State of Nevada, county of Clark, on --

14 Let me make sure I got the -- if I stated the -- the numbers right on
15 the counts. Are we all on the same page with 8 being stricken?

16 MR. DRASKOVICH: Should be 1 through 14, yeah.

17 THE COURT: Okay. All right. Perfect then. And 1 through 14
18 are all bound over at this time.

19 And before we give out that bindover date, before I lose jurisdiction
20 here, we had an Exhibit 4 that was previously marked --

21 MS. SCHIFALACQUA: (Indiscernible), your Honor. We did not
22 move for admission of Exhibit 4 and I don't know if we want the clerk to --

23 THE COURT: Yeah. We'll just leave it that way. We'll note for
24 the record that State's proposed Exhibit 4 was marked for identification
25 purposes but not introduced into evidence and not offered for evidence.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

And with that, um, this case will be bound over to the Eighth
Judicial District Court, State of Nevada, county of Clark, on....

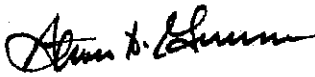
THE CLERK: July 20th, 10 a.m.

THE COURT: All right. Thank you, everyone. Appreciate it.
Court's adjourned.

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
video recording of this proceeding in the above-entitled case to the best of my
ability.


NORMA JEAN SILVERMAN
Court Recorder/Transcriber


CLERK OF THE COURT

1 ROBERT M. DRASKOVICH, ESQ. (6275)
2 TURCO & DRASKOVICH, LLP
3 815 S. Casino Center Boulevard
4 Las Vegas, NV 89101
5 Telephone: (702) 474-4222
6 Fax: (702) 474-1320

7 GARY A. MODAFFERI, ESQ.
8 LAW OFFICES OF GARY A. MODAFFERI
9 815 S. Casino Center Boulevard
10 Las Vegas, Nevada 89101

11 LOUIS C. SCHNEIDER, ESQ. (9683)
12 500 S. Seventh Street
13 Las Vegas, Nevada 89101
14 Telephone: (702) 435-2121

15 Counsel for Defendant/Petitioner

16 **DISTRICT COURT**
17 **CLARK COUNTY, STATE OF NEVADA**

18 In the Matter of the Application of
19 JASON LOFTHOUSE
20 For a Writ of Habeas Corpus.

Case No. C-15-307937-1
Dept No. XX

21 **PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)**

22 TO: The Honorable Judge of the Eighth Judicial District Court of
23 The State of Nevada, in and for the County of Clark

24 The Petition of JASON LOFTHOUSE submitted by ROBERT M. DRASKOVICH,
25 GARY A. MODAFFERI and LOUIS C. SCHNEIDER, as attorneys for the above-captioned
26 individual, respectfully affirm:

- 27 1. That attorneys for Petitioner are duly qualified, practicing and licensed
28 attorneys in the City of Las Vegas, County of Clark, State of Nevada.
2. That attorneys make an application herein on behalf of their client Petitioner

1 for a Writ of Habeas Corpus.

2 3. That the imprisonment and restraint of Petitioner is unlawful for the following
3 reasons: The Petitioner is unlawfully and unconstitutionally charged with
4 Sexual Conduct Between Certain Employees or Volunteers of School and
5 Pupil (Counts 1, 4, 5, 6, 7, 8, 11, 12 and 13), Open or Gross Lewdness
6 (Counts 2 and 9), and First Degree Kidnapping (Counts 3 and 10).

7
8 4. That no other Petition for Habeas Corpus has heretofore been filed on behalf
9 of Petitioner.

10 5. The Petitioner waives the 60 day limitation for bringing the accused to trial.

11 6. If the Petition is not decided within 15 days before the date set for trial, the
12 Petitioner consents that the Court may, without notice or hearing, continue the trial indefinitely
13 or to date designated by the Court.

14
15 WHEREFORE, Petitioner prays that this Honorable Court make an Order
16 directing the County of Clark to issue a Writ of Habeas Corpus directed to the said Joseph
17 Lombardo, Sheriff, commanding him to bring the above-mentioned Petitioner before your
18 Honor, and return the cause of his imprisonment.

19
20 DATED: August 20, 2015.

21 /s/ Gary A. Modafferi, Esq.

22 By:

23 Robert M. Draskovich, Esq. (6275)
24 Gary A. Modafferi, Esq. (12450)
25 Louis C. Schneider, Esq. (9683)
26 Attorneys for Defendant/Petitioner Jason Lofthouse
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION

TO: ALL PARTIES OF INTEREST and THEIR COUNSEL OF RECORD; and

TO: THE STATE OF NEVADA.

PLEASE TAKE NOTICE that on the 8 day of SEPT, 2015, Defendant Lofthouse will bring the foregoing PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL) on for hearing at the hour of 8:30 AM a.m. in the above-referenced court.

DATED: August 20, 2015.

/s/ Gary A. Modafferi

By:

Robert M. Draskovich, Esq. (6275)
Gary A. Modafferi, Esq. (12450)
Louis C. Schneider, Esq. (9683)
Attorneys for Defendant Jason Lofthouse

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION

GARY A. MODAFFERI makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am familiar with the facts and circumstances of this case.

2. That I am the attorney of record for Petitioner/Defendant in the above matter; that I have read the foregoing Petition, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true; that Defendant, JASON LOFTHOUSE, personally authorizes me to commence this Writ of Habeas Corpus action.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 20th day of August, 2015.

/s/ Gary A. Modafferi

GARY A. MODAFFERI

**MEMORANDUM OF
POINTS AND AUTHORITIES**

I. OVERVIEW

The Petitioner is charged by way of Amended Information filed on July 16, 2015 with Sexual Conduct Between Certain Employees or Volunteers of School and Pupil (Category C Felony); Counts 1, 4, 5, 6, 7, 8, 11, 12 and 13; Open or Gross Lewdness (Gross Misdemeanor) Counts 2 and 9; and First Degree Kidnapping (Category A Felony) Counts 3 and 10.¹

A preliminary hearing was held before the Honorable Christopher K. Lee on July 9, 2015. The State was represented by Barbara Schifalacqua, Esq., and Stacy Kollins, Esq. The Petitioner was represented by Robert M. Draskovich, Esq., and Louis C. Schneider, Esq. The State presented one witness; Minor M.T..² At the end of the hearing, Count 8 was voluntarily dismissed and the Justice Court sustained the remaining fourteen counts as represented in the attached Amended Information.³

¹ See Amended Information attached as Exhibit A.

² The preliminary hearing transcript was filed on July 30, 2015 and is referred to hereinafter as "PHT."

³ The statutory elements of the challenged counts are outlined below:

NRS 200.310 Degrees.

1. A person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for ransom, or reward, or for the purpose of committing sexual assault, extortion or robbery upon or from the person, or for the purpose of killing the person or inflicting substantial bodily harm upon the person, or to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnapped person, and a person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine the minor from his or her parents, guardians, or any other person having lawful custody of the minor, or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act is guilty of kidnapping in the first degree which is a category A felony.

2. A person who willfully and without authority of law seizes, inveigles, takes, carries away or kidnaps another person with the intent to keep the person secretly imprisoned within the State, or for the purpose of conveying the person out of the State without authority of law, or in any manner held to service or detained against the person's will, is guilty of kidnapping in the second degree which is a category B felony.

[1:165:1947; 1943 NCL § 10612.05]—(NRS A 1959, 20; 1979, 39; 1987, 495; 1995, 1184)

NRS 200.320 Kidnapping in first degree: Penalties. A person convicted of kidnapping in the first degree is guilty of a category A felony and shall be punished: ⁵

1
2 1. Where the kidnapped person suffers substantial bodily harm during the act of kidnapping or the subsequent
3 detention and confinement or in attempted escape or escape therefrom, by imprisonment in the state prison:

4 (a) For life without the possibility of parole;
5 (b) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has
6 been served; or

7 (c) For a definite term of 40 years, with eligibility for parole beginning when a minimum of 15 years has been
8 served.

9 2. Where the kidnapped person suffers no substantial bodily harm as a result of the kidnapping, by
10 imprisonment in the state prison:

11 (a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has
12 been served; or

13 (b) For a definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been
14 served.

15 [2:165:1947; 1943 NCL § 10612.06]—(NRS A 1967, 469; 1973, 1804; 1995, 1184)

16 **NRS 201.470 Definitions.** As used in NRS 201.470 to 201.550, inclusive, unless the context otherwise requires,
17 the words and terms defined in NRS 201.480 to 201.530, inclusive, have the meanings ascribed to them in those
18 sections.

19 (Added to NRS by 1997, 2522)

20 **NRS 201.480 "College" defined.** "College" means a college or community college which is privately
21 owned or which is part of the Nevada System of Higher Education.

22 (Added to NRS by 1997, 2522)

23 **NRS 201.490 "Private school" defined.** "Private school" has the meaning ascribed to it in NRS 394.103.

24 (Added to NRS by 1997, 2522)

25 **NRS 201.500 "Public school" defined.** "Public school" has the meaning ascribed to it in NRS 385.007.

26 (Added to NRS by 1997, 2522)

27 **NRS 201.510 "Sado-masochistic abuse" defined.** "Sado-masochistic abuse" has the meaning ascribed to it
in NRS 201.262.

(Added to NRS by 1997, 2522)

28 **NRS 201.520 "Sexual conduct" defined.** "Sexual conduct" means:

1. Ordinary sexual intercourse;
2. Anal intercourse;
3. Fellatio, cunnilingus or other oral-genital contact;
4. Physical contact by a person with the unclothed genitals or pubic area of another person for the purpose of
arousing or gratifying the sexual desire of either person;
5. Penetration, however slight, by a person of an object into the genital or anal opening of the body of another
person for the purpose of arousing or gratifying the sexual desire of either person;
6. Masturbation or the lewd exhibition of unclothed genitals; or
7. Sado-masochistic abuse.

(Added to NRS by 1997, 2522)

29 **NRS 201.530 "University" defined.** "University" means a university which is privately owned or which is
30 part of the Nevada System of Higher Education.

(Added to NRS by 1997, 2522)

31 **NRS 201.540 Sexual conduct between certain employees of school or volunteers at school and pupil:**
32 **Penalty; exception.**

33 1. Except as otherwise provided in subsection 4, a person who:

34 (a) Is 21 years of age or older;

(b) Is or was employed in a position of authority by a public school or private school or is or was volunteering
in a position of authority at a public or private school; and

II. FACTUAL BACKGROUND

Counsel for Petitioner began the hearing by pointing out to the Court that the Petitioner was being charged with a crime against decency and moral conduct under NRS 201.540 and not a crime against the person.⁴ The sexual relationship that was alleged between M.T. and Petitioner is not and was not prohibited by law due to M.T.'s age. The State's one and only witness was

(c) Engages in sexual conduct with a pupil who is 16 or 17 years of age and:

(1) Who is or was enrolled in or attending the public school or private school at which the person is or was employed or volunteering; or

(2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer,

is guilty of a category C felony and shall be punished as provided in NRS 193.130.

2. Except as otherwise provided in subsection 4, a person who:

(a) Is 21 years of age or older;

(b) Is or was employed in a position of authority by a public school or private school or is or was volunteering in a position of authority at a public or private school; and

(c) Engages in sexual conduct with a pupil who is 14 or 15 years of age and:

(1) Who is or was enrolled in or attending the public school or private school at which the person is or was employed or volunteering; or

(2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer,

is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

3. For the purposes of subsections 1 and 2, a person shall be deemed to be or have been employed in a position of authority by a public school or private school or deemed to be or have been volunteering in a position of authority at a public or private school if the person is or was employed or volunteering as:

(a) A teacher or instructor;

(b) An administrator;

(c) A head or assistant coach; or

(d) A teacher's aide or an auxiliary, nonprofessional employee who assists licensed personnel in the instruction or supervision of pupils pursuant to NRS 391.100.

4. The provisions of this section do not apply to a person who is married to the pupil.

(Added to NRS by 1997, 2522; A 2001, 703; 2013, 2098)

NRS 201.210 Open or gross lewdness; penalty.

1. A person who commits any act of open or gross lewdness is guilty:

(a) For the first offense, of a gross misdemeanor.

(b) For any subsequent offense, of a category D felony and shall be punished as provided in NRS 193.130.

2. For the purposes of this section, the breast feeding of a child by the mother of the child does not constitute an act of open or gross lewdness.

[Part 1911 C&P § 195; A 1921, 112; NCL § 10142]—(NRS A 1963, 63; 1965, 1465; 1967, 476; 1973, 95, 255, 1406; 1977, 866; 1979, 1429; 1983, 206; 1991, 1008; 1995, 127, 1199, 1327; 1997, 2501, 3188)

⁴ PHT 9.

1 M.T. She was seventeen with a date of birth of October 22, 1987 when these events were alleged
2 to have occurred.⁵

3 M.T. attends Rancho High School where she was a junior during the 2014-2015 school
4 years.⁶ She met the Petitioner at Rancho during this time. Petitioner taught U.S. History.⁷ They
5 first met in the beginning of the school year in 2014.⁸ She described their relationship through
6 winter break as a "beginner teacher-student relationship."⁹ After winter break Petitioner took time
7 off and M.T. had a substitute teacher.¹⁰ M.T. and Petitioner began contact outside of their school
8 relationship through Twitter after the school winter break.¹¹ It began with friends asking him to
9 return because they were unhappy with his substitute.¹² M.T. began direct messaging Petitioner
10 in March, 2015.¹³ They would message about music and other topics.

13 M.T. said she knew the Petitioner was married with children and that he was 32 years old.¹⁴
14 In late April, the two began telling each other that they were attracted to each other.¹⁵ The first
15 time there was physical contact was in May 2015 when the two kissed in his classroom.¹⁶ M.T.
16 described giving Petitioner oral sex in the empty and locked classroom.¹⁷ They had positioned
17 themselves in the corner of the room so as not to be seen by other people.
18
19
20
21
22

23 ⁵ PHT 12.

24 ⁶ PHT 12.

25 ⁷ PHT 14.

26 ⁸ PHT 16.

27 ⁹ PHT 17.

28 ¹⁰ PHT 17.

¹¹ PHT 18.

¹² PHT 18.

¹³ PHT 20.

¹⁴ PHT 21.

¹⁵ PHT 22.

¹⁶ PHT 24.

¹⁷ PHT 27 and PHT 30 (counts 1 and 2)

1 On May 20, 2015 they made arrangements to go to a hotel to have sex.¹⁸ Petitioner picked
2 her up in the morning at her house; they both skipped school, and went to a hotel to have
3 consensual sex.¹⁹ They first had oral sex and next they had penis in vagina sex.²⁰ Count three is
4 charged as a kidnapping in the first degree for this consensual encounter at the hotel on May 20,
5 2015. The State would later argue that this charge was supported by a custodial/parental
6 interference theory.
7

8 The State also splintered the encounter into two episodes of sexual intercourse by charging
9 Counts six and seven for penis to vagina sex. They charged separately Count 5 for fellatio and
10 Count 4 for cunnilingus. Petitioner dropped off M.T. near her house at approximately 2p.m. on
11 May 20, 2015.²¹ M.T. described several other encounters with Petitioner occurring between May
12 21st to May 27th including oral sex in the classroom. She touched his genitals and they kissed.²²
13

14 M.T. told the prosecutor that she was annoyed to be forced to tell her about these private
15 and consensual choices and that she wished "my choice was respected."²³ M.T. next asked to
16 describe another hotel sexual encounter with Petitioner at the Cannery Hotel on May 28, 2015.²⁴
17 M.T. indicated she did not have her parents' permission to go to either the Aliante on May 20,
18 2015 or the Cannery on May 28, 2015.²⁵
19

20 The State identified a surveillance photograph through M.T. of her kissing the Petitioner.²⁶
21 While in the hotel room M.T. testified she "gave him oral sex."²⁷ He gave her oral sex.²⁸ M.T.
22

23
24 ¹⁸ PHT 33. M.T. testified they had penis to vagina sex twice. PHT 43.

¹⁹ PHT 33, 34 and 39.

²⁰ PHT 39-40.

²¹ PHT 45.

²² PHT 46-47.

²³ PHT 49.

²⁴ PHT 50-53.

²⁵ PHT 34 and 54.

²⁶ PHT 57.

²⁷ PHT 58.

²⁸ PHT 59.

1 also testified to twice having penis to vagina sex.²⁹ On June 3, 2015, M.T. went to Petitioner's
2 classroom. She kissed him and then a security officer entered and took her to the school office.³⁰
3 M.T. first denied then admitted the relationship.³¹

4
5 Upon cross-examination, M.T. readily underscored that she was seventeen when these acts
6 occurred with Petitioner and that they were all completely consensual.³² No drugs or alcohol
7 were involved.³³ M.T. told the Court she went with Petitioner willingly and was not confined in
8 anyway.³⁴ Petitioner at no point tried to keep M.T. from her parents, nor did he tell her he wanted
9 to keep her from her parents, nor did M.T. feel that he was keeping her from her parents.³⁵ Being
10 seventeen she routinely met with people without her parents' permission. M.T. said she felt like
11 she was free to leave him at any time.³⁶

12
13 When asked if she felt intimidated by the prosecutors M.T. responded "I feel intimidated by
14 anyone who questions what I do with my body."³⁷ M.T. said she felt completely forced to
15 participate in this prosecution.³⁸ M.T. felt her relationship with the Petitioner was an "honest"
16 relationship and it was entered into voluntarily on her part.³⁹ But for the fact that Petitioner is in
17 legal trouble she did not have regrets. She testified that "I believe we're both equally
18 responsible."⁴⁰ When asked by the prosecutor if she told anyone older than 18 about her sexual
19 relationship with Petitioner, M.T. responded "I don't tell any adult about my sexual
20
21
22

23 ²⁹ PHT 59-60.

24 ³⁰ PHT 64.

25 ³¹ PHT 65.

26 ³² PHT 70.

27 ³³ PHT 70.

28 ³⁴ PHT 71.

³⁵ PHT 72.

³⁶ PHT 73.

³⁷ PHT 74.

³⁸ PHT 76.

³⁹ PHT 78.

⁴⁰ PHT 78.

relationships.”⁴¹ M.T. testified that, “I don’t see how it concerns what I do with anyone else.”⁴²
She told the prosecutor “It’s my body and I’m over 16.”⁴³

III. LEGAL ARGUMENT

A. The three First Degree Kidnapping charges are unsupported by the facts or the law.

Even when the evidence presented at the preliminary hearing is viewed through the probable cause standard evidentiary prism, nothing the Petitioner did or said, can transform these events into legal culpability amounting to kidnapping in the first degree. The Amended Information alleges two counts of First Degree Kidnapping as codified in Counts 3 and 10.

The State uses the exact tracking language provided for in the definitional section of NRS 200.310. Counsel for the Petitioner consistently made the argument that the State’s misuse of its charging powers has transformed a crime against public decency and good morals offense as codified in NRS 201 into a crime against persons offense as codified in NRS 200.

Counsel for Petitioner argued, “We do not have the defendant in this case keeping this young lady, prying this young lady away from her parents or guardians. If there was in fact movement it was incidental to the sexual conduct. Our Nevada Supreme Court has stated that for a separate charge of first-degree kidnapping that movement must be so great and so substantial that it substantially increases the risk of harm to the alleged victim, but in this case we don’t have a victim so it doesn’t apply.”⁴⁴

The language Counsel made reference to in his argument is the same language contained in Counts 3 and 10 and is the same language that the Nevada Supreme Court has scrutinized

⁴¹ PHT 85.

⁴² PHT 87.

⁴³ PHT 87.

⁴⁴ PHT 91.

1 through multiple decisions. In both events, the Amended Information reads in pertinent part that
2 the Petitioner "did ... willfully, unlawfully, and feloniously, lead, take, entice, carry away or
3 kidnap M.T. a minor, with intent to keep, imprison or confine said M.T., from her parents,
4 guardians, or other person or persons having lawful custody of M.T., or with the intent to hold
5 M.T. to unlawful service, or to perpetrate upon the person of M.T. any unlawful act, to-wit: by
6 Defendant engaging in sexual acts with the said M.T. which constitute Sexual Conduct Between
7 Certain Employees or Volunteers and Pupil, to-wit Sexual Intercourse and/or Fellatio and/or
8 Cunnilingus."⁴⁵ The charge at issue is a class A felony which carries a life term.

11 The act at issue is consensual sex between a seventeen year old girl and a man. This
12 conduct alone is not criminal. The circumstance, pursuant to the student/teacher prohibition
13 makes an otherwise legal encounter a criminal encounter. However, the harm necessary to
14 support a charge of First Degree Kidnapping does not then morph to support a First Degree
15 Kidnapping charge.

17 At the preliminary hearing, the State erroneously argued the kidnapping allegation is is
18 legally valid when coextensively alleged with the premise that the attendant actions constitute
19 their interpretation of interference with parental custody. The State also argued that consideration
20 of the complainant's explicit unwavering testimony that she agreed and desired to go with the
21 Petitioner is irrelevant to assessing this offense.⁴⁶

23 The State misapprehends the law. It is the State's burden to present evidence amounting
24 to probable cause that the seizure, movement or restraint substantially exceeded what is
25 necessary to complete the associated offense. To begin with the associated offense, it is
26 respectfully submitted, must be an offense which causes the person kidnapped to be harmed or
27

⁴⁵ Counts 3 and 10 of Amended Information. See e.g. Exhibit A.

1 subjected to the possibility of harm. That proof is lacking in the preliminary hearing record. The
2 State cannot point to any legislative intent to make Kidnapping in the First Degree elementally
3 indistinguishable from Sexual Conduct Between Certain Employees or Volunteers of School and
4 Pupil. Voluntarily going to a hotel to have consensual sex does not transform these events into
5 Kidnapping.
6

7 Beginning with Wright, the Nevada Supreme Court distinguished the acts necessary to
8 sustain a Kidnapping in the First Degree and an associated Robbery offense.⁴⁷ In Wright, the
9 Nevada Supreme Court concluded "that the Legislature intended a conviction of both kidnapping
10 and robbery only when the movement of the victim substantially increases the risk of harm
11 beyond that necessarily present in the crime of robbery itself."⁴⁸ Not a single fact presented at
12 preliminary hearing that makes the kidnapping charge more than incidental to the morals and
13 decency offense.⁴⁹ The State presented no legal basis for including a morals and decency offense
14 as a predicate crime to support an allegation of Kidnapping in the First Degree.
15
16

17 In Clem, the Nevada Supreme Court held that, "while the plain language of NRS 200.310 (1)
18 does not require asportation, the court has required it when the kidnapping is incidental to
19 another offense, such as robbery, where restraint of the victim is inherent with the primary
20 offense."⁵⁰ If the victim is physically restrained, "this in itself, establishes kidnapping as an
21 additional offense."⁵¹ In Petitioner's case, there was no asportation and there was no restraint.
22
23
24

25 ⁴⁶ PHT 93-94.

26 ⁴⁷ Wright v. State, 94 Nev. 415, 581 P.2d. 442 (1978)

27 ⁴⁸ Woods v. State, 95 Nev. 29, 31 588 P.2d. 1030, 1032 (1979)

28 ⁴⁹ In Woods, id, the Court found that locking the victims in the trunk of a car in a remote area substantially increased
their risk of harm.

⁵⁰ Clem v. State, 104 Nev. 351, 354, 760 P.2d. 103, 105 (1988) citing Wright v. State, 94 Nev. 415, 581 P.2d. 442
(1978); Langford v. State, 95 Nev. 631, 600 P.2d. 231 (1979)

⁵¹ Clem, id, 104 Nev. at 354.

1 In Clem, the Court held that "... the kidnapping is not incidental to the underlying offense if
2 "the restraint increased the risk of harm" or "had an independent purpose and significance as
3 [being] essential to the accomplishment of the other offense." Here, the State did not prove that
4 there was any asportation or restraint of any kind.

5
6 In Hutchins, the Nevada Supreme Court sustained a kidnapping because the victim was
7 forcibly moved to a different part of the apartment where she was physically restrained and
8 accordingly less apt to be heard by a passerby. Additionally, the forcible method used to relocate
9 her to a more secure setting for the assault, coupled with the measures used to accomplish her
10 restraint, created a greater risk of harm without more.⁵² These are not the facts of Petitioner's
11 case. There is nothing like this in Petitioner's case.

12
13 In Mendoza, the Court held "that movement or restraint incidental to an underlying
14 offense where restraint or movement is inherent, as a general matter, will not expose the
15 defendant to dual criminal liability under either the first or second kidnapping statutes. However,
16 where the movement or restraint serves to substantially increase the risk of harm to the victim
17 over and above that necessarily present in the associated offense, i.e. robbery, extortion, battery
18 resulting in substantial harm, or sexual assault, or where the seizure, restraint or movement of the
19 victim substantially exceeds that required to complete the associated crime charged, dual
20 convictions under the kidnapping and robbery statutes are proper."⁵³

21
22
23 The State essentially argues that the Petitioner interfered with parental custody and this
24 interference substitutes for restraint or movement that substantially exceeds that necessary to
25 complete the charge of Sexual Conduct Between Certain Employees or Volunteers of School and
26 Pupil. Under the State's proposed use of the kidnapping statute the driver of M.T.s car used to
27

28
14
⁵² Hutchins v. State, 110 Nev. 103, 887 P.2d. 1136 (1994)

1 cut school would also be guilty of Kidnapping. The manner in which this kidnapping was
2 charged and presented at preliminary hearing represents a forbidden scenario in which every
3 charge of Sexual Conduct Between Certain Employees or Volunteers of School and Pupil would
4 also necessarily be a Kidnapping in the First Degree charge. This is not the law and it is not in
5 keeping with the holdings of such cases as Mendoza, Clem, Wright and Hutchins.
6

7 In Pascua, the Nevada Supreme Court once again took the opportunity to hold that,
8 "movement or restraint incidental to an underlying offense, where restraint or movement is
9 inherent, as a general matter, will not expose the defendant to dual criminal liability under either
10 the first-or-second degree kidnapping statutes."⁵⁴ The Court went on to address the propriety of
11 dual convictions under Nevada kidnapping and murder statutes. The Court in Pascua stated that
12 "although we are cognizant that seizure, restraint, or movement often occurs incidental to the
13 underlying offense of murder, there are certainly situations in which such seizure, movement, or
14 restraint substantially exceeds that required to complete the murder."⁵⁵ The Court then attempted
15 to illustrate examples of a situation where "such seizure, movement, or restraint substantially
16 exceeds that to complete the murder." The Court stated "for example dual convictions could
17 stand where the object is murder and victim is kidnapped for that purpose. We can also imagine
18 a scenario in which a person is kidnapped for ransom and is murdered in order to prevent the
19 victim from identifying the kidnapper."⁵⁶
20
21
22

23 In this case, the State argues that probable cause to establish Kidnapping in the First
24 Degree was presented because Petitioner constructively violated the Complainant's parental
25 custody. The State failed to present any evidence on this point from M.T.'s parents. Probable
26
27

28 ⁵³ Mendoza v. State, 122 Nev. 130 P.3d 176 (2006)

⁵⁴ Pascua v. State, 122 Nev. 1001, 145 P.3d 1031, 1033 (2006)

⁵⁵ Pascua, id at 1034.

1 cause remains the standard to be applied. The terms slight and/or marginal have not eroded the
2 basic tenet that this is still the same amount of evidence that must be proffered in the warrant
3 application process to enter a citizen's home or alternatively, the amount of evidence for a police
4 officer to arrest a citizen from the street.

5
6 In Graves, the Nevada Supreme Court examined whether the same probable cause
7 standard applied to proof of corpus delicti. The Court held that the State has the burden of
8 showing a "reasonable inference" of death by criminal agency, such that a person of ordinary
9 caution and prudence (would) believe and conscientiously entertain a strong suspicion."⁵⁷ This
10 applicable legal analogy was repeated in Middleton where the Court held, "Accordingly, we now
11 clarify that at preliminary hearing stage, the State's burden with respect to the corpus delicti is
12 the same as its burden to show probable cause." The State must present evidence supporting a
13 "reasonable inference" of death by criminal agency."⁵⁸

14
15 In this case the State must have presented proof amounting to probable cause that a crime
16 occurred and that the Petitioner is the person that committed the crime. The crime of first degree
17 kidnapping did not occur. The State's proof surrounding this issue was presented at preliminary
18 hearing in a tangential and confusing manner. M.T. did not need her parents' permission to have
19 sex. The proposed charge of kidnapping in the first degree by interference with parental custody
20 is based upon the erroneous presumption that M.T. was beholden to legally obtain this
21 permission.
22
23
24
25
26
27

28 ⁵⁶ Pascua, id at 1034.

⁵⁷ Graves v. Sheriff, 88 Nev. 436, 439, 498 P.2d. 1329, 1336 (1972)

⁵⁸ Sheriff v. Middleton, 112 Nev. 956, 961, 921 P.2d. 286 (1996)

1 **B. The State presented insufficient evidence to establish that Petitioner**
2 **committed open or gross lewdness.**

3 The Petitioner was charged with two counts of Open and Gross Lewdness based upon
4 private, unviewed, physical interactions between M.T. and Petitioner in his classroom.⁵⁹ M.T.
5 said they kissed in the right hand corner of the classroom ... "to not be seen."⁶⁰ She further
6 testified that the otherwise empty classroom was probably locked.⁶¹ They were "outside the view
7 of the window and the door" during their physical encounters. The second charged encounter
8 occurred sometime ... "From May 21st to May 27th..."⁶² In both instances evidence was adduced
9 that M.T. engaged in consensual oral sex (fellatio) with Petitioner.
10

11 The Nevada Supreme Court has previously considered what acts of lewdness were
12 deemed "open" under NRS 201.210.⁶³ The Ranson court concluded that because the term "open"
13 modified the word "lewdness" the Legislature intended to broaden the common law definition to
14 include acts which are committed in a private, but which are nevertheless committed in an
15 "open" as opposed to secret manner.⁶⁴
16

17 In this case, the parties took particular caution to prevent open exposure of their physical
18 encounter. The door was locked and they moved to a portion of the classroom where they could
19 not be seen by others in the building. It is respectfully submitted that these precautions preclude
20 a finding that the offenses charged were committed in an "open" manner.⁶⁵
21

22
23
24
25
26 ⁵⁹ Count 2 alleges a time between May 6, 2015 and Count 9 alleges a time between May 21, 2015 and May 27,
27 2015.

28 ⁶⁰ PHT 25.

⁶¹ PHT 26 and 27.

⁶² PHT 45.

⁶³ Ranson v. State, 99 Nev. 766, 767 (1983)

⁶⁴ Id.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

It is respectfully submitted that the State failed to present sufficient probable cause to sustain counts 2, 3, 9, and 10. These counts should be dismissed.

DATED: August 20, 2015.

By: /s/ Robert M. Draskovich
Robert M. Draskovich, Esq. (6275)
Gary A. Modafferi, Esq. (12450)
Louis C. Schneider, Esq. (9683)
Counsel for Defendant/Petitioner LOFTHOUSE

⁶⁵ The petition plans to challenge the constitutionality of § 38 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil. NRS 201.540 A motion to dismiss will be filed for that purpose.

1 ROBERT M. DRASKOVICH, ESQ. (6275)
2 TURCO & DRASKOVICH, LLP
3 815 S. Casino Center Boulevard
4 Las Vegas, NV 89101
5 Telephone: (702) 474-4222
6 Fax: (702) 474-1320

7 GARY A. MODAFFERI, ESQ.
8 LAW OFFICES OF GARY A. MODAFFERI
9 815 S. Casino Center Boulevard
10 Las Vegas, Nevada 89101

11 LOUIS C. SCHNEIDER, ESQ. (9683)
12 500 S. Seventh Street
13 Las Vegas, Nevada 89101
14 Telephone: (702) 435-2121

15 Counsel for Defendant/Petitioner

16 **DISTRICT COURT**
17 **CLARK COUNTY, STATE OF NEVADA**

18 In the Matter of the Application of

19 JASON LOFTHOUSE

20 For a Writ of Habeas Corpus.

Case No. C-15-307937-1

Dept No. XX

21 **CERTIFICATE OF SERVICE**

22 I, the undersigned, hereby certify that on the 20th day of August, 2015, I served a true
23 copy of **PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)** upon the following:

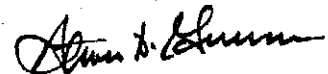
24 Stacey Kollins, Esq.
25 Chief Deputy District Attorney
26 stacy.kollins@clarkcountyda.com

27 Barbara Schifalacqua
28 Chief Deputy District Attorney
barbara.schifalacqua@clarkcountyda.com

/s/ Erika W. Magana

Erika W. Magana, An Employee of
Turco & Draskovich, LLP

EXHIBIT "A"


CLERK OF THE COURT

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 STACEY KOLLINS
6 Chief Deputy District Attorney
7 Nevada Bar #005391
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 I.A. 07/20/2015
13 10:00 AM
14 SCHNEIDER

15 THE STATE OF NEVADA,
16 Plaintiff,

17 -vs-

18 JASON RICHARD LOFTHOUSE,
19 #7019775
20 Defendant.

CASE NO: C-15-307937-1

DEPT NO: XX

AMENDED
INFORMATION

21 STATE OF NEVADA }
22 COUNTY OF CLARK } ss.

23 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
24 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

25 That JASON RICHARD LOFTHOUSE, the Defendant above named, having
26 committed the crimes of SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
27 VOLUNTEERS OF SCHOOL AND PUPIL (Category C Felony - NRS 201.540 - NOC
28 51067), OPEN OR GROSS LEWDNESS (Gross Misdemeanor - NRS 201.210 - NOC
50971) and FIRST DEGREE KIDNAPPING (Category A Felony - NRS 200.310, 200.320
- NOC 50053) in the manner following:

That the said Defendant, on or between May 6, 2015 and May 28, 2015, at and within
the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such
cases made and provided, and against the peace and dignity of the State of Nevada,

//

1 COUNT 1 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or between May 6, 2015 and May 19, 2015, then and there, willfully, unlawfully
4 and feloniously, while employed or volunteering or having been previously employed or
5 volunteering in a position of authority at a public or private school, to-wit: a teacher, at Rancho
6 High School, Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with
7 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
8 school at which Defendant was or previously had been employed or volunteering.

9 COUNT 2 - OPEN OR GROSS LEWDNESS

10 did, on or between May 6, 2015 and May 19, 2015, willfully and unlawfully commit an
11 act of open or gross lewdness by said Defendant having the said M.T. rub and/or touch the
12 body and/or genital area of Defendant and/or said M.T. engage in fellatio with Defendant in a
13 classroom of Rancho High School.

14 COUNT 3 - FIRST DEGREE KIDNAPPING

15 did, on or about May 20, 2015, willfully, unlawfully and feloniously, lead, take, entice,
16 carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T.,
17 from her parents, guardians, or other person or persons having lawful custody of M.T., or with
18 the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any
19 unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T. which constitute
20 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual
21 intercourse and/or fellatio and/or cunnilingus.

22 COUNT 4 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
23 VOLUNTEERS OF SCHOOL AND PUPIL

24 did, on or about May 20, 2015, then and there, willfully, unlawfully, and feloniously,
25 while employed or volunteering or having been previously employed or volunteering in a
26 position of authority at a public or private school, to-wit: a teacher, at Rancho High School,
27 Clark County, Nevada, and who is over 21 years of age, engage in cunnilingus, with M.T.,
28 who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at

1 which Defendant was or previously had been employed or volunteering.

2 COUNT 5 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
3 VOLUNTEERS OF SCHOOL AND PUPIL

4 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
5 while employed or volunteering or having been previously employed or volunteering in a
6 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
7 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
8 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which
9 Defendant was or previously had been employed or volunteering.

10 COUNT 6 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
11 VOLUNTEERS OF SCHOOL AND PUPIL

12 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
13 while employed or volunteering or having been previously employed or volunteering in a
14 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
15 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
16 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
17 school at which Defendant was or previously had been employed or volunteering.

18 COUNT 7 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
19 VOLUNTEERS OF SCHOOL AND PUPIL

20 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
21 while employed or volunteering or having been previously employed or volunteering in a
22 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
23 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
24 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
25 school at which Defendant was or previously had been employed or volunteering.

26 //

27 //

28 //

1 COUNT 8 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or between May 21, 2015 and May 27, 2015, then and there willfully,
4 unlawfully, and feloniously, while employed or volunteering or having been previously
5 employed or volunteering in a position of authority at a public or private school, to-wit: a
6 teach, at Rancho High School, , Clark County, Nevada, and who is over 21 years of age, engage
7 in fellatio, with M.T., who was 16 or 17 years of age at the time, and who was enrolled in or
8 attending the school at which Defendant was or previously had been employed or volunteering.

9 COUNT 9 - OPEN OR GROSS LEWDNESS

10 did, on or between May 21, 2015 and May 27, 2015, willfully and unlawfully commit
11 an act of open or gross lewdness by said Defendant having the said M.T. rub and/or touch the
12 body and/or genital area of Defendant and/or said M.T. engage in fellatio with Defendant in a
13 classroom of Rancho High School.

14 COUNT 10 - FIRST DEGREE KIDNAPPING

15 did, on or about May 28, 2015, willfully, unlawfully and feloniously, lead, take, entice,
16 carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T.,
17 from her parents, guardians, or other person or persons having lawful custody of M.T., or with
18 the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any
19 unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T which constitute
20 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual
21 intercourse and/or fellatio and/or cunnilingus.

22 COUNT 11 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
23 VOLUNTEERS OF SCHOOL AND PUPIL

24 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
25 while employed or volunteering or having been previously employed or volunteering in a
26 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
27 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
28 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which

1 Defendant was or previously had been employed or volunteering.

2 COUNT 12 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
3 VOLUNTEERS OF SCHOOL AND PUPIL

4 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
5 while employed or volunteering or having been previously employed or volunteering in a
6 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
7 Clark County, Nevada, and who is over 21 years of age, engage in cunnilingus, with M.T.,
8 who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at
9 which Defendant was or previously had been employed or volunteering.

10 COUNT 13 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
11 VOLUNTEERS OF SCHOOL AND PUPIL

12 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
13 while employed or volunteering or having been previously employed or volunteering in a
14 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
15 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
16 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
17 school at which Defendant was or previously had been employed or volunteering.

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 COUNT 14 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
4 while employed or volunteering or having been previously employed or volunteering in a
5 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
6 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
7 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
8 school at which Defendant was or previously had been employed or volunteering.

9 STEVEN B. WOLFSON
10 Clark County District Attorney
Nevada Bar #001565

11 BY /s/ STACEY KOLLINS
12 STACEY KOLLINS
13 Chief Deputy District Attorney
14 Nevada Bar #005391
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Names of witnesses known to the District Attorney's Office at the time of filing this
Information are as follows:

ABBOTT; CCSDPD#0199

ALEMAN, MARIA; 2237 DEMETRIUS AVE, LVN 89101

BROWNLEE, BELISA; 3612 SHAWN REYNOLDS CT #203, LVN 89129

BUTLER, VERNON; CANNERY CASINO, 2121 E CRAIG RD, NLV 89030

CASTILLO, ZUREMA; 6212 CRATERS EDGE ST, NLV 89031

COR or Designee; CCDC

COR or Designee; CCSD

COR or Designee; CCSDPD COMMUNICATIONS

COR or Designee; CCSDPD RECORDS

COR or Designee; RANCHO HIGH SCHOOL

HIBNER; CCSDPD#0243

JONES; CCSDPD#0323

KUZMA, JAMES; 2158 FOUNTAIN SPRINGS DR, HND 89074

LNU, NATHAN; SECURITY SUPERVISOR; ALIANTE HOTEL/CASINO

M.T.; c/o CCDA-SVU/VWAC

MACISZAK; CCSDPD#0308

NORDSTROM, R.; ALIANTE HOTEL/CASINO

PATTY; CCSDPD#0520

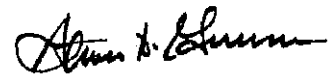
PRINCIPAL; RANCHO HIGH SCHOOL

TORRES, ISIDIRO; 5722 COLEMAN ST, NLV 89031

TORRES, MRS. FNU; 5722 COLEMAN ST, NLV 89031

TROXELL; CCSDPD#0373

DA#15FN0939X/hjc/SVU
CCSDPD EV#150603963



CLERK OF THE COURT

1 **RWHC**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **STACEY L. KOLLINS**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #005391**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **State of Nevada**

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 In the Matter of Application,)
11 of)

Case No. **C-15-307937-1**

12)
13 **JASON RICHARD LOFTHOUSE,**
14 **#7019775**

Dept No. **XX**

15 For a Writ of Habeas Corpus.
16)
17)
18)
19)
20)

18 **RETURN TO WRIT OF HABEAS CORPUS**

19 **DATE OF HEARING: SEPTEMBER 22, 2015**
20 **TIME OF HEARING: 8:30 A.M.**

21 **COMES NOW, JOSEPH LOMBARDO, Sheriff of Clark County, Nevada,**
22 **Respondent, through his counsel, STEVEN B. WOLFSON, District Attorney, through**
23 **STACEY L. KOLLINS, Chief Deputy District Attorney, in obedience to a writ of habeas**
24 **corpus issued out of and under the seal of the above-entitled Court on the 20th day of August,**
25 **2015, and made returnable on the 8th day of September, 2015, at the hour of 8:30 o'clock**
26 **A.M., before the above-entitled Court, and states as follows:**

27 //

28 //

//

The Preliminary Hearing Testimony of M.T. Pertinent to this Return

On July 9, 2015, a preliminary hearing was held in the above-captioned matter. The charges stem from an ongoing sexual relationship between M.T. and Jason Lofthouse, (hereinafter Defendant), a teacher a Rancho High School.

M.T. testified that she was 17 years old and her date of birth is October 22, 1997. M.T. attended Rancho High School for the past three years and was a junior during the 2014-2015 school year. PHT, p. 12. M.T. attended Ranch High School during her entire junior year and she knew Defendant as her fourth-period A.P. U.S. history teacher, during her junior year. PHT, pp. 13-15. M.T. first met Defendant in August 2014 and was in his class through June 2015. When she first met Defendant, M.T. was sixteen years of age. PHT, p. 15.

M.T. recounted that during the first semester with Defendant as her teacher they had a beginner teacher – student relationship. M.T. shared that during the second semester the relationship started to change. PHT, p. 16. Defendant was out on family leave because he had recently had a child which required a substitute teacher in January of 2015. Defendant came back to school sometime after the winter break. PHT, p. 17. Near that time, M.T. began following Defendant on Twitter. M.T. tweeted Defendant a message to come back from his absence because they were not enjoying the substitute teacher. PHT, p. 18.

Defendant and M.T. began direct messaging one another in March 2015. Defendant was back at school teaching during that time. PHT, pp. 19-20. Defendant and M.T. began direct messaging one another every day. In those messages M.T. discussed the school day and music, among other things. PHT, p. 20-21. M.T. told the Court that she knew Defendant was thirty-two years old and married with three children. M.T. testified that she had seen pictures of the Defendant's children on Twitter. PHT, p. 21. M.T. and Defendant communicated daily through April and May 2015. The relationship changed as M.T. began to like Defendant not as a teacher but as a romantic interest. Defendant told M.T. that he was attracted to her. PHT, p. 22. Defendant told M.T. that she was funny and pretty. That relationship began sometime at the end of April 2015. PHT, p. 23. M.T. testified that she had Defendant's phone number in her phone, saved under an emoji, as she did not want anyone to see Defendant's name

1 because she didn't want them to find out. PHT, pp. 23-24.

2 M.T. testified that she and Defendant text messaged almost every day. In May 2015,
3 the relationship between M.T. and Defendant began to get physical. M.T. testified that they
4 kissed in his classroom at Rancho High School. M.T. testified that the classroom door was
5 closed and probably locked, and they kissed in the right corner of the room so they would not
6 be seen. PHT, pp. 25-26. In May, after the kissing incident, the physical relationship escalated.
7 On a couple of occasions M.T. and Defendant kissed followed by M.T. giving Defendant oral
8 [sex], by placing her mouth on his penis. These encounters occurred in Defendant's classroom,
9 with the door shut and probably locked. PHT, pp. 26-27. These encounters occurred outside
10 the view of the window and the door. Defendant and M.T. kissed each other and touched each
11 other. Defendant touched M.T.'s breasts. M.T. touched Defendant's chest area and genital
12 area. PHT, p. 28. M.T. testified that Defendant pulled down his pants and underwear and M.T.
13 gave him oral sex until he ejaculated in her mouth. PHT, pp. 29-30.

14 On May 20, 2015, M.T. went to the Aliante hotel with Defendant. The plan was that
15 Defendant would pick M.T. up and they would go to the hotel. Defendant picked M.T. up on
16 Ranch House Street at 7:15 a.m. M.T. was supposed to go to school that day but she did not.
17 M.T. testified that her mother would normally drive her to school, but that day she told her
18 mom she was going to get a ride. M.T. stated she never told her mom she was going anywhere
19 with Defendant. M.T. had neither permission to skip school that day nor to go with Defendant
20 to Aliante. PHT, pp. 33-34. M.T. testified that she did not have permission from either parent
21 to go with Defendant on May 20, 2015. PHT, p. 36.

22 M.T. stated that Defendant picked her up in blue, four (4) door, Toyota, and took her
23 to Aliante Casino. PHT, p. 37. M.T. testified that they went directly to the room when they
24 arrived as Defendant already had keys. M.T. testified that room was a basic room with a
25 window, two beds and a TV. Before M.T. went to the room, Defendant had sent her a picture
26 of via text message. PHT, p. 38. M.T. was shown a photograph marked as State's Exhibit "1",
27 which she identified as a photograph of the room she was in at Aliante. PHT, p. 39.

28 //

1 M.T. testified that when they got into the room they had sex on the bed closest to the
2 window. M.T. testified they first had oral sex and then they had penis to vagina sex. M.T.
3 recounted that she put her mouth on Defendant's penis and he ejaculated. Further, Defendant
4 put his mouth on her vagina. Afterward, they took a shower together and then they had sex
5 again, with Defendant placing his penis inside M.T.'s vagina, until Defendant ejaculated on
6 M.T.'s stomach. PHT, pp. 39-40. Afterward, they talked. PHT, pp. 41-42. M.T. testified that
7 she and Defendant had penis to vagina sex in the room "about twice" and Defendant did not
8 use a condom during the sex. PHT, p. 42.

9 M.T. testified that she was at the Aliante Hotel with Defendant from a little after 7 a.m.
10 until 2 p.m., when Defendant took her home. PHT, pp. 44-45. M.T. testified that on May 21,
11 2015, she gave Defendant oral sex, in his classroom, during her seventh period class time.
12 M.T. was supposed to be in class but did not go. During that incident M.T. and Defendant
13 kissed and M.T. touched Defendant all over his body, including his chest and genital area.
14 Defendant's pants and underwear were pulled down and his penis was exposed. PHT, p. 46-
15 49. M.T. testified that she felt annoyed about having to testify in open court and that she did
16 not want to be there. M.T. testified that she wished her choice would have been respected.
17 M.T. further testified that while Defendant's penis was exposed, she put his penis in her mouth
18 until he ejaculated. PHT, pp. 49-50.

19 M.T. continued to talk to Defendant on a daily basis. On May 28, 2015, M.T. had
20 occasion to go to a hotel with Defendant. It was a school day and like the plan before, M.T.
21 told her mom that she was getting a ride and Defendant picked her up, on Ranch House, in his
22 blue Toyota. PHT, pp. 50-51. Defendant picked M.T. up after 7 a.m., and took her to the
23 Cannery Hotel-Casino. PHT, p. 52. M.T. testified that the Cannery and Rancho High School
24 are located in North Las Vegas, Clark County, Nevada, as is the Aliante Hotel. PHT, pp. 52-
25 53. M.T. relayed that the Cannery is located on Craig and Losee. Identical to the trip to
26 Aliante, Defendant already had the keys to the room when they arrived. PHT, p. 53.

27 //

28 //

1 M.T. recounted that her mom and dad did not know she was going to the Cannery with
2 Defendant and she had not asked permission to go anywhere with Defendant on May 28, 2015.
3 When they got into the room at the Cannery they talked. Defendant gave M.T. some frozen
4 mangos and Lana Del Rey records. PHT, p. 55. M.T. was shown a photograph marked as
5 State's Exhibit "2", which she identified as a picture of her and Defendant kissing at the
6 Cannery Hotel on May 28, 2015. M.T. was also shown a photograph marked as State's Exhibit
7 "3", which she identified as a picture of her and Defendant walking out of the elevator, with
8 Defendant carrying a bag, at the Cannery Hotel and Casino. PHT, p. 57.

9 When they got to the room, Defendant put the frozen mangos in the refrigerator and
10 M.T. and Defendant began kissing. M.T. testified that she gave Defendant oral sex by placing
11 his penis in her mouth until he ejaculated. Defendant also gave M.T. oral sex by placing his
12 mouth on her vagina. M.T. and Defendant then engaged in penis to vagina sex, with M.T. on
13 top, until Defendant ejaculated on M.T.'s stomach. PHT, pp. 58-61.

14 Defendant and M.T. stayed at the Cannery and talked that day until 2:00 p.m., when he
15 drove her home. PHT, p. 61. M.T. continued to talk with Defendant on a daily basis afterward.
16 On June 3, 2015, M.T. went to school. M.T. left her seventh period class and went to
17 Defendant's classroom. When she got to the classroom there were several people present.
18 After the room emptied and M.T. and Defendant were alone, the door was shut and locked.
19 Defendant and M.T. kissed, in the right corner of the classroom, again positioned such that no
20 one could see. Officer Patty and another security came into the classroom. M.T. was taken to
21 their office where she met with Detective Troxil and another officer. PHT, p. 64.

22 M.T. gave a statement to them that was not truthful, in that she denied having a
23 relationship with Defendant. When M.T. got home from school, her dad took all of her
24 electronics and then called her mom to come home. M.T. told her parents that it was true.
25 M.T. then spoke to Detective Troxil and another female detective and gave them a statement
26 that detailed her relationship with Defendant. PHT, pp. 64-65.

27 //

28 //

1 M.T. testified that when she and Defendant made plans to go to Aliante and the Cannery
2 it was for the purpose of having sex. M.T. testified that she and Defendant talked spoke often
3 about those plans and Defendant would say sexual things to M.T. such as he wanted her and
4 that he wanted to rip off her clothes. PHT, p. 67-68.

5 LEGAL ARGUMENT

6 STANDARD OF PROOF AT PRELIMINARY HEARING

7 In order to hold a person for trial, a justice of the peace must find probable cause to
8 believe that an offense was committed and that the defendant in question committed the
9 offense. NRS 172. 155; Kirksey v. State, 112 Nev. 980, 923 P.2nd 1102, 1108 (1996). During
10 the preliminary proceeding, the State must elicit sufficient evidence demonstrating probable
11 cause that a crime was committed and that the accused was likely the perpetrator. Sheriff v.
12 Miley, 99 Nev. 377, 379, 663 P.2d 343, 344 (1983); NRS 172.155. As such, an Information
13 will be sustained where the State submits sufficient legal evidence to establish probable cause.
14 Sheriff v. Simpson, 109 Nev. 430, 434-35, 851 P.2d 428, 431- 32 (1993). "The finding of
15 probable cause may be based on slight, even 'marginal' evidence, because it does not involve
16 a determination of the guilt or innocence of an accused." Id. at 435, 851 P.2d at 432 (quoting
17 Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted)). A
18 preliminary hearing need not be perfect; the proceeding need only provide a defendant with
19 fair consideration. Franklin v. State, 89 Nev. 382, 389, 513 P.2d 1252, 1257 (1973). The
20 preliminary hearing functions merely to determine whether the State has sufficient probable
21 cause to pursue charges against the defendant. Since the burden of proof at a preliminary
22 hearing is so much lower than that required at trial, the evidence adduced at the hearing need
23 not be sufficient to support a conviction. Abbott v. Sheriff, 87 Nev. 397, 487 P.2d 1067 (1971).
24 The State need not produce the quantum proof necessary to establish guilt of the accused
25 beyond a reasonable doubt. Id. The State only has to present enough evidence to support a
26 reasonable inference that the accused committed the crime and does not need to negate all
27 possible inferences as to doubt. See, Lamb v. Holsten, 85 Nev. 566, 568, 459 P.2d 771, 772
28 (1969); Johnson v. State, 82 Nev. 338, 341, 418 P.2d 495, 496 (1966). Further, a Petition for

1 Writ of Habeas Corpus is not a vehicle to determine factual disputes as those are matters
2 reserved for the trier of fact at the time of trial. Brymer v. Sheriff, 92 Nev. 598 (1976); Wrenn
3 v. Sheriff, 87 Nev. 85 (1971). In sum, if the evidence produced at the preliminary examination
4 establishes a reasonable inference that the defendant committed the charged crimes, probable
5 cause exists to order the defendant to answer in the district court. Morgan v. Sheriff, 86 Nev.
6 23, 476 P.2d 600 (1970).

7 **I. THE STATE PRESENTED SUFFICIENT EVIDENCE THAT DEFENDANT**
8 **COMMITTED THE CRIMES OF FIRST DEGREE KIDNAPPING AS**
9 **FURTHER ALLEGED IN COUNTS 3 AND 10 OF THE AMENDED**
10 **INFORMATION**

11 Counts 3 and 10 of the Amended Information charge the Defendant as follows:

12 **COUNT 3 - FIRST DEGREE KIDNAPPING**

13 did, on or about May 20, 2015, willfully, unlawfully and
14 feloniously, lead, take, entice, carry away or kidnap M.T., a minor,
15 with the intent to keep, imprison, or confine said M.T., from her
16 parents, guardians, or other person or persons having lawful
17 custody of M.T., or with the intent to hold M.T. to unlawful
18 service, or to perpetrate upon the person of M.T. any unlawful act,
19 to-wit: by Defendant engaging in sexual acts with the said M.T.
20 which constitute Sexual Conduct Between Certain Employees or
21 Volunteers of School and Pupil, to-wit: sexual intercourse and/or
22 fellatio and/or cunnilingus.

23 **COUNT 10 - FIRST DEGREE KIDNAPPING**

24 did, on or about May 28, 2015, willfully, unlawfully and
25 feloniously, lead, take, entice, carry away or kidnap M.T., a minor,
26 with the intent to keep, imprison, or confine said M.T., from her
27 parents, guardians, or other person or persons having lawful
28 custody of M.T., or with the intent to hold M.T. to unlawful
service, or to perpetrate upon the person of M.T. any unlawful act,
to-wit: by Defendant engaging in sexual acts with the said M.T.
which constitute Sexual Conduct Between Certain Employees or
Volunteers of School and Pupil, to-wit: sexual intercourse and/or
fellatio and/or cunnilingus.

NRS 200.310(1) defines First Degree Kidnapping as follows:

1. A person who willfully seizes, confines, inveigles, entices,
decoys, abducts, conceals, kidnaps or carries away a person by any
means whatsoever with the intent to hold or detain, or who holds
or detains, the person for ransom, or reward, or for the purpose of
committing sexual assault, extortion or robbery upon or from the
person, or for the purpose of killing the person or inflicting
substantial bodily harm upon the person, or to exact from relatives,

1 friends, or any other person any money or valuable thing for the
2 return or disposition of the kidnapped person, and a person who
3 leads, takes, entices, or carries away or detains any minor with
4 the intent to keep, imprison, or confine the minor from his or
5 her parents, guardians, or any other person having lawful
6 custody of the minor, or with the intent to hold the minor to
7 unlawful service, or perpetrate upon the person of the minor
8 any unlawful act is guilty of kidnapping in the first degree
9 which is a category A felony.

10 NRS 200.310 recites three alternative theories for the crime of first degree kidnapping,
11 two of which are implicated in this case. Defendant's entire Writ argument is based upon the
12 first portion of NRS 200.310(1), which does not apply to minor children and is not applicable
13 in this case. Furthermore, the first portion of the statute is not applicable to the facts in this
14 case because the State is not alleging that Defendant seized, confined, inveigled or enticed the
15 victim in this case with the intent to hold or detain her for ransom or reward; or, for the purpose
16 of committing sexual assault, extortion or robbery upon or from her person. Nor do the fact
17 indicate that the kidnapping occurred for the purpose of killing or inflicting substantial bodily
18 harm on the minor victim. As such, the case law cited by Defendant in support of his erroneous
19 reliance on the first portion of the statute is also inapplicable to the facts of this case.

20 The second portion of NRS 200.310(1) delineates the second theory under which a first
21 degree kidnapping occurs and indicates that a defendant is guilty of first degree kidnapping if
22 he "leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison
23 or confine him from his parents." The State has to prove two things under this theory. First,
24 that the Defendant lead, took, enticed, carried, or detained the minor and second, when he did
25 so, he did it with intent to keep imprison, or confine the minor from her parents.

26 For the first prong, the Defendant definitely "led" and/or "took" and/or "enticed" M.T.
27 when he made arrangements to meet her, drove to her location, and pick her up with his
28 vehicle, on two occasions, without her parent's consent. For the second prong, the Defendant
clearly did this with the intent to keep and/or confine M.T. from her parents; and, he did so for
the purpose of engaging in sexual acts with her, by taking her to two separate hotel/casinos,
where they spent upwards of seven hours together in locked hotel rooms talking and engaging
in sexual acts together.

1 Alternatively, under the third and final portion of the statute, a defendant is also guilty
2 if he "leads, takes, entices, or carries away or detains any minor... or perpetrates upon the
3 person of the minor any unlawful act." Here, the Defendant committed the unlawful acts of
4 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual
5 intercourse and/or fellatio and/or cunnilingus. Therefore, he also meets the third type of
6 kidnapping found within the statute.

7 Most importantly, NRS 200.350 clearly states that: The consent thereto of the person
8 kidnapped or confined shall not be a defense unless it appears satisfactorily to the jury that
9 such person was above the age of 18 years and that the person's consent was not extorted by
10 threats, duress or fraud.

11 In this case, M.T. was 17 years old at the time of these crimes, thus, under the law she
12 cannot consent. Furthermore, a minor cannot legally consent to become the victim of unlawful
13 service or to have unlawful acts perpetrated on her. Therefore, it doesn't matter that M.T. was
14 a willing participant throughout the course of Defendant's misconduct. Due to her age, alone,
15 she cannot consent to this type of conduct. The Defense might not like the state of the law,
16 but it is what it is, and the Defendant broke it.

17 M.T. testified that on two separate occasions, Defendant picked her up near her home,
18 on a school day, and drove her to two separate hotels, where he had rented the room so that
19 they could engage in having sex with each other. M.T. testified that she told her mother that
20 she was getting a ride to school on those two occasions; and, that she did not have permission
21 from either parent to go to the hotels with the Defendant on May 20, 2015 and May 28, 2015.
22 PHT, pp. 33-42; pp. 50-61.

23 Defendant also argues that the State did not present sufficient evidence that the
24 Defendant violated the parental custody of the victim. The State disagrees. The victim in this
25 case testified that she was 17 years of age and she did not have permission from her parents to
26 be out of school or taken anywhere by the Defendant on either day at issue here. Her testimony
27 alone, that she was a minor; that her mother thought she was getting a ride to school; and, that
28 her parents did not ever give her permission to go anywhere with the Defendant, is enough to

1 establish the violation of parental custody.

2 Clearly, from the testimony presented at the preliminary hearing, the State has met the
3 burden of slight or marginal evidence, to charge Defendant with the crimes of First Degree
4 Kidnapping as further alleged in Counts 3 and 10 of the Amended Information.

5 **II. THE STATE PRESENTED SUFFICIENT EVIDENCE THAT THE**
6 **DEFENDANT COMMITTED THE CRIMES OF OPEN OR GROSS**
7 **LEWDNESS AS FURTHER ALLEGED IN COUNTS 2 AND 9 OF THE**
8 **AMENDED INFORMATION**

9 COUNT 2 -OPEN OR GROSS LEWDNESS

10 did, on or between May 6, 2015 and May 19, 2015, willfully and
11 unlawfully commit an act of open or gross lewdness by said
12 Defendant having the said M.T. rub and/or touch the body and/or
13 genital area of Defendant and/or said M.T. engage in fellatio with
14 Defendant in a classroom of Rancho High School.

15 COUNT 9 -OPEN OR GROSS LEWDNESS

16 did, on or between May 21, 2015 and May 27, 2015, willfully and
17 unlawfully commit an act of open or gross lewdness by said
18 Defendant having the said M.T. rub and/or touch the body and/or
19 genital area of Defendant and/or said M.T. engage in fellatio with
20 Defendant in a classroom of Rancho High School.

21 NRS 201.210 states:

22 1. A person who commits any act of open or gross lewdness is
23 guilty:

24 (a) For the first offense, of a gross misdemeanor.

25 (b) For any subsequent offense, of a category D felony and shall
26 be punished as provided in NRS 193.130.

27 2. For the purposes of this section, the breast feeding of a child by
28 the mother of the child does not constitute an act of open or gross
lewdness.

At common law, open lewdness was defined as an "unlawful indulgence of lust
involving gross indecency with respect to sexual conduct" committed in a public place and
observed by persons lawfully present. Young v. State, 109 Nev. 205, 849 P.2d 336 (1993).

Under some statutes, lewdness is deemed "open" when it is committed in another's
presence or in a place open to public view, or in an open manner. Id. Similarly, indecent
exposure of one's genitals was punishable at common law without regard to whether the

1 exposure was observed, or observed by a consenting adult, as long as the exposure occurred
2 in a public place. Id.

3 The Nevada Supreme Court has a long standing principle that private acts that are
4 committed in an open fashion with the intent to be offensive fall under the definition of open
5 and gross lewdness. Ranson v. State, 99 Nev. 766, 670 P.2d 574 (1983).

6 In Ranson, supra, the defendant entered the victim's home without her permission, stole
7 her gun and forced her to partially undress at gunpoint. The defendant then fondled the
8 victim's breasts and buttocks, bit her buttocks and then left. He was later convicted of
9 burglary, robbery with the use of a deadly weapon and open or gross lewdness. On appeal
10 defendant claimed that he couldn't be convicted of open and gross lewdness because the acts
11 weren't open, they were committed inside the victim's home and not a public place. The
12 Nevada Supreme Court disagreed and stated:

13 At common law, it was necessary to prove that the offense of
14 "lewdness" was committed in a public place. It is generally
15 accepted, however, that when a legislature uses the term "open" to
16 modify the term "lewdness," as the Nevada Legislature has done,
17 it intends to broaden the common law definition to include acts
18 which are committed in a private place, but which are nevertheless
19 committed in an "open" as opposed to a "secret" manner. See
20 Commonwealth v. Wardell, 128 Mass. 52, 35 Am.Rep. 357
21 (1880); State v. Baldino, 11 N.J.Super. 158, 78 A.2d 95
(Ct.App.Div.1951); see generally 50 Am.Jur.2d, Lewdness,
Indecency, Etc., § 1 (1970). Contra Everett v. Commonwealth,
214 Va. 325, 200 S.E.2d 564 (1973) (crime of open and gross
lewdness must be committed in a public place). We therefore
conclude that it was sufficient that appellant committed the present
lewd acts in an "open" fashion, clearly intending that his acts be
offensive to his victim. See Commonwealth v. Wardell, supra.

22 In this case, M.T. testified that, on a couple of occasions, she and Defendant kissed and
23 M.T. gave the Defendant oral [sex], by placing her mouth on his penis. The incident occurred
24 in Defendant's classroom [at Rancho High School], with the door shut and probably locked.
25 PHT, pp. 26-27. The incidents occurred outside the view of the window and the door. During
26 that incidents Defendant and M.T. kissed each other and touched each other. Defendant
27 touched M.T.'s breasts. M.T. touched Defendant's chest area and genital area. PHT, p. 28.
28 M.T. testified that Defendant pulled down his pants and underwear and M.T. gave him oral

1 sex until he ejaculated in her mouth. PHT, pp. 29-30.

2 Clearly, the State presented sufficient evidence through the victim's testimony that
3 Defendant committed Counts 2 and 9, as further charged in the Information.

4 **CONCLUSION**

5 Based on the foregoing arguments, the State respectfully requests Defendant's Petition
6 for Writ of Habeas Corpus be DENIED.

7 DATED this 8th day of September, 2015.

8 Respectfully submitted,

9 STEVEN B. WOLFSON
10 Clark County District Attorney
Nevada Bar #001565

11
12 BY /s/ STACEY L. KOLLINS
13 STACEY L. KOLLINS
14 Chief Deputy District Attorney
Nevada Bar #005391

15
16 **CERTIFICATE OF SERVICE**

17 I, hereby certify that service of the above and foregoing, was made this 8th day of
18 September, 2015, to:

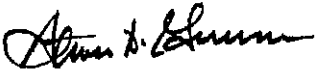
19 ROBERT M. DRASKOVICH, ESQ.
20 GARY A. MODAFFERI, ESQ.
Email: emagana@draskovich.com

21 LOUIS C. SCHNEIDER, ESQ.
22 Email: lcs@lvnlaw.net

23
24 /s/ HOWARD CONRAD
25 Secretary for the District Attorney's Office
26 Special Victims Unit

27
28 hjc/SVU

EXHIBIT "1"


CLERK OF THE COURT

AINF
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**I.A. 07/20/2015
10:00 AM
SCHNEIDER**

THE STATE OF NEVADA,

Plaintiff,

-vs-

JASON RICHARD LOFTHOUSE,
#7019775

Defendant.

CASE NO: C-15-307937-1

DEPT NO: XX

**AMENDED
INFORMATION**

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That **JASON RICHARD LOFTHOUSE**, the Defendant above named, having committed the crimes of **SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR VOLUNTEERS OF SCHOOL AND PUPIL (Category C Felony - NRS 201.540 - NOC 51067)**, **OPEN OR GROSS LEWDNESS (Gross Misdemeanor - NRS 201.210 - NOC 50971)** and **FIRST DEGREE KIDNAPPING (Category A Felony - NRS 200.310, 200.320 - NOC 50053)** in the manner following:

That the said Defendant, on or between May 6, 2015 and May 28, 2015, at and within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

//

1 COUNT 1 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or between May 6, 2015 and May 19, 2015, then and there, willfully, unlawfully
4 and feloniously, while employed or volunteering or having been previously employed or
5 volunteering in a position of authority at a public or private school, to-wit: a teacher, at Rancho
6 High School, Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with
7 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
8 school at which Defendant was or previously had been employed or volunteering.

9 COUNT 2 - OPEN OR GROSS LEWDNESS

10 did, on or between May 6, 2015 and May 19, 2015, willfully and unlawfully commit an
11 act of open or gross lewdness by said Defendant having the said M.T. rub and/or touch the
12 body and/or genital area of Defendant and/or said M.T. engage in fellatio with Defendant in a
13 classroom of Rancho High School.

14 COUNT 3 - FIRST DEGREE KIDNAPPING

15 did, on or about May 20, 2015, willfully, unlawfully and feloniously, lead, take, entice,
16 carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T.,
17 from her parents, guardians, or other person or persons having lawful custody of M.T., or with
18 the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any
19 unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T. which constitute
20 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual
21 intercourse and/or fellatio and/or cunnilingus.

22 COUNT 4 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
23 VOLUNTEERS OF SCHOOL AND PUPIL

24 did, on or about May 20, 2015, then and there, willfully, unlawfully, and feloniously,
25 while employed or volunteering or having been previously employed or volunteering in a
26 position of authority at a public or private school, to-wit: a teacher, at Rancho High School,
27 Clark County, Nevada, and who is over 21 years of age, engage in cunnilingus, with M.T.,
28 who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at

1 which Defendant was or previously had been employed or volunteering.

2 COUNT 5 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
3 VOLUNTEERS OF SCHOOL AND PUPIL

4 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
5 while employed or volunteering or having been previously employed or volunteering in a
6 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
7 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
8 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which
9 Defendant was or previously had been employed or volunteering.

10 COUNT 6 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
11 VOLUNTEERS OF SCHOOL AND PUPIL

12 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
13 while employed or volunteering or having been previously employed or volunteering in a
14 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
15 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
16 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
17 school at which Defendant was or previously had been employed or volunteering.

18 COUNT 7 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
19 VOLUNTEERS OF SCHOOL AND PUPIL

20 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
21 while employed or volunteering or having been previously employed or volunteering in a
22 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
23 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
24 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
25 school at which Defendant was or previously had been employed or volunteering.

26 //

27 //

28 //

1 COUNT 8 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or between May 21, 2015 and May 27, 2015, then and there willfully,
4 unlawfully, and feloniously, while employed or volunteering or having been previously
5 employed or volunteering in a position of authority at a public or private school, to-wit: a
6 teach, at Rancho High School, , Clark County, Nevada, and who is over 21 years of age, engage
7 in fellatio, with M.T., who was 16 or 17 years of age at the time, and who was enrolled in or
8 attending the school at which Defendant was or previously had been employed or volunteering.

9 COUNT 9 - OPEN OR GROSS LEWDNESS

10 did, on or between May 21, 2015 and May 27, 2015, willfully and unlawfully commit
11 an act of open or gross lewdness by said Defendant having the said M.T. rub and/or touch the
12 body and/or genital area of Defendant and/or said M.T. engage in fellatio with Defendant in a
13 classroom of Rancho High School.

14 COUNT 10 - FIRST DEGREE KIDNAPPING

15 did, on or about May 28, 2015, willfully, unlawfully and feloniously, lead, take, entice,
16 carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T.,
17 from her parents, guardians, or other person or persons having lawful custody of M.T., or with
18 the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any
19 unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T which constitute
20 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual
21 intercourse and/or fellatio and/or cunnilingus.

22 COUNT 11 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
23 VOLUNTEERS OF SCHOOL AND PUPIL

24 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
25 while employed or volunteering or having been previously employed or volunteering in a
26 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
27 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
28 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which

1 Defendant was or previously had been employed or volunteering.

2 COUNT 12 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
3 VOLUNTEERS OF SCHOOL AND PUPIL

4 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
5 while employed or volunteering or having been previously employed or volunteering in a
6 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
7 Clark County, Nevada, and who is over 21 years of age, engage in cunnilingus, with M.T.,
8 who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at
9 which Defendant was or previously had been employed or volunteering.

10 COUNT 13 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
11 VOLUNTEERS OF SCHOOL AND PUPIL

12 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
13 while employed or volunteering or having been previously employed or volunteering in a
14 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
15 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
16 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
17 school at which Defendant was or previously had been employed or volunteering.

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 COUNT 14 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
4 while employed or volunteering or having been previously employed or volunteering in a
5 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
6 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
7 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
8 school at which Defendant was or previously had been employed or volunteering.

9 STEVEN B. WOLFSON
10 Clark County District Attorney
Nevada Bar #001565

11 BY /s/ STACEY KOLLINS
12 STACEY KOLLINS
13 Chief Deputy District Attorney
Nevada Bar #005391

Names of witnesses known to the District Attorney's Office at the time of filing this
Information are as follows:

ABBOTT; CCSDPD#0199

ALEMAN, MARIA; 2237 DEMETRIUS AVE, LVN 89101

BROWNLEE, BELISA; 3612 SHAWN REYNOLDS CT #203, LVN 89129

BUTLER, VERNON; CANNERY CASINO, 2121 E CRAIG RD, NLV 89030

CASTILLO, ZUREMA; 6212 CRATERS EDGE ST, NLV 89031

COR or Designee; CCDC

COR or Designee; CCSD

COR or Designee; CCSDPD COMMUNICATIONS

COR or Designee; CCSDPD RECORDS

COR or Designee; RANCHO HIGH SCHOOL

HIBNER; CCSDPD#0243

JONES; CCSDPD#0323

KUZMA, JAMES; 2158 FOUNTAIN SPRINGS DR, HND 89074

LNU, NATHAN; SECURITY SUPERVISOR; ALIANTE HOTEL/CASINO

M.T.; c/o CCDA-SVU/VWAC

MACISZAK; CCSDPD#0308

NORDSTROM, R.; ALIANTE HOTEL/CASINO

PATTY; CCSDPD#0520

PRINCIPAL; RANCHO HIGH SCHOOL

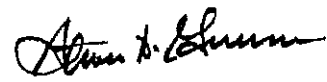
TORRES, ISIDIRO; 5722 COLEMAN ST, NLV 89031

TORRES, MRS. FNU; 5722 COLEMAN ST, NLV 89031

TROXELL; CCSDPD#0373

DA#15FN0939X/hjc/SVU
CCSDPD EV#150603963

Original



CLERK OF THE COURT

1 **ORDER**

2 ROBERT M. DRASKOVICH, ESQ. (6275)

3 **TURCO & DRASKOVICH, LLP.**

4 GARY A. MODAFFERI, ESQ. (12450)

5 **Law Office of Gary A. Modafferi, LLC**

6 815 S. Casino Center Blvd.

7 Las Vegas, Nevada 89101

8 Telephone: (702) 474-4222

9 LOUIS SCHNEIDER, ESQ. (9683)

10 500 S. Seventh Street

11 Las Vegas, Nevada 89101

12 Attorneys for Defendant

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 THE STATE OF NEVADA,

16 Plaintiff,

17 vs.

18 JASON LOFTHOUSE,

19 Defendant.

CASE NO.: C-15-307937-1

DEPT. NO.: XX

20 **ORDER THAT WRIT OF HABEAS CORPUS ISSUE**

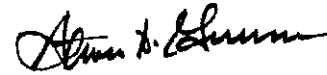
21 The Petition of ROBERT M. DRASKOVICH, ESQ., GARY A. MODAFFERI, ESQ.,
22 and LOUIS C. SCHNEIDER having been filed in the above matter,

23 IT IS HEREBY ORDERED, ADJUSTED AND DECREED that you, Clerk of the Eighth
24 Judicial Court of the State of Nevada, in and for the County of Clark, issue a Writ of Habeas
25 Corpus, as is attached hereto.

26 DATED AND DONE at Las Vegas, Nevada, this 16 day of September, 2015.

27 
DISTRICT COURT JUDGE

28 ERIC JOHNSON



CLERK OF THE COURT

1 ROBERT M. DRASKOVICH, ESQ. (6275)
2 TURCO & DRASKOVICH, LLP
3 815 S. Casino Center Boulevard
4 Las Vegas, NV 89101
5 Telephone: (702) 474-4222
6 Fax: (702) 474-1320

7 GARY A. MODAFFERI, ESQ.
8 LAW OFFICES OF GARY A. MODAFFERI
9 815 S. Casino Center Boulevard
10 Las Vegas, Nevada 89101

11 LOUIS C. SCHNEIDER, ESQ. (9683)
12 500 S. Seventh Street
13 Las Vegas, Nevada 89101
14 Telephone: (702) 435-2121

15 Counsel for Defendant/Petitioner

16 **DISTRICT COURT**
17 **CLARK COUNTY, STATE OF NEVADA**

18 THE STATE OF NEVADA,
19
20 Plaintiff,

21 vs.

22 JASON LOFTHOUSE,
23
24 Petitioner/Defendant.

CASE NO. C-15-307937-1

DEPT. NO. XX

25 **PETITIONER'S TRAVERSE**

26 COMES NOW, the Defendant, JASON LOFTHOUSE, by and through his counsel,
27 ROBERT M. DRASKOVICH, ESQ., of TURCO & DRASKOVICH, LLP, GARY A.
28 MODAFFERI, ESQ., of THE LAW OFFICE OF GARY A. MODAFFERI, LLC, and LOUIS C.
SCHNEIDER, ESQ., and respectfully tenders the following Traverse (Pre-Conviction).

1 This Traverse focuses on the issues of whether the State correctly interpreted NRS
2 200.310 to support their three theory argument of kidnapping in the first degree. Specifically,
3 whether a crime against public decency and morals can be used to support a charge of first
4 degree kidnapping and whether the State sustained its burden of probable cause as to all elements
5 of the offenses charged.
6

7 This Traverse is offered in addition to any evidence and/or argument adduced at a hearing
8 on this matter.

9 DATED this 15th day of September, 2015.

10 /s/ Gary A. Modafferi, Esq.

11
12 By: Robert M. Draskovich, Esq. (6275)
13 Gary A. Modafferi, Esq. (12450)
14 Louis C. Schneider, Esq. (9683)
15 Attorneys for
16 Defendant/Petitioner Jason Lofthouse
17
18
19
20
21
22
23
24
25
26
27
28

TRAVERSE

I. THE KIDNAPPING CHARGES.

The Return provided by the State suggests that three separate "alternative theories" supplied by NRS 310.¹ The State argues that the litany of cases provide for in the Writ that deal with incidental restraint are inapplicable.² The State provides not a single Nevada case to support its theory that their interpretation of the statute overrides the long standing rule "that movement or restraint incidental to an underlying offense where restraint or movement is inherent, as a general matter, will not expose the defendant to dual criminal liability."³ The dual criminal liability at issue is criminal responsibility for the predicate offense, Sexual Conduct Between Employees or Volunteers of School or Pupil and the crime of Kidnapping in the First degree. Implicit in this rule is that the movement must be non-consensual. In this case all movement was consensual. Implicit in this rule is the movement significantly adds to the NRS 310 trivializes the serious nature and consequence of a conviction of Kidnapping in the First Degree.

The State argues that M.T. was a minor and pursuant to NRS 200.350 she could not consent to any movement. Specifically, the State argues, "a minor cannot legally consent to become a victim of unlawful service or to have unlawful act perpetrated on her. Therefore, it doesn't matter that M.T. was a willing participant throughout the course of Defendant's misconduct. Due to her age, alone, she cannot consent to this type of conduct."⁴ The type of conduct at issue is not considered a "Crime Against the Person." Those crimes are codified in NRS 200. Rather, the conduct at issue is consensual sex between a seventeen year old that is capable of consenting to sex with a man of any age.

¹ Return at p.9.

² Return at pp. 9-10.

³ Mendoza v. State, 122 Nev. 267, 275 130 P.3d. 176, 181 (2006)

1 The State argues that M.T.'s parents must give consent in this circumstance for their
2 daughter to have sex she can otherwise legally consent to because that sex with was a teacher.
3 According to their theory, if she cannot consent to sex with a teacher, even if she is seventeen,
4 then Kidnapping in the First Degree is automatically implicated no matter how inconsequential
5 or slight the movement might be to have sex.

7 While the conduct at issue may satisfy the elements of Sexual Conduct Between
8 Employees or Volunteers of School or Pupil, the State gives no legal precedent that these
9 offenses overlap with the elements of a Class A First Degree Kidnapping charge to the point
10 where they are essentially coextensive. The State divides NRS 200.310(1), for purposes of their
11 separate theory argument, by highlighting certain portions of the statute to the exclusion of other
12 portions of the statute.⁵ The manner in which the State arbitrarily segments the statute is
13 misleading because the incidental movement doctrine derived from Mendoza and its progeny are
14 connected to the highlighted portions of the State's Return by the conjunctive qualifier "and."
15 The pertinent portion as presented and highlighted in the State's Return reads as follows:
17

- 18 1. A person who willfully seizes, confines, inveigles, entices, decoys,
19 abducts, conceals, kidnaps or carries away a person by any means
20 whatsoever with the intent to hold or detain, or who holds or detains, the
21 person for ransom, or reward, or for the purpose of committing sexual
22 assault, extortion or robbery upon or from the person, or for the purpose
23 of killing the person or inflicting substantial bodily harm upon the
24 person, or to exact from relatives, friends, or any other person any
25 money or valuable thing for the return or disposition of the kidnapped
26 person, **and** a person who leads, takes, entices, or carries away or
27 detains any minor with the intent to keep, imprison, or confine the
28 minor from his or her parents, guardians, or any other person having
lawful custody of the minor, or with the intent to hold the minor to
unlawful service, or perpetrate upon the person of the minor any

28 ⁴ Return at p.10.

⁵ Return at p.9.

1 unlawful act is guilty of kidnapping in the first degree which is a
2 category A felony.

3 The use of the word "and" before the highlighted portion that the State wishes this Court to
4 emphasize makes it clear that the incidental movement doctrine outlined in Mendoza, and not
5 some undefined unsupported parental custody doctrine of a seventeen year old girl, is still the
6 appropriate test for determining probable cause in a First Degree Kidnapping Charge.

7
8 **II. THE OPEN OR GROSS LEWDNESS CHARGES.**

9 The State cites Ranson to support their theory that the consensual physical contact between
10 M.T. and Petitioner in a classroom of Rancho High School constituted the offense of Open or
11 Gross Lewdness. The State wrote in their statement of facts that, "M.T. testified that the
12 classroom door was closed and probably locked, and they kissed in the right corner of the room
13 so they would not be seen." This testimony underscores the fact that the physical encounters
14 were committed in a "secret" as opposed to open manner as distinguished in Ranson and
15 supported by The Nevada Supreme Court's supporting citation to Commonwealth v. Wardell.⁶

17 In Wardell, as relied upon in Ranson, it was essential that in order for the exposure to be
18 considered done "in an "open" fashion" ... the offender must intend that his acts be offensive to
19 the victim." The acts of the conduct at issue were not offensive to M.T. and the State has not
20 proven offense to any other victim, accordingly, these counts cannot legally stand.

22 In Quinn, the Massachusetts Supreme Judicial Court catalogued the development of their
23 open and gross lewdness statute.⁷ In Quinn, the court remphasized that Wardell held that to
24 sustain a charge of open and gross lewdness the Defendant must "intentionally, indecently, and
25

26
27
28 ⁶ Ranson v. State, 99 Nev. 766 (1983) Commonwealth v. Wardell, 128 Mass. 52 (1880)

⁷ Commonwealth v. Quinn, 439 Mass. 492 (2003)

1 offensively expose himself ... without necessity reasonable excuse, and in such a way as to
2 produce alarm.”⁸

3 Surely, M.T. was not alarmed by the exposure. To the contrary, she testified that she
4 welcomed it. In the final sentence of the quote cited by the State from Ranson, it states, “we
5 therefore conclude that it was sufficient that Appellant committed the present lewd acts in an
6 “open” fashion, clearly intending that his acts be offensive to his victim.”⁹ The acts in question
7 were secret not open and they were not intended to be offensive to the complainant. Accordingly,
8 probable cause was not presented to sustain these charges.
9

10 CONCLUSION

11 It is respectfully submitted that insufficient evidence was presented to sustain either the
12 Kidnapping in the First Degree charges or the Open and Gross Lewdness charges. Accordingly,
13 those charges should be dismissed.
14

15 DATED this 15th day of September, 2015.

16 /s/ Gary A. Modafferi, Esq.

17 By:

18 Robert M. Draskovich, Esq. (6275)
19 Gary A. Modafferi, Esq. (12450)
20 Louis C. Schneider, Esq. (9683)
21 Attorneys for
22 Defendant/Petitioner Jason Lofthouse
23
24
25
26
27
28

⁸ Quinn, supra at 496.

⁹ Return at p.12, citing Ranson, supra.

1 ROBERT M. DRASKOVICH, ESQ. (6275)
2 TURCO & DRASKOVICH, LLP
3 815 S. Casino Center Boulevard
4 Las Vegas, NV 89101
5 Telephone: (702) 474-4222
6 Fax: (702) 474-1320

7 GARY A. MODAFFERI, ESQ.
8 LAW OFFICES OF GARY A. MODAFFERI
9 815 S. Casino Center Boulevard
10 Las Vegas, Nevada 89101

11 LOUIS C. SCHNEIDER, ESQ. (9683)
12 500 S. Seventh Street
13 Las Vegas, Nevada 89101
14 Telephone: (702) 435-2121

15 Counsel for Defendant/Petitioner

16 **DISTRICT COURT**
17 **CLARK COUNTY, STATE OF NEVADA**

18 THE STATE OF NEVADA,
19 Plaintiff,
20
21 vs.
22 JASON LOFTHOUSE,
23 Petitioner/Defendant.

CASE NO. C-15-307937-1
DEPT. NO. XX

24 **CERTIFICATE OF SERVICE**

25 I, the undersigned, hereby certify that on the 15th day of September, 2015, I served a true
26 copy of **TRAVERSE** upon the following:

27 Stacey Kollins, Esq.
28 Chief Deputy District Attorney
stacy.kollins@clarkcountynyda.com

Barbara Schifalacqua
Chief Deputy District Attorney
Barbara.schifalacqua@clarkcountynyda.com

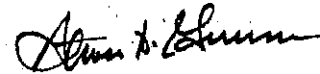
/s/ Erika W. Magana

Erika W. Magana, An Employee of
Turco & Draskovich, LLP

1 MOTN
2 GUROVICH, BERK & ASSOCIATES, APC
3 DMITRY Y. GUROVICH, ESQ. (CA Bar No. 181427)
4 15250 Ventura Boulevard, Suite 1220
5 Sherman Oaks, California 91403
6 Tel: (310) 937-2066

7 -and-
8 MACE J. YAMPOLSKY, LTD.
9 JASON R. MARGOLIS, ESQ. (NV Bar No. 012439)
10 625 South Sixth Street
11 Las Vegas, Nevada 89101
12 Tel: (702) 385-9777
13 Attorneys for Defendant,
14 Jason Lofthouse

Electronically Filed
09/29/2015 11:11:31 AM



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA

12 Plaintiff,

13 vs.

14 JASON LOFTHOUSE,

15 Defendant.

Case No. C-15-307937-1
Dept. No. XX

17 MOTION TO ASSOCIATE COUNSEL

18 COMES NOW the Defendant Jason Lofthouse, by and through his counsel, Jason R. Margolis,
19 Esq., of Mace J. Yampolsky, Ltd., and hereby moves the Court for an Order permitting Dmitry Y.
20 Gurovich, Esq., to practice in Nevada pursuant to Nevada Supreme Court Rule 42.

21 The grounds for Defendant's Motion are set forth in the attached Memorandum of Points and
22 Authorities.

23 DATED this 29th day of September, 2015.

24 MACE J. YAMPOLSKY, LTD.

25 /s/ Jason R. Margolis, Esq.
26 JASON R. MARGOLIS, ESQ.
27 Nevada Bar No. 012439
28 625 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Defendant

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3

TO: OFFICE OF THE DISTRICT ATTORNEY, Counsel for Plaintiff

DATED this 29th day of September, 2015.

/s/ Jason R. Margolis, Esq.
JASON R. MARGOLIS, ESQ.
Nevada Bar No. 012439
625 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Defendant

I. DMITRY Y. GUROVICH, ESQ. SHOULD BE ADMITTED TO PRACTICE IN THIS CASE

II. CONCLUSION

DATED this 29th day of September, 2015.

/s/ Jason R. Margolis, Esq.
JASON R. MARGOLIS, ESQ.
Nevada Bar No. 012439
625 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Defendant

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Stacy Kollins
Deputy District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155
stacy.kollins@clarkcountynvda.com

3

Exhibit "A"

Exhibit "A"

VAPP

DISTRICT COURT
CLARK COUNTY, NEVADA

People of the State of Nevada)

Plaintiff,)

vs.)

Jason Laffhouse)

Defendant.)

Case No. C-15-307937-1

Dept. No. 20

VERIFIED APPLICATION FOR ASSOCIATION
OF COUNSEL UNDER NEVADA SUPREME COURT RULE 42

Dmitry Yuzef Gurovich, Petitioner, respectfully represents:
First Middle Name Last

1. Petitioner resides at 1713 San Vito Lane
Street Address

Camarillo, Ventura, CA, 93012
City County State Zip Code

(818) 205-1555
Telephone

2. Petitioner is an attorney at law and a member of the law firm of: Gurovich, Berk & Associates
with offices at 15250 Ventura Blvd., Suite 1220
Street Address

Sherman Oaks, Los Angeles, CA, 91403
City County State Zip Code

(818) 205-1555, gba_law@yahoo.com
Telephone Email

3. Petitioner has been retained personally or as a member of the above named law firm by _____
Jason Lofthouse to provide legal representation in
connection with the above-entitled matter now pending before the above referenced court.

4. Since December of 1995, petitioner has been, and presently is, a member of good
standing of the bar of the highest court of the State of California where
petitioner regularly practices law.

5. Petitioner was admitted to practice before the following United States District Courts, United
States Circuit Courts of Appeal, the Supreme Court of the United States, and/or courts of other states
on the dates indicated for each, and is presently a member in good standing of the bars of said Courts:

	<u>DATE ADMITTED</u>
<u>Central District of California</u>	<u>12/1995</u>
<u>State of California</u>	<u>12/1995</u>
_____	_____
_____	_____

6. Is Petitioner currently suspended or disbarred in any court? You must answer yes or no. If yes,
give particulars; e.g., court, jurisdiction, date: No

7. Is Petitioner currently subject to any disciplinary proceedings by any organization with authority
at law? You must answer yes or no. If yes, give particulars, e.g. court, discipline authority, date,
status: No

8. Has Petitioner ever received public discipline including, but not limited to, suspension or disbarment, by any organization with authority to discipline attorneys at law? You must answer yes or no. If yes, give particulars, e.g. court, discipline authority, date, status: No

9. Has Petitioner ever had any certificate or privilege to appear and practice before any regulatory administrative body suspended or revoked? You must answer yes or no. If yes, give particulars, e.g. date, administrative body, date of suspension or reinstatement: No

10. Has Petitioner, either by resignation, withdrawal, or otherwise, ever terminated or attempted to terminate Petitioner's office as an attorney in order to avoid administrative, disciplinary, disbarment, or suspension proceedings? You must answer yes or no. If yes, give particulars: No

11. Petitioner has filed the following application(s) to appear as counsel under Nevada Supreme Court Rule 42 during the past three (3) years in the following matters, if none, indicate so: *(do not include Federal Pro Hacs)*

<u>Date of Application</u>	<u>Cause</u>	<u>Title of Court Administrative Body or Arbitrator</u>	<u>Was Application Granted or Denied?</u>
<u>None</u>			
<hr/>			
<hr/>			

(If necessary, please attach a statement of additional applications)

12. Nevada Counsel of Record for Petition in this matter is:

(must be the same as the signature on the Nevada Counsel consent page)

Jason R Margolis 12439
First Name Middle Name Last Name NV Bar #

who has offices at Mace J. Yampolsky Limited
Firm Name/Company

625 S. Sixth Street Las Vegas Clark
Street Address City County

89101 (702) 385-9777
Zip Code Phone Number

13. The following accurately represents the names and addresses of each party in this matter, WHETHER OR NOT REPRESENTED BY COUNSEL, and the names and addresses of each counsel of record who appeared for said parties: (You may attach as an Exhibit if necessary.)

NAME

MAILING ADDRESS

Office of District Attorney 200 Lewis Ave., Las Vegas NV 89101

Robert M. Draskovich, Esq (previous Defense Counsel) 815 S. Casino Center Blvd. Las Vegas Gary

A. Modafferi, Esq (Previous Defense Counsel) 815 S. Casino Center Blvd. Las Vegas

Louis C. Schneider, Esq. (Previous Defense Counsel) 500 S. Seventh Street, Las Vegas 89101

14. Petitioner agrees to comply with the provisions of Nevada Supreme Court Rule 42(3) and (13) and Petitioner consents to the jurisdiction of the courts and disciplinary boards of the State of Nevada in accordance with provisions as set forth in SCR 42(3) and (13). Petitioner respectfully requests that Petitioner be admitted to practice in the above-entitled court FOR THE PURPOSES OF THIS MATTER ONLY.

15. Petitioner has disclosed in writing to the client that the applicant is not admitted to practice in this jurisdiction and that the client has consented to such representation.

I, Dmitry Yuzef Gurovich, do hereby swear/affirm under penalty of perjury that the assertions of this application and the following statements are true:

- 1) That I am the Petitioner in the above entitled matter.
- 2) That I have read Supreme Court Rule (SCR) 42 and meet all requirements contained therein, including, without limitation, the requirements set forth in SCR 42(2), as follows:

- (A) I am not a member of the State Bar of Nevada;
- (B) I am not a resident of the State of Nevada;
- (C) I am not regularly employed as a lawyer in the State of Nevada;
- (D) I am not engaged in substantial business, professional, or other activities in the State of Nevada;
- (E) I am a member in good standing and eligible to practice before the bar of any jurisdiction of the United States; and
- (F) I have associated a lawyer who is an active member in good standing of the State Bar of Nevada as counsel of record in this action or proceeding.

- 2) That I have read the foregoing application and know the contents thereof; that the same is true of my own knowledge except as to those matters therein stated on information and belief, and as to the matter I believe them to be true.

That I further certify that I am subject to the jurisdiction of the Courts and disciplinary boards of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of Nevada; that I understand and shall comply with the standards of professional conduct required by members of the State Bar of Nevada; and that I am subject to the disciplinary jurisdiction to the State Bar of Nevada with respect to any of my actions occurring in the course of such appearance.

CASE NO.

DEPT NO. 20

IN THE 8TH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

People of the State of Nevada
Plaintiff,

vs.

Jason Laffhouse
Defendant

VERIFIED APPLICATION FOR
ASSOCIATION OF COUNSEL UNDER
NEVADA SUPREME COURT RULE 42

Dmitry Yuzef Gurovich, Petitioner, respectfully represents:
First Middle Name Last

1. Petitioner resides at 1713 San Vito Lane
Street Address

Camarillo, Ventura, California
City County State

93012, (818) 205-1555
Zip Code Telephone

2. Petitioner is an attorney at law and a member of the law firm of

GUROVICH, BERK & ASSOCIATES, APC

with offices at 15250 Ventura Blvd., Suite 1220
Street Address

Sherman Oaks, Los Angeles, CA
City County State

91403, (818) 205-1555 gba_law@yahoo.com
Zip Telephone Email

DATED this 25th day of September, 20 15

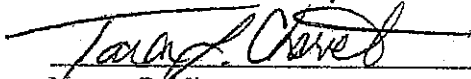

Petitioner/Affiant

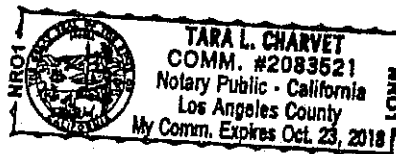
If this signature is not in blue ink, you have a copy.

STATE OF CA)
COUNTY OF Los Angeles) ss

Subscribed and sworn to before me

this 25 day of September, 20 15


Notary Public



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

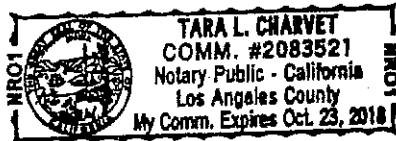
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
 County of Los Angeles
 On 09-25-2015 before me, Tara L. Charvet, Notary Public
 Date Here Insert Name and Title of the Officer
 personally appeared Dmitry Yuzet
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Tara L. Charvet
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
 Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney In Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney In Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

I Jason R. Margolis hereby consent as Nevada Counsel of Record to the
Print NV Counsel name
designation of Petitioner to associate in this cause pursuant to SCR 42.

DATED this 28th day of September, 20 15

Jason R. Margolis
Counsel of Record

If this signature is not in blue ink, you have a
copy.

STATE OF Nevada)
COUNTY OF Clark) ss

Subscribed and sworn to before me

this 28 day of September, 20 15
Theresa J. Muzgay
Notary Public

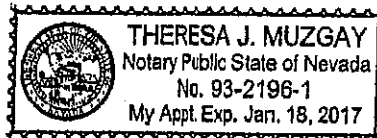


Exhibit "B"

Exhibit "B"



THE STATE BAR OF CALIFORNIA

MEMBER RECORDS & COMPLIANCE

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1617

TELEPHONE: 888-800-3400

CERTIFICATE OF STANDING

September 17, 2015

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, DMITRY YUZEK GUROVICH, #181427 was admitted to the practice of law in this state by the Supreme Court of California on December 12, 1995; and has been since that date, and is at date hereof, an ACTIVE member of the State Bar of California; that the public record states that information has been provided pursuant to Business and Professions Code section 6086.1(c); and that no recommendation for discipline for professional or other misconduct has ever been made by the Board of Trustees or a Disciplinary Board to the Supreme Court of the State of California.

THE STATE BAR OF CALIFORNIA

Louise Turner
Custodian of Membership Records

Exhibit "C"

Exhibit "C"

1 STAT

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 Case No. C-15-307937-1
5 Dept. No. 20

6 People of
7 the State of Nevada

8 vs.

9 Jason Lofthouse
10 _____/

11 STATE BAR OF NEVADA STATEMENT PURSUANT TO SUPREME COURT RULE
12 42(3)(b)

13 THE STATE BAR OF NEVADA, in response to the application of
14 Petitioner, submits the following statement pursuant to SCR42(3):

15 SCR42(6) **Discretion.** The granting or denial of a motion to associate
16 counsel pursuant to this rule by the court is discretionary. The
17 court, arbitrator, mediator, or administrative or governmental
18 hearing officer may revoke the authority of the person permitted to
19 appear under this rule. Absent special circumstances, repeated
20 appearances by any person or firm of attorneys pursuant to this rule
21 shall be cause for denial of the motion to associate such person.

22 (a) **Limitation.** It shall be presumed, absent special
23 circumstances, and only upon showing of good cause, that
24 more than 5 appearances by any attorney granted under
25 this rule in a 3-year period is excessive use of this
26 rule.

27 (b) **Burden on applicant.** The applicant shall have the
28 burden to establish special circumstances and good cause
for an appearance in excess of the limitation set forth
in subsection 6(a) of this rule. The applicant shall set
forth the special circumstances and good cause in an
affidavit attached to the original verified application.

1. DATE OF APPLICATION: September 28, 2015

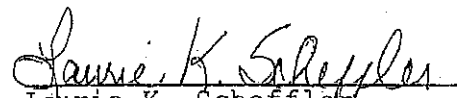
2. APPLYING ATTORNEY: Dmitry Yuzef Gurovich, Esq.

1 3. FIRM NAME AND ADDRESS: Gurovich, Berk & Associates, 15250
2 Ventura Blvd., Suite 1220, Sherman Oaks, CA 91403

3 4. NEVADA COUNSEL OF RECORD: Jason R. Margolis, Esq., Mace J.
4 Yampolsky, Ltd., 625 S. Sixth St., Las Vegas, NV 89101

5 5. There is no record of previous applications for appearance by
6 petitioner within the past three (3) years.

7 DATED this September 28, 2015
8

9 
10 Laurie K. Scheffler
11 Member Services Admin.
12 Pro Hac Vice Processor
13 STATE BAR OF NEVADA
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORIGINAL

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

OCT 01 2015

BY Linda Skinner
LINDA SKINNER, DEPUTY

SUBT
GUROVICH, BERK & ASSOCIATES, APC
DMITRY Y. GUROVICH, ESQ. (CA Bar No. 181427)
15250 Ventura Boulevard, Suite 1220
Sherman Oaks, California 91403
Tel: (310) 937-2066

-and-

MACE J. YAMPOLSKY, LTD.
JASON R. MARGOLIS, ESQ. (NV Bar No. 012439)
625 South Sixth Street
Las Vegas, Nevada 89101
Tel: (702) 385-9777
Attorneys for Defendant,
Jason Lofthouse

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA

Plaintiff,

vs.

JASON LOFTHOUSE,

Defendant.

Case No. C-15-307937-1
Dept. No. XX

SUBSTITUTION OF ATTORNEY

The undersigned, Jason Lofthouse, Defendant in the above-entitled action, hereby substitutes and appoints Dmitry Y. Gurovich, Esq., as attorney of record, in place and stead of Robert Draskovich, Esq.

DATED this 1 day of October, 2015.

Jason Lofthouse
JASON LOFTHOUSE

C-15-307937-1
SUBT
Substitution of Attorney
4491337

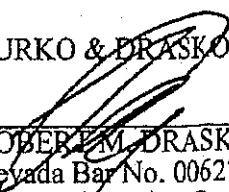


1 **CONSENT TO SUBSTITUTION OF ATTORNEYS**

2 The undersigned Robert M. Draskovich, Esq., hereby consents to the above-entitled substitution.

3 DATED this 1 day of October, 2015.

4 TURKO & DRASKOVICH


5 
6 ROBERT M. DRASKOVICH, ESQ.
7 Nevada Bar No. 006275
8 815 South Casino Center Boulevard
9 Las Vegas, Nevada 89101

10 **ACCEPTANCE OF SUBSTITUTION OF ATTORNEYS**

11 Dmitry Y. Gurovich, Esq., hereby accepts the above Substitution of Attorneys in the place and
12 stead of Robert M. Draskovich, Esq.

13 DATED this 1 day of October, 2015.

14 GUROVICH, BERK & ASSOCIATES, APC &
15 MACE J. YAMPOLSKY, LTD

16 
17 DMITRY Y. GUROVICH, ESQ.
18 California Bar No. 181427
19 15250 Ventura Boulevard, Suite 1220
20 Sherman Oaks, California 91403

21 -and-

22 JASON R. MARGOLIS, ESQ.
23 Nevada Bar No. 012439
24 625 South Sixth Street
25 Las Vegas, Nevada 89101
26 Attorneys for Defendant

27 **RECEIPT OF COPY**

28 RECEIPT OF COPY of the foregoing SUBSTITUTION OF ATTORNEY is hereby acknowledged
this day of October, 2015.

 OFFICE OF THE DISTRICT ATTORNEY

 DEPUTY DISTRICT ATTORNEY
200 Lewis Avenue
Las Vegas, Nevada 89101
Attorney for Plaintiff

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

OCT 01 2015

By Linda Skinner
LINDA SKINNER, DEPUTY

1 ORDR
2 GUROVICH, BERK & ASSOCIATES, APC
3 DMITRY Y. GUROVICH, ESQ. (CA Bar No. 181427)
4 15250 Ventura Boulevard, Suite 1220
5 Sherman Oaks, California 91403
6 Tel: (310) 937-2066

-and-

7 MACE J. YAMPOLSKY, LTD.
8 JASON R. MARGOLIS, ESQ. (NV Bar No. 012439)
9 625 South Sixth Street
10 Las Vegas, Nevada 89101
11 Tel: (702) 385-9777
12 Attorneys for Defendant,
13 Jason Lofthouse

DISTRICT COURT

CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA

12 Plaintiff,

13 vs.

14 JASON LOFTHOUSE,

15 Defendant.

Case No. C-15-307937-1
Dept. No. XX

C-15-307937-1
ORAP
Order Admitting to Practice
4491338



ORDER ADMITTING TO PRACTICE

18 Dmitry Y. Gurovich, Esq., having filed his Motion to Associate Counsel under Nevada Supreme
19 Court Rule 42, together with a Verified Application for Association of Counsel, a Certificate of Good
20 Standing for the State of California, and the State Bar of Nevada Statement; said application having been
21 noticed, no objections having been made, and the Court being fully apprised in the premises, and good
22 cause appearing, it is hereby

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

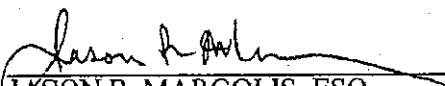
1 ORDERED, that said application is hereby granted, and Dmitry Y. Gurovich, Esq., is hereby
2 admitted to practice in the above-entitled Court for the purposes of the above-entitled matter only.

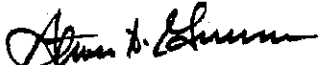
3 DATED this 1 day of October, 2015.

4
5 
6 DISTRICT COURT JUDGE

7 Respectfully submitted:

8 MACE J. YAMPOLSKY, LTD.

9 
10 JASON R. MARGOLIS, ESQ.
11 Nevada Bar No. 012439
12 625 South Sixth Street
13 Las Vegas, Nevada 89101
14 Attorney for Defendant
15
16
17
18
19
20
21
22
23
24
25
26
27
28


CLERK OF THE COURT

1 **MOT**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 STACEY KOLLINS
6 Chief Deputy District Attorney
7 Nevada Bar #00531
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 JASON RICHARD LOFTHOUSE,
14 #7019775

15 Defendant.

CASE NO: C-15-307937-1

DEPT NO: XX

16 **NOTICE OF MOTION AND MOTION TO PRECLUDE DEFENSE**

17 **PRESENTATION OF JURY NULLIFICATION ARGUMENTS**

18 DATE OF HEARING: JANUARY 12, 2016
19 TIME OF HEARING: 8:30 AM

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
21 District Attorney, through STACEY KOLLINS, Chief Deputy District Attorney, and files this
22 Notice of Motion and Motion to Preclude Defense Presenting Jury Nullification Arguments.

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

26 //

27 //

28 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0

DATED this 29th day of December, 2015.

BY /s/ STACEY KOLLINS
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #00531

STATEMENT OF FACTS

At the inception of this case, Defense counsel suggested that because M.T. was of age to consent to sex, there should be no criminal responsibility on Defendant's behalf. It is the sex between Teacher and Student that is prohibited by statute. Additionally, much was made of the fact that NRS 201.540, Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, is categorized by the legislature as a Crime Against Public Decency as opposed to Crimes Against Persons. The State files this motion proactively and as a precaution such that nullification be deemed an impermissible argument at trial.

It is incontrovertible that a jury, or even a single juror, has the power to “acquit ‘in the teeth of both law and facts.’” *Merced v. McGrath*, 426 F.3d 1076, 1079 (9th Cir. 2005) (quoting *Horning v. District of Columbia*, 254 U.S. 135, 138, 41 S.Ct. 53, 65 L.Ed. 185 (1920)). Courts have recognized that although the jury has the power of nullification, they do not have the right to exercise that power. See *Standefer v. United States*, 447 U.S. 10, 22-23, 100 S.Ct. 1999, 64 L.Ed.2d 689 (1980), cited in, *Merced v. McGrath*, 426 F.3d at 1079. Rather, “it is

1 the duty of juries in criminal cases to take the law from the court, and apply that law to the
2 facts as they find them to be from the evidence." *Sparf v. United States*, 156 U.S. 51, 102, 15
3 S.Ct. 273, 39 L.Ed. 343 (1895); *United States v. Trujillo*, 714 F.2d 102, 105-06 (11th
4 Cir.1983) ("While a jury does have the power to bring a verdict ... its duty is to apply the law
5 as interpreted and instructed by the court.") (internal citations omitted). The oath of the juror
6 as contained in section 16.070 of the Nevada Revised Statutes requires the juror to swear or
7 affirm that he will well and truly try the case now pending before this court and a true verdict
8 render according to the evidence given." That is the juror's duty to follow the law. He may
9 have the power to nullify a proper verdict, but when he does so he violates his oath as a juror.

10 The Second Circuit stated:

11 Inasmuch as no juror has a right to engage in nullification-and, on
12 the contrary, it is a violation of a juror's sworn duty to follow the
13 law as instructed by the court-trial courts have the duty to forestall
14 or prevent such conduct, whether by firm instruction or
admonition or, where it does not interfere with guaranteed rights
or the need to protect the secrecy of jury deliberations, ... by
dismissal of an offending juror from the venire or the jury.

15 *United States v. Thomas*, 116 F.3d 606, 616 (2d Cir.1997)

16 It is for this very reason that courts do not give instructions to juries on their power of
17 nullification. See e.g., *Merced v. McGrath*, 426 F.3d at 1079. The Ninth Circuit stated: "[W]e
18 note that a number of courts have considered whether petit juries should be informed of their
19 nullification power. The courts have uniformly rejected the idea." *United States v. Navarro-*
20 *Vargas*, 408 F.3d 1184, 1199 (9th Cir. 2005) (en banc); see also, *United States v. Powell*, 955
21 F.2d 1206, 1213 (9th Cir.1992); *United States v. Dougherty*, 473 F.2d 1113, 1137
22 (D.C.Cir.1972) ("An explicit instruction to a jury conveys an implied approval that runs the
23 risk of degrading the legal structure requisite for true freedom, for an ordered liberty that
24 protects against anarchy as well as tyranny"); *United States v. Boardman*, 419 F.2d 110, 116
25 (1st Cir.1969) ("Today jurors may have the power to ignore the law, but their duty is to apply
26 the law as interpreted by the court, and they should be so instructed."); see also, *People v.*

1 Partner, 180 Cal.App.3d 178, 186, 225 Cal.Rptr. 502 (1986) ("We agree that the jury should
2 not be instructed on so-called jury nullification.¹").

3 Moreover, the Nevada Supreme Court has indicated that nullification arguments to a
4 jury are impermissible. *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008). The Ninth Circuit,
5 when faced with arguments of jury nullification indicated that the trial court may properly
6 instruct the jury to disregard the arguments of counsel and also indicated that "[n]ot only
7 should a judge interfere with an attorney's closing argument when it is 'legally wrong,' but he
8 should also limit, for example, attorneys' remarks outside the record or unduly inflammatory."
9 *United States v. Blixt*, 548 F.3d 882, 890 (9th Cir. 2008) (quoting *United States v. Sturgis*, 578
10 F.2d 1296, 1300 (9th Cir.1978)).

11 CONCLUSION

12 For the reasons stated above the State moves this Honorable Court to grant its Motion
13 to preclude the defendant from making arguments to the jury that amount to jury nullification.

14 DATED this 29th day of December, 2015.

15 STEVEN B. WOLFSON
16 Clark County District Attorney
Nevada Bar #001565

17 BY /s/ STACEY KOLLINS
18 STACEY KOLLINS
19 Chief Deputy District Attorney
Nevada Bar #00531

20
21
22
23
24
25
26 ¹ Jury nullification has been defined as,

27 [a] jury's knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants
28 to send a message about some social issue that is larger than the case itself or be-cause the result dictated by law is
contrary to the jury's sense of justice, morality, or fairness.

Black's Law Dictionary 875 (8th ed.2004).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, hereby certify that service of the above and foregoing, was made this 29th day of
December, 2015, to:

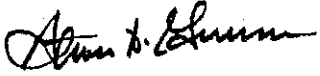
JASON MARGOLIS, ESQ.
Email: jason@macelaw.com

DMITRY GUROVICH, ESQ.
Email: gba_law@yahoo.com

/s/ HOWARD CONRAD

Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU


CLERK OF THE COURT

DMITRY Y. GUROVICH, SBN 181427
GUROVICH, BERK & ASSOCIATES, APC
15250 Ventura Blvd., Suite 1220
Sherman Oaks, CA 91403
Telephone: (818) 205-1555
Facsimile: (818) 205-1559
Email: gba_law@yahoo.com
Appearing Pro Hac Vice:
Jason Margolis, Bar #12439
Local Counsel

Attorneys for Defendant
Jason Lofthouse

DISTRICT COURT
CLARK COUNTY, NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON RICHARD LOFTHOUSE,

Defendant.

CASE NO. C-15-307937-1

DEFENDANT'S OPPOSITION TO
MOTION TO PRECLUDE DEFENSE
PRESENTATION OF JURY
NULLIFICATION ARGUMENTS

A motion such as this is both premature and unnecessary. At no time, did this defense counsel indicate or imply that he would seek to influence the jury to ignore the laws of the State of Nevada. We, as legal professionals, understand that the jury has the power to nullify. We also understand that instructing the jury to do so should not be encouraged as it undermines our entire legal system. The jury should follow the law as instructed by the judge. "While we recognize that a jury may render a verdict at odds with the evidence or the law, neither the court nor counsel should encourage jurors to violate their oath." US vs. Trujillo, 715 F.2d 102.

In every single trial, a judge instructs the jury as to the law. He or she further instructs the jury to follow the law regardless of how they feel about it. This instruction is intended to make clear to the jury that they must not ignore the law and make their

1 decision based on some other standard. Furthermore, the judge has control of the
2 courtroom. He or she is perfectly capable of controlling a defense attorney or a
3 prosecutor that is making improper arguments. This motion in limine is as necessary as a
4 motion to forbid the introduction of hearsay evidence.

5
6 This motion should be denied because it is wasteful and unnecessary.

7
8
9 Dated: February 1, 2016

/s/ DMITRY Y. GUROVICH
DMITRY Y. GUROVICH
Counsel for Defendant

CERTIFICATE OF SERVICE

The undersigned, an employee of MACE J. YAMPOLSKY, LTD., hereby certifies that on the 2nd day of February, 2016, she caused a copy of the foregoing DEFENDANT'S OPPOSITION TO MOTION TO PRECLUDE DEFENSE PRESENTATION OF JURY NULLIFICATION ARGUMENTS, by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

Stacy Kollins
Deputy District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155
stacy.kollins@clarkcountyda.com

/s/ Theresa J. Muzgay
An Employee of Mace. J. Yampolsky, Ltd.


CLERK OF THE COURT

1 **NWEW**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **STACEY KOLLINS**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #005391**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

11 **-vs-**

12 **JASON RICHARD LOFTHOUSE,**
13 **#7019775**

14 **Defendant.**

CASE NO: C-15-307937-1

DEPT NO: XX

15
16 **NOTICE OF WITNESSES AND/OR EXPERT WITNESSES**
17 **[NRS 174.234]**

18 **TO: JASON RICHARD LOFTHOUSE, Defendant; and**

19 **TO: JASON MARGOLIS, ESQ. and DMITRY GUROVICH, ESQ.,**
20 **Counsels of Record:**

21 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the STATE OF
22 **NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief:**

23 **ABBOTT; CCSDPD#199**

24 **ALEMAN, MARIA; 2237 DEMETRIUS AVE, LVN 89101**

25 **BROWNLEE, BELISA; 3612 SHAWN REYNOLDS CT #203, LVN 89129**

26 **BUTLER, VERNON; CANNERY HOTEL/CASINO, NLV**

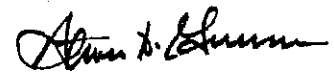
27 **CASTILLO, ZUREMA; 6212 CRATERS EDGE ST, NLV 89031**

28 **COR or Designee; CCDC**

COR or Designee; CCSD/RANCHO HIGH SCHOOL

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

212



CLERK OF THE COURT

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 STACEY KOLLINS
6 Chief Deputy District Attorney
7 Nevada Bar #005391
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JASON RICHARD LOFTHOUSE,
13 #7019775

14 Defendant.

CASE NO: C-15-307937-1

DEPT NO: XX

SECOND AMENDED
INFORMATION

15 STATE OF NEVADA)
16 COUNTY OF CLARK) ss.

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That JASON RICHARD LOFTHOUSE, the Defendant above named, having
20 committed the crimes of SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
21 VOLUNTEERS OF SCHOOL AND PUPIL (Category C Felony - NRS 201.540 - NOC
22 51067) and FIRST DEGREE KIDNAPPING (Category A Felony - NRS 200.310, 200.320
23 - NOC 50053) in the manner following:

24 That the said Defendant, on or between May 6, 2015 and May 28, 2015, at and within
25 the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such
26 cases made and provided, and against the peace and dignity of the State of Nevada,

27 //

28 //

1 COUNT 1 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or between May 6, 2015 and May 19, 2015, then and there, willfully, unlawfully
4 and feloniously, while employed or volunteering or having been previously employed or
5 volunteering in a position of authority at a public or private school, to-wit: a teacher, at Rancho
6 High School, Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with
7 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
8 school at which Defendant was or previously had been employed or volunteering.

9 COUNT 2 - FIRST DEGREE KIDNAPPING

10 did, on or about May 20, 2015, willfully, unlawfully and feloniously, lead, take, entice,
11 carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T.,
12 from her parents, guardians, or other person or persons having lawful custody of M.T., or with
13 the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any
14 unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T. which constitute
15 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual
16 intercourse and/or fellatio and/or cunnilingus.

17 COUNT 3 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
18 VOLUNTEERS OF SCHOOL AND PUPIL

19 did, on or about May 20, 2015, then and there, willfully, unlawfully, and feloniously,
20 while employed or volunteering or having been previously employed or volunteering in a
21 position of authority at a public or private school, to-wit: a teacher, at Rancho High School,
22 Clark County, Nevada, and who is over 21 years of age, engage in cunnilingus, with M.T.,
23 who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at
24 which Defendant was or previously had been employed or volunteering.

25 COUNT 4 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
26 VOLUNTEERS OF SCHOOL AND PUPIL

27 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
28 while employed or volunteering or having been previously employed or volunteering in a

1 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
2 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
3 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which
4 Defendant was or previously had been employed or volunteering.

5 COUNT 5 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
6 VOLUNTEERS OF SCHOOL AND PUPIL

7 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
8 while employed or volunteering or having been previously employed or volunteering in a
9 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
10 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
11 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
12 school at which Defendant was or previously had been employed or volunteering.

13 COUNT 6 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
14 VOLUNTEERS OF SCHOOL AND PUPIL

15 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
16 while employed or volunteering or having been previously employed or volunteering in a
17 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
18 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
19 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
20 school at which Defendant was or previously had been employed or volunteering.

21 COUNT 7 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
22 VOLUNTEERS OF SCHOOL AND PUPIL

23 did, on or between May 21, 2015 and May 27, 2015, then and there willfully,
24 unlawfully, and feloniously, while employed or volunteering or having been previously
25 employed or volunteering in a position of authority at a public or private school, to-wit: a
26 teach, at Rancho High School, , Clark County, Nevada, and who is over 21 years of age, engage
27 in fellatio, with M.T., who was 16 or 17 years of age at the time, and who was enrolled in or
28 attending the school at which Defendant was or previously had been employed or volunteering.

1
2 COUNT 8 - FIRST DEGREE KIDNAPPING

3 did, on or about May 28, 2015, willfully, unlawfully and feloniously, lead, take, entice,
4 carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T.,
5 from her parents, guardians, or other person or persons having lawful custody of M.T., or with
6 the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any
7 unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T which constitute
8 Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual
9 intercourse and/or fellatio and/or cunnilingus.

10 COUNT 9 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
11 VOLUNTEERS OF SCHOOL AND PUPIL

12 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
13 while employed or volunteering or having been previously employed or volunteering in a
14 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
15 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
16 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which
17 Defendant was or previously had been employed or volunteering.

18 COUNT 10 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
19 VOLUNTEERS OF SCHOOL AND PUPIL

20 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
21 while employed or volunteering or having been previously employed or volunteering in a
22 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
23 Clark County, Nevada, and who is over 21 years of age, engage in cunnilingus, with M.T.,
24 who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at
25 which Defendant was or previously had been employed or volunteering.

26 //

27 //

28 //

1 COUNT 11 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
4 while employed or volunteering or having been previously employed or volunteering in a
5 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
6 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
7 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
8 school at which Defendant was or previously had been employed or volunteering.

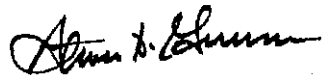
9 COUNT 12 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
10 VOLUNTEERS OF SCHOOL AND PUPIL

11 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
12 while employed or volunteering or having been previously employed or volunteering in a
13 position of authority at a public or private school, to-wit: a teach, at Rancho High School, ,
14 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
15 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
16 school at which Defendant was or previously had been employed or volunteering.

17 STEVEN B. WOLFSON
18 Clark County District Attorney
19 Nevada Bar #001565

20 BY /s/ STACEY KOLLINS
21 STACEY KOLLINS
22 Chief Deputy District Attorney
23 Nevada Bar #005391
24
25
26
27

28 DA#15FN0939X/hjc/SVU
CCSDPD EV#150603963


CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

JASON RICHARD LOFTHOUSE,
#7019775

Defendant.

CASE NO: C-15-307937-1

DEPT NO: XX

SUPPLEMENTAL NOTICE OF WITNESSES

AND/OR EXPERT WITNESSES
[NRS 174.234]

TO: JASON RICHARD LOFTHOUSE, Defendant; and

**TO: JASON MARGOLIS, ESQ. and DMITRY GUROVICH, ESQ.,
Counsels of Record:**

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief:

*indicates additional witness(es) and/or modification(s)

ABBOTT; CCSDPD#199

ALEMAN, MARIA; 2237 DEMETRIUS AVE, LVN 89101

*BEHNIA; ALI; UNK

*BELTHAZAR, STEPHANIE; UNK

BROWNLEE, BELISA; 3612 SHAWN REYNOLDS CT #203, LVN 89129

BUTLER, VERNON; CANNERY HOTEL/CASINO, NLV

1 *CALDWELL, M.; CCSD; Will testify as expert as to the forensic analysis of
2 computers, cellular phones and related technology, and/or as to forensic analysis of said
3 devices conducted in the instant case.

4 CASTILLO, ZUREMA; 6212 CRATERS EDGE ST, NLV 89031

5 COR or Designee; CCDC

6 COR or Designee; CCSD/RANCHO HIGH SCHOOL

7 *C.T.; c/o CCDA-SVU/VWAC

8 *FIELDS, MIA; UNK

9 *GONZALEZ, SAMANTHA; UNK

10 GUGLIELMO, PANNELLI; UNK

11 HERNANDEZ-DIAZ, TANIA; UNK

12 HIBNER; CCSDPD#243

13 I.T.; c/o CCDA-SVU/VWAC

14 JONES; CCSDPD#323

15 KIDD, SAMANTHA; UNK

16 KUZMA, DR. JAMES; PRINCIPAL, RANCHO HIGH SCHOOL

17 M.T.; c/o CCDA-SVU/VWAC

18 MACISZAK; CCSDPD#308

19 MAGANA, WENDY; UNK

20 MYERS, MIKAYLA; UNK

21 *NISKANEN, MARILYN; UNK

22 NORDSTROM, R.; ALIANTE HOTEL/CASINO

23 PAGLINI, DR JOHN; 9163 W FLAMINGO RD, LVN 89147

24 *PANNELLI, GUGLIELMO; UNK

25 PATTY; CCSDPD#520

26 SECURITY SUPERVISOR; ALIANTE HOTEL/CASINO

27 *SWAR, JESSICA; UNK

28 TROXELL; CCSDPD#373

These witnesses are in addition to those witnesses endorsed on the Information or Indictment and any other witness for which a separate Notice of Witnesses and/or Expert Witnesses has been filed.

A copy of each expert witness' curriculum vitae, if available, is attached hereto.

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

BY /s/ STACEY KOLLINS
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391

CERTIFICATE OF SERVICE

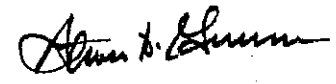
I, hereby certify that service of the above and foregoing, was made this 22ND day of February, 2016, to:

JASON MARGOLIS, ESQ.
jason@macelaw.com

DMITRY GUROVICH, ESQ.
gba_law@yahoo.com

/s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU


CLERK OF THE COURT

1 NWEW
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 STACEY KOLLINS
6 Chief Deputy District Attorney
7 Nevada Bar #005391
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,
12
13 -VS-
14 JASON RICHARD LOFTHOUSE,
15 #7019775
16 Defendant.

CASE NO: C-15-307937-1
DEPT NO: XX

AMENDED SUPPLEMENTAL NOTICE OF WITNESSES
AND/OR EXPERT WITNESSES
[NRS 174.234]

18 TO: JASON RICHARD LOFTHOUSE, Defendant; and
19 TO: JASON MARGOLIS, ESQ. and DMITRY GUROVICH, ESQ.,
20 Counsels of Record:

21 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
22 NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief:

23 *indicates additional witness(es) and/or modification(s)

- 24 ABBOTT; CCSDPD#199
- 25 ALEMAN, MARIA; 2237 DEMETRIUS AVE, LVN 89101
- 26 BEHNIA; ALI; UNK
- 27 BELTHAZAR, STEPHANIE; UNK
- 28 BROWNLEE, BELISA; 3612 SHAWN REYNOLDS CT #203, LVN 89129

1 BUTLER, VERNON; CANNERY HOTEL/CASINO, NLV
2 *CALDWELL, M.; CCSD; Will testify as expert as to the forensic analysis of
3 computers, cellular phones and related technology, and/or as to forensic analysis of said
4 devices conducted in the instant case.
5 CASTILLO, ZUREMA; 6212 CRATERS EDGE ST, NLV 89031
6 COR or Designee; CCDC
7 COR or Designee; CCSD/RANCHO HIGH SCHOOL
8 C.T.; c/o CCDA-SVU/VWAC
9 FIELDS, MIA; UNK
10 GONZALEZ, SAMANTHA; UNK
11 GUGLIELMO, PANNELLI; UNK
12 HERNANDEZ-DIAZ, TANIA; UNK
13 HIBNER; CCSDPD#243
14 I.T.; c/o CCDA-SVU/VWAC
15 JONES; CCSDPD#323
16 KIDD, SAMANTHA; UNK
17 KUZMA, DR. JAMES; PRINCIPAL, RANCHO HIGH SCHOOL
18 M.T.; c/o CCDA-SVU/VWAC
19 MACISZAK; CCSDPD#308
20 MAGANA, WENDY; UNK
21 MYERS, MIKAYLA; UNK
22 NISKANEN, MARILYN; UNK
23 NORDSTROM, R.; ALIANTE HOTEL/CASINO
24 PAGLINI, DR JOHN; 9163 W FLAMINGO RD, LVN 89147
25 PANNELLI, GUGLIELMO; UNK
26 PATTY; CCSDPD#520
27 SECURITY SUPERVISOR; ALIANTE HOTEL/CASINO
28 SWAR, JESSICA; UNK

1 TROXELL; CCSDPD#373

2 These witnesses are in addition to those witnesses endorsed on the Information or
3 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert
4 Witnesses has been filed.

5 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

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

9 BY /s/ STACEY KOLLINS
10 STACEY KOLLINS
11 Chief Deputy District Attorney
12 Nevada Bar #005391

13
14
15
16
17 **CERTIFICATE OF SERVICE**

18 I, hereby certify that service of the above and foregoing, was made this 24TH day of
19 FEBRUARY 2016February, 2016, to:

20 JASON MARGOLIS, ESQ.
21 jason@macelaw.com

22 DMITRY GUROVICH, ESQ.
23 gba_law@yahoo.com

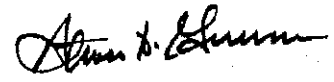
24 /s/ HOWARD CONRAD
25 Secretary for the District Attorney's Office
26 Special Victims Unit

27
28 hjc/SVU

Detective M. Caldwell P#368
Clark County School District Police Department
120 Corporate Park Drive, Henderson, Nevada 89074

- Lantern Certified Examiner (24 hours)
- 2015 National Law Enforcement Training on Child Exploitation, this training covers various classroom blocks most of which are related to computer and cell phone forensic techniques. (21 hours)
- Emerging Trends in Recovering Cell Phone Data (20 hours)
- OSINT (24 hours)
- Nevada POST Basic Certificate
- Nevada POST Intermediate Certificate
- Nevada POST Advanced Certificate
- Instructor Development (40 hours)
- Field Training Officer (32 hours)
- Post First Line Supervision (80 hours)
- Advanced FTO Seminar (24 hours)
- Crisis Intervention Training (24 hours)
- Detective and New Criminal Investigator training (35 hours)
- Reid Interview and Interrogation (24 hours)
- Advanced Reid Interview and Interrogation (8 hours)
- Defensive Tactics Instructor (40 hours)

- ASP Tactical Baton Instructor (40 hours)
- Forensic Interviewing of Children (40 hours)
- Surveillance Basics (16 hours)
- Back Ground Investigations (12 hours)
- Gang Crime Conference (16 hours)
- Gang Response for Patrol (27 hours)
- Multijurisdictional Counterdrug Task Force Training (24 hours)
- Radar Operator Course
- WMD Awareness program (8 hours)
- National School Safety Conference (28 hours)
- Financial Research and Money Laundering (7 hours)


CLERK OF THE COURT

1 NWEW
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 STACEY KOLLINS
6 Chief Deputy District Attorney
7 Nevada Bar #005391
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,

12 -vs-

13 JASON RICHARD LOFTHOUSE,
14 #7019775

15 Defendant.

CASE NO: C-15-307937-1

DEPT NO: XX

16 SECOND SUPPLEMENTAL NOTICE OF WITNESSES

17 AND/OR EXPERT WITNESSES
18 [NRS 174.234]

19 TO: JASON RICHARD LOFTHOUSE, Defendant; and

20 TO: JASON MARGOLIS, ESQ. and DMITRY GUROVICH, ESQ.,
21 Counsels of Record:

22 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
23 NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief:

24 *indicates additional witness(es) and/or modification(s)

25 ABBOTT; CCSDPD#199

26 ALEMAN, MARIA; 2237 DEMETRIUS AVE, LVN 89101

27 BEHNIA; ALI; UNK

28 BELTHAZAR, STEPHANIE; UNK

BROWNLEE, BELISA; 3612 SHAWN REYNOLDS CT #203, LVN 89129

1 BUTLER, VERNON; CANNERY HOTEL/CASINO, NLV
2 CALDWELL, M.; CCSD; Will testify as expert as to the forensic analysis of
3 computers, cellular phones and related technology, and/or as to forensic analysis of said
4 devices conducted in the instant case.
5 CASTILLO, ZUREMA; 6212 CRATERS EDGE ST, NLV 89031
6 COR or Designee; CCDC
7 COR or Designee; CCSD/RANCHO HIGH SCHOOL
8 C.T.; c/o CCDA-SVU/VWAC
9 FIELDS, MIA; UNK
10 GONZALEZ, SAMANTHA; UNK
11 GUGLIELMO, PANNELLI; UNK
12 HERNANDEZ-DIAZ, TANIA; UNK
13 HIBNER; CCSDPD#243
14 I.T.; c/o CCDA-SVU/VWAC
15 JONES; CCSDPD#323
16 KIDD, SAMANTHA; UNK
17 KUZMA, DR. JAMES; PRINCIPAL, RANCHO HIGH SCHOOL
18 *LARIMIR, FNU; ALIANTE HOTEL/CASINO
19 M.T.; c/o CCDA-SVU/VWAC
20 MACISZAK; CCSDPD#308
21 MAGANA, WENDY; UNK
22 MYERS, MIKAYLA; UNK
23 NISKANEN, MARILYN; UNK
24 *NORDSTROM, R.; CANNERY HOTEL/CASINO
25 PAGLINI, DR JOHN; 9163 W FLAMINGO RD, LVN 89147
26 PANNELLI, GUGLIELMO; UNK
27 PATTY; CCSDPD#520
28 *HILL, NATHAN; SECURITY SUPERVISOR, ALIANTE HOTEL/CASINO

1 SWAR, JESSICA; UNK
2 TROXELL; CCSDPD#373

3 These witnesses are in addition to those witnesses endorsed on the Information or
4 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert
5 Witnesses has been filed.

6 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

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

10 BY /s/ STACEY KOLLINS
11 STACEY KOLLINS
12 Chief Deputy District Attorney
13 Nevada Bar #005391
14
15
16

17 **CERTIFICATE OF SERVICE**

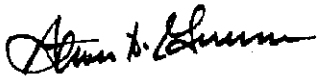
18 I, hereby certify that service of the above and foregoing, was made this 4TH day of
19 MARCH 2016, to:

20 JASON MARGOLIS, ESQ.
21 jason@macelaw.com

22 DMITRY GUROVICH, ESQ.
23 gba_law@yahoo.com

24 /s/ HOWARD CONRAD
25 Secretary for the District Attorney's Office
26 Special Victims Unit
27

28 hjc/SVU


CLERK OF THE COURT

1 DMITRY Y. GUROVICH, SBN 181427
2 GUROVICH, BERK & ASSOCIATES, APC
3 15250 Ventura Blvd., Suite 1220
4 Sherman Oaks, CA 91403
5 Telephone: (818) 205-1555; Fax No. (818) 205-1559
6 Email: gha_law@yahoo.com
7 Appearing Pro Hac Vice

8 MACE J. YAMPOLSKY, LTD.
9 Jason Margolis, Bar #12439
10 Nevada Bar No. 012439
11 615 South Sixth Street
12 Las Vegas, Nevada 89101
13 (702) 385-9777; Fax No. (702) 385-3001
14 Email: jason@macelaw.com
15 Local Counsel

16 Attorneys for Defendant
17 Jason Lofthouse

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,
15
16 Plaintiff,
17
18 v.
19 JASON RICHARD LOFTHOUSE,
20
21 Defendant.

CASE NO. C-15-307937-1
DEPT. NO. XX

DEFENDANT'S MOTION IN LIMINE TO
PRECLUDE THE STATE FROM
INTRODUCING OR ATTEMPTING TO
INTRODUCE EVIDENCE OF ANY OTHER
ACTUAL OR POTENTIAL VICTIMS

22 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

23 COMES NOW, Defendant by and through his attorneys, Dmitry Y. Gurovich and
24 Jason Margolis, and moves this Court to PRECLUDE THE STATE FROM
25 INTRODUCING OR ATTEMPTING TO INTRODUCE EVIDENSE OF ANY OTHER
26 ACTUAL OR POTENTIAL VICTIMS.

27 ///

28 ///

DEFENDANT'S MOTION IN LIMINE TO PRECLUDE THE STATE
FROM INTRODUCING OR ATTEMPTING TO INTRODUCE
EVIDENSE OF ANY OTHER ACTUAL OR POTENTIAL VICTIMS

1 This Motion is based on all the papers and pleadings on file herein, the attached
2 points and authorities in support, and oral arguments at the time of hearing.

3 Dated: March 16, 2016

4
5 /s/ Dmitry Y. Gurovich, Esq.
6 DMITRY Y. GUROVICH,
7 Attorney for Defendant

8 **NOTICE OF MOTION**

9 TO: THE STATE OF NEVADA, Plaintiff; and

10 TO: OFFICE OF THE DISTRICT ATTORNEY, Attorney for Plaintiff.

11 YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
12 bring the above and foregoing Motion on for hearing before Department XX of the above-entitled Court
13 on the 5th day of April, 2016, at the hour of 8:30 AM.m.

14
15 Dated: March 16, 2016

16 /s/ Dmitry Y. Gurovich, Esq.
17 DMITRY Y. GUROVICH,
18 Attorney for Defendant

19 **1. Factual Allegations:**

20 Mr. Lofthouse has been charged with a violation of NRS 201.540, prohibiting
21 sexual conduct between teachers and their students, and NRS 200.310, First Degree
22 Kidnapping. Both statutes involve a single Victim.
23

24 It has come to the attention of the Defense that the State may attempt to introduce
25 "Prior Bad Acts" evidence of one or more than one other victims. The Defense
26 strenuously objects to the introduction of any such evidence.
27
28

1 **2. Argument:**

2 NRS 48.035 states in pertinent part: "Although relevant, evidence is not
3 admissible if its probative value is substantially outweighed by the danger of unfair
4 prejudice, of confusion of the issues or of misleading the jury."
5

6 Here, not only has there been no discovery with respect to any other victims or
7 potential victims, testimony or argument involving any such allegations, very likely, will
8 mislead the jury and will substantially prejudice the defense.
9

10 There has been, absolutely no discovery produced by the State as to any potential
11 or actual victims, other than the Victim that is the subject of this case. Although, the
12 State may suspect that such individuals exist, nothing beyond mere suppositions has been
13 shared with the Defense. As such, any allusions, hinting at, or direct testimony about any
14 other victims of the Defendant must be forbidden by this Court.
15

16 Likewise, these questionable allegations will only stand to mislead the jury and to
17 prejudice Mr. Lofthouse's defense in this case. If the jury hears that there may be other
18 victims, they likely will label Mr. Lofthouse, improperly, as a predator. They also will
19 use these allegations as defendant's character evidence, something that should not be
20 allowed. Jury instructions attempting to rehabilitate the situation after the fact, will not
21 be enough to undo the damage caused by these inadmissible allegations.
22
23
24

25 **3. Conclusion:**

26 As such, Mr. Lofthouse, respectfully requests that this Honorable Court order the
27 State not to introduce or attempt to introduce any evidence or allegations of any victims
28

1 or potential victims other than the Victim that is the subject of this case. Mr. Lofthouse,
2 further requests that this Honorable Court order the State to instruct its witnesses not to
3 "inadvertently blurt out" any such allegations.
4

5 Dated: March 16, 2016

6 /s/ Dmitry Y. Gurovich, Esq.
7 DMITRY Y. GUROVICH,
8 Attorney for Defendant
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing, was made this 17th day of March, 2016, via electronically filing to:

Stacey Kollins, Chief DDA
Stacey.kollins@clarkcountyda.com

MACE J. YAMPOLSKY, LTD.

/s/ Theresa J. Muzgay

An employee of
MACE J. YAMPOLSKY, LTD.

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
MAR 21 2016

JURL

DISTRICT COURT

Linda Skinner
LINDA SKINNER, DEPUTY

CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff(s),

-vs-

JASON RICHARD LOFTHOUSE

Defendant(s).

CASE NO C307937

DEPT. NO. XX

JURY LIST

- | | |
|---------------------------|--------------------------------|
| 1. JERRY MORRIS | 8. ROBERT MCCANN |
| 2. TIA CHAI | 9. NICHOLAS MOORE |
| 3. DONNA LEWIS | 10. TABITHA REYES |
| 4. JED BRAEGGER | 11. TERESA CASTELLAN OS-ZAMORA |
| 5. CAROLINE THOMAS-JENSON | 12. HOLLY WITTE |
| 6. NICOLO SANTABRIGIDA | 13. DAVID LONGORIA |
| 7. LISETTE BRIONES | 14. CHERRY CASTANAGA |

ALTERNATES

Secret from above

T:\DEPT 20\JURY LISTS\LOFTHOUSE.doc

C-15-307937-1
JURL
Jury List
4533118



FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
MAR 24 2016

JURL

BY Linda Skinner
DISTRICT COURT LINDA SKINNER, DEPUTY

CLARK COUNTY, NEVADA

THE STATE OF NEVADA

Plaintiff(s),

CASE NO. C307937

DEPT. NO. XX

-VS-

JASON RICHARD LOFTHOUSE
Defendant(s).

AMENDED JURY LIST

- | | |
|---------------------------|--------------------------------|
| 1. JERRY MORRIS | 7. LISETTE BRIONES |
| 2. TIA CHAI | 8. ROBERT MCCANN |
| 3. DONNA LEWIS | 9. NICHOLAS MOORE |
| 4. JED BRAEGGER | 10. TABITHA REYES |
| 5. CAROLINE THOMAS-JENSON | 11. TERESA CASTELLAN OS-ZAMORA |
| 6. NICOLO SANTABRIGIDA | 12. HOLLY WITTE |

ALTERNATES

- | | |
|-------------------|---------------------|
| 1. DAVID LONGORIA | 2. CHERRY CASTANAGA |
|-------------------|---------------------|

C-15-307937-1
AJUR
Amended Jury List
4634810



FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
MAR 25 2016

B *Linda Skinner*
LINDA SKINNER, DEPUTY 11:34 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
-vs-
JASON RICHARD LOFTHOUSE,
Defendant.

CASE NO: C-15-307937-1
DEPT NO: XX

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

MEMBERS OF THE JURY:

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

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

C-15-307937-1
INST
Instructions to the Jury
4534808



27

INSTRUCTION NO. 2

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

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. 3

Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Information that on or between May 6, 2015 and May 28, 2015, at and within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
VOLUNTEERS OF SCHOOL AND PUPIL

did, on or between May 6, 2015 and May 19, 2015, then and there, willfully, unlawfully and feloniously, while employed or volunteering or having been previously employed or volunteering in a position of authority at a public or private school, to-wit: a teacher, at Rancho High School, Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at which Defendant was or previously had been employed or volunteering.

COUNT 2 - FIRST DEGREE KIDNAPPING

did, on or about May 20, 2015, willfully, unlawfully and feloniously, lead, take, entice, carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said M.T., from her parents, guardians, or other person or persons having lawful custody of M.T., or with the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T. any unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T. which constitute Sexual Conduct Between Certain Employees or Volunteers of School and Pupil, to-wit: sexual intercourse and/or fellatio and/or cunnilingus.

COUNT 3 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
VOLUNTEERS OF SCHOOL AND PUPIL

did, on or about May 20, 2015, then and there, willfully, unlawfully, and feloniously, while employed or volunteering or having been previously employed or volunteering in a

1 position of authority at a public or private school, to-wit: a teacher, at Rancho High School,
2 Clark County, Nevada, and who is over 21 years of age, engage in cunnilingus, with M.T.,
3 who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at
4 which Defendant was or previously had been employed or volunteering.

5 COUNT 4 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
6 VOLUNTEERS OF SCHOOL AND PUPIL

7 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
8 while employed or volunteering or having been previously employed or volunteering in a
9 position of authority at a public or private school, to-wit: a teacher, at Rancho High School, ,
10 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
11 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at
12 which Defendant was or previously had been employed or volunteering.

13 COUNT 5 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
14 VOLUNTEERS OF SCHOOL AND PUPIL

15 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
16 while employed or volunteering or having been previously employed or volunteering in a
17 position of authority at a public or private school, to-wit: a teacher, at Rancho High School, ,
18 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
19 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
20 school at which Defendant was or previously had been employed or volunteering.

21 COUNT 6 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
22 VOLUNTEERS OF SCHOOL AND PUPIL

23 did, on or about May 20, 2015, then and there willfully, unlawfully, and feloniously,
24 while employed or volunteering or having been previously employed or volunteering in a
25 position of authority at a public or private school, to-wit: a teacher, at Rancho High School, ,
26 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
27 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
28 school at which Defendant was or previously had been employed or volunteering.

1 COUNT 7 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
2 VOLUNTEERS OF SCHOOL AND PUPIL

3 did, on or between May 21, 2015 and May 27, 2015, then and there willfully,
4 unlawfully, and feloniously, while employed or volunteering or having been previously
5 employed or volunteering in a position of authority at a public or private school, to-wit: a
6 teach, at Rancho High School, , Clark County, Nevada, and who is over 21 years of age,
7 engage in fellatio, with M.T., who was 16 or 17 years of age at the time, and who was
8 enrolled in or attending the school at which Defendant was or previously had been employed
9 or volunteering.

10 COUNT 8 - FIRST DEGREE KIDNAPPING

11 did, on or about May 28, 2015, willfully, unlawfully and feloniously, lead, take,
12 entice, carry away or kidnap M.T., a minor, with the intent to keep, imprison, or confine said
13 M.T., from her parents, guardians, or other person or persons having lawful custody of M.T.,
14 or with the intent to hold M.T. to unlawful service, or to perpetrate upon the person of M.T.
15 any unlawful act, to-wit: by Defendant engaging in sexual acts with the said M.T which
16 constitute Sexual Conduct Between Certain Employees or Volunteers of School and Pupil,
17 to-wit: sexual intercourse and/or fellatio and/or cunnilingus.

18 COUNT 9 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
19 VOLUNTEERS OF SCHOOL AND PUPIL

20 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
21 while employed or volunteering or having been previously employed or volunteering in a
22 position of authority at a public or private school, to-wit: a teacher, at Rancho High School, ,
23 Clark County, Nevada, and who is over 21 years of age, engage in fellatio, with M.T., who
24 was 16 or 17 years of age at the time, and who was enrolled in or attending the school at
25 which Defendant was or previously had been employed or volunteering.

26 COUNT 10 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
27 VOLUNTEERS OF SCHOOL AND PUPIL

28 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,

1 while employed or volunteering or having been previously employed or volunteering in a
2 position of authority at a public or private school, to-wit: a teacher, at Rancho High School, ,
3 Clark County, Nevada, and who is over 21 years of age, engage in cunnilingus, with M.T.,
4 who was 16 or 17 years of age at the time, and who was enrolled in or attending the school at
5 which Defendant was or previously had been employed or volunteering.

6 COUNT 11 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
7 VOLUNTEERS OF SCHOOL AND PUPIL

8 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
9 while employed or volunteering or having been previously employed or volunteering in a
10 position of authority at a public or private school, to-wit: a teacher, at Rancho High School, ,
11 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
12 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
13 school at which Defendant was or previously had been employed or volunteering.

14 COUNT 12 - SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR
15 VOLUNTEERS OF SCHOOL AND PUPIL

16 did, on or about May 28, 2015, then and there willfully, unlawfully, and feloniously,
17 while employed or volunteering or having been previously employed or volunteering in a
18 position of authority at a public or private school, to-wit: a teacher, at Rancho High School, ,
19 Clark County, Nevada, and who is over 21 years of age, engage in sexual intercourse, with
20 M.T., who was 16 or 17 years of age at the time, and who was enrolled in or attending the
21 school at which Defendant was or previously had been employed or volunteering.

22 It is the duty of the jury to apply the rules of law contained in these instructions to the
23 facts of the case and determine whether or not the Defendant is guilty of one or more of the
24 offenses charged.

INSTRUCTION NO. 4

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

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

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

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

INSTRUCTION NO. 5

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 6

1
2 You are here to determine the guilt or innocence of the Defendant from the evidence
3 in the case. You are not called upon to return a verdict as to the guilt or innocence of any
4 other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the
5 guilt of the Defendant, you should so find, even though you may believe one or more persons
6 are also guilty.

INSTRUCTION NO. 7

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

A separate crime is charged against the Defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

INSTRUCTION NO. 8

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weights to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

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

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

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

INSTRUCTION NO. 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) The witness' opportunity and ability to see or hear or know the things testified to;
- (2) The witness' memory;
- (3) The witness' manner while testifying;
- (4) The witness' interest in the outcome of the case, if any;
- (5) The witness bias or prejudice, if any;
- (6) Whether other evidence contradicted the witness' testimony;
- (7) The reasonableness of the witness' testimony in light of all the evidence; and
- (8) Any factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

INSTRUCTION NO. 10

1
2 A witness who has special knowledge, skill, experience, training or education in a
3 particular science, profession or occupation is an expert witness. An expert witness may
4 give his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the
8 reasons given for it are unsound.

INSTRUCTION NO. 11

In order to return a verdict of guilty as to First Degree Kidnapping, you must find the state has proven the following elements:

1. Defendant lead or took or enticed or carried away or detained a minor, that is a person under the age of 18 years, AND
2. Acted with one or more of the following intents:
 - a. With the intent to keep, imprison, or confine her from her parents, guardians, or any other person having lawful custody of the minor, OR
 - b. With the intent to hold the minor to unlawful service, OR
 - c. With the intent to perpetrate upon the person of the minor any unlawful act.

It is not necessary for everyone to agree on the particular theory of action or intent. However, you all must agree that Defendant took at least one of the above listed actions, that is the Defendant lead or took or enticed or carried away or detained a minor, and that he did it with any one of the intents listed above.

Consent of a minor under the age of 18 years is not a defense to Kidnapping in the First Degree. Force or threat of force is not an element of First Degree Kidnapping.

INSTRUCTION NO. 12

Where a person is charged with the crime of First Degree Kidnapping for the purpose of committing Sexual Conduct Between Certain Employees Or Volunteers Of School And Pupil it is not necessary to establish the Sexual Conduct Between Certain Employees Or Volunteers Of School And Pupil was actually committed.

INSTRUCTION NO. 13

A teacher while employed or having been previously employed or volunteering in a position of authority at a public or private school who is over 21 years of age, who engages in sexual conduct with someone who is 16 or 17 years of age at the time, and who was enrolled in or attending the school at which the teacher was or previously had been employed is guilty of Sexual Conduct with Certain Employees or Volunteers of School and Pupil.

Sexual Conduct means:

1. ordinary sexual intercourse,
2. fellatio, cunnilingus or other oral genital contact,
3. physical contact by a person with the unclothed genitals or pubic area of another person for the purpose of arousing or gratifying the sexual desire of either person,
4. Masturbation or lewd exhibition of unclothed genitals.

INSTRUCTION NO. 14

Consent is not a defense to Sexual Conduct with Certain Employees or Volunteers of School and Pupil.

Force or threat of force is not required to find someone committed the crime of Sexual Conduct with Certain Employees or Volunteers of School and Pupil.

There is no requirement that the crime of Sexual Conduct with Certain Employees or Volunteers of School and Pupil take place on school property.

INSTRUCTION NO. 15

There is no requirement that the testimony of a victim of a sexual conduct crime be corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

INSTRUCTION NO. 16

Where multiple sexual acts occur as part of a single criminal encounter a Defendant may be found guilty for each separate or different act of sexual conduct.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO. 17

For both Sexual Conduct Between Certain Employees or Volunteers of School and Pupil and First Degree Kidnapping, there is no requirement that the Defendant knew that the minor was under the age of 18. Proof that the minor was under the age of 18 at the time is sufficient.

INSTRUCTION NO. 18

Where a sexual conduct is alleged, the State is not required prove a specific date, but may prove a time frame within which the act took place.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO. 19

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

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 20

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of the guilt or innocence of the Defendant.

INSTRUCTION NO. 21

When you retire to consider your verdict, you must select one of your members to act as foreperson that will preside over your deliberation and will be your spokesperson here in court.

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

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

INSTRUCTION NO. 22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you may send a note through the clerk or bailiff, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any questions. Remember that you are not to tell anyone - including me - how the jury stands, numerically or otherwise, on any question submitted to you, including the question of the guilt of the Defendant, until after you have reached a unanimous verdict or have been discharged.

Readbacks of testimony are time consuming and are not encouraged unless you deem it a necessity. Should you require a readback, you must carefully describe the testimony to be read back so that the court reporter can arrange her notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 23

The law does not compel a defendant in a criminal case to take the stand and testify and no presumption may be raised and no inference of any kind may be drawn from the failure of a defendant to testify.

INSTRUCTION NO. 24

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25**
- 26
- 27
- 28

JASON RICHARD LOFTHOUSE,) No. 70587
)
Appellant,)
)
vi.)
)
THE STATE OF NEVADA,)
)
Respondent.)

10

11
12

STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

14

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

16

17

18
19
20

21
22

HOWARD S. BROOKS
WILLIAM M. WATERS

22
23

24

25

27
28

Clark County Public Det