

1 but a stranger abduction where they do nothing to the
2 child that they've been caught for.

3 In other words, if you -- if somebody picked
4 a kid up off the street and they did not have the
5 opportunity to do anything else to them, if you did not
6 have this statute in place to protect children, there
7 would be no crime. So the legislature has carved that
8 out.

9 The unlawful service portion of that statute for
10 the kidnapping statute was designed with children
11 prostitution in mind. Because when pimps endear
12 themselves to these minor prostitutes and they go with
13 them consensually -- mind you, bad decision -- that is a
14 first-degree kidnapping, and the statute was designed to
15 protect kids.

16 Now, when you get to the third portion that
17 we are operating on here today, if someone with --
18 leads or takes or entices or carries away a kid and
19 performs an unlawful act with them, it's a kidnapping.
20 They're a minor. They're under 18.

21 I want to talk to you, in this case, about the
22 word "entice." Entice does not presuppose dominion.
23 Entice means to attract someone, especially by offering or
24 showing something that is appealing or interesting; to
25 attract artfully or by arousing hope or desire, to tempt.

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1 That is what entice means. That is a dictionary
2 definition. Entice does not mean that you have to
3 exercise some kind of physical control over them.

4 And let's talk about what enticement was to
5 Michelle, a 17-year-old girl. He romanced her. He wooed
6 her. He complimented her. He flirted with her. He said,
7 "Good morning, Michelle. You're so pretty. Your clothes
8 are beautiful today. I saw your low-cut shirt. I wish I
9 could kiss you. I wish I could hold you."

10 She's 17. She's not 30 or 40-something where
11 those lines might not work. She is 17.

12 What is enticement? What is romancing a 17 year
13 old? You need to hold her to a 17-year-old standard.
14 Despite what you think about her sexual conduct and how
15 she speaks in those text messages, she's a 17 year old.
16 And I submit to you that, at 17, the flattery, and the
17 attention, and the wooing, and the sexual experience, and
18 the excitement of a sexual tryst with your teacher at a
19 hotel getaway, those are all things that are appealing and
20 arousing and tempting and that is what enticement is.
21 It's the same as sticking -- as pulling up in a van and
22 saying, "Do you want some candy, little girl?" It's the
23 same thing. And that is what that statute was designed to
24 preclude.

25 I understand that everyone, during selection, is

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1 hung up on the label of first-degree kidnapping. Perhaps
2 our Legislature could have done a better job. Perhaps
3 they could have called it "Harboring a minor to commit a
4 crime with them." Perhaps they could have called it
5 "Confinement or enticing a minor in order to commit a
6 crime." They could have called it something else; but
7 they have statutory construction here and that's where
8 they put it. And they put that whole body of the
9 first-degree kidnapping statute in place to handle
10 situations just like this.

11 There is another part of the first-degree
12 kidnapping statute that you haven't heard about today
13 because we haven't -- it's not part of this case, but it
14 involves the TV kidnapping. The
15 you-took-me-to-commit-robbery,
16 you-took-me-to-commit-a-sexual-assault,
17 you-took-me-to-commit-extortion, the
18 duct-tape-throw-in-the-trunk kidnapping, that's a part of
19 the statute that we have not addressed with you because it
20 does not apply to this case and we're not suggesting to
21 you that it does.

22 But this statute, the way Nevada has drafted
23 it, the way it has been enacted, it was put in place to
24 protect our kids. And that's what it is. You may
25 disagree with it, but punishment's not within your

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1 purview or within your province today to decide.

2 You -- you might not like the label, but the elements
3 of the crime, in this case, have been met.

4 There is no dominion and control overlay here.
5 That is not what this is. This is enticement by a
6 32-year-old school teacher flirting and wooing and
7 promising getaways till he ultimately picks her up and
8 takes her to a hotel. That is kidnapping in the state of
9 Nevada. You may not agree with the label, but the
10 elements have been met.

11 And you have to -- you have to understand, if
12 you sit back -- excuse me -- and you look at the facts
13 of this case, that it's not too difficult to entice a
14 17-year-old girl. That's not tough. Again, enticing a
15 grownup, it might take wine and champagne and a weekend
16 away or, you know, something a little more extravagant.
17 Here it took a, "Good morning. You're pretty. I want
18 to kiss you. I want to touch you," and a bag of
19 mangos. He gave her attention, and that attention and
20 that promise of privacy and touching and flirting.
21 She's 17. You need to hold her to that standard.

22 She was obviously reluctant. I told you she'd
23 be that way. I -- I think she still likes him. I think
24 she still has some feeling for him. I can't control that.
25 But -- and I submit to you, that while it wasn't physical

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1 dominion and control, such as binding or carrying off, it
2 certainly was emotional control, and it was emotional
3 manipulation, and it was grooming her and enticing her to
4 a place of privacy where he could have sex with her and no
5 one would know, and that's what he did.

6 And, again, this statute was drafted -- this
7 portion of the statute was drafted with our kids in mind.
8 It was drafted with our kids in mind. Whether you like
9 the label or not, he enticed her, he led her away.

10 I'm not going to go through all the text
11 messages again. You know, it's obvious, when you go
12 back there and read them, in State's 21, that he
13 romanced this girl with very little effort, I might
14 add, with very little effort, and he got her to go to
15 the Aliante. Whether she consented is not a defense.
16 Whether she consented to sex is not a defense to
17 kidnapping. The consensual teacher/student
18 relationship has nothing to do with the kidnapping
19 statute. The consent to one does not negate or
20 alleviate his criminal responsibility for the
21 kidnapping.

22 They've conceded, through defense counsel's
23 argument, that there was sexual conduct, teacher and
24 student. Consent is not a defense to that. I ask that
25 you find him guilty of those counts. I also ask that you

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1 follow your oath that you took to follow the law and find
2 him guilty of the first-degree kidnapping, in that Jason
3 Lofthouse enticed and led and at least physically picked
4 up and took her to the hotel. On any of those theories,
5 he is guilty of first-degree kidnapping. Don't be afraid
6 of the label. Focus on what the elements are. If you
7 look at the elements and stick to the definition of
8 entice, that does not involve dominion or control, I
9 submit to you you have no option but to find him guilty
10 beyond a reasonable doubt of those two charges of
11 kidnapping. To do otherwise, I think, flies in the face
12 of the evidence. But I submit it to you.

13 I thank you for your time the last few days.

14 **THE COURT:** All right. All right. Ladies
15 and gentlemen, we're now done with the closing
16 arguments and we're at the point where we're going to
17 have you go back to the jury deliberation room and
18 begin deliberations.

19 In terms of that, however, we're going to be
20 having to excuse a couple of our members for the -- at
21 this point in time. The jury will be made up of 12
22 people. We usually pick, and we did in this instance,
23 two alternates, because it is very possible and it's
24 happened a number of trials that I've been on,
25 something will happen where one of the jurors may not

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1 be able to continue on through the whole trial and we
2 need to have somebody come in and take over that
3 juror's spot. I will tell you that all two alternates
4 that we had in this case were Mr. Longoria and
5 Ms. Castanaga. You two were our alternates. I
6 appreciate your time here. I'm not excusing you at
7 this point in time. The reason that is, we're going to
8 have the other jurors go back and start deliberations;
9 but while it's rare that it happens, every now and
10 then, once the jurors get back into the room and start
11 deliberating, one of them may become ill or a family
12 emergency may come up and that juror has to leave and
13 we can bring in one of the alternate jurors at that
14 point in time to take their place. So I'm not excusing
15 you. I'm going to have you go with my law clerk,
16 Josie. She'll get your information as far as your
17 phone number and when you are excused, she'll be the
18 one to contact you and let you know that you are
19 excused.

20 Because I'm not excusing you, I do want to
21 remind you that until you are excused, do not talk to
22 each other about this case or about anyone who has
23 anything to do with it. Do not talk with anyone else
24 about the case or about anyone that has anything to do
25 with it until you've been discharged as jurors. Anyone

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1 else includes members of your family and your friends.
2 You may tell them that you are a juror in a criminal
3 case, but don't tell them anything else about it until
4 after you have been discharged by myself.

5 Do not let anyone talk to you about the case or
6 about anyone who has anything to do with the case. If
7 someone should try to talk to you, please report it to me
8 immediately by contacting the marshal.

9 Do not read any news stories or articles or
10 listen to any radio or television reports about the case
11 or about anyone who has anything to do with the case.

12 Do not visit the scene of any of the events
13 mentioned during the trial or undertake any sort of
14 investigation or research on your own.

15 And do not begin to form or express any
16 opinion on any subject connected with this case until
17 it is finally submitted to you.

18 I'll ask the clerk to swear in Josie so that
19 she can take the alternates.

20 **THE CLERK:** You do solemnly swear that you
21 will keep these alternate jurors in some private and
22 convenient place, that you will not permit any person
23 to speak with them unless it be by order of the Court,
24 so help you God?

25 **MS. GROH:** I do.

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1 **THE COURT:** All right. Mr. Longoria,
2 Ms. Castanaga, if you would pick up your belongings and
3 go with Josie, and she'll get your phone number and
4 arrange with you too.

5 *(Whereupon, David Longoria, Cherry Castanaga,*
6 *and Josie Groh exited the proceedings.)*

7 **THE COURT:** All right. You are the jury of
8 12 that will go back for deliberations. It's 5:03
9 tonight. What I'm going to ask is that you go back
10 into the room, choose a foreperson for your jury, and
11 then decide what time you want to come back tomorrow
12 morning. You can come back -- I would ask that you
13 come back some time between 8:00 and 9:30 in the
14 morning. You can decide, among yourselves, what time
15 is best for you to come back, but I really would ask
16 that you not come back later than 9:30. I want to try
17 to get in a full day of deliberations with the goal
18 that you hopefully -- while I don't want you to push
19 your deliberations and rush anything, I want to get in
20 a full day so you have as much time as possible
21 tomorrow to deliberate.

22 When you get back there, you've chosen a
23 foreperson and decided on what time you want to come
24 back tomorrow morning, give a note to the marshal with
25 the time that you're going to come back. What he'll do

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1 is, meet out -- or the marshal will explain -- where do
2 you want to have them meet you tomorrow?

3 **THE MARSHAL:** I'll have them meet me by the
4 door back here.

5 **THE COURT:** He'll show you where to meet
6 tomorrow to begin the deliberations.

7 Now, once you get back there, obviously, at
8 that point in time, you can talk about the case, and
9 you can begin your deliberations. However, I want to
10 emphasize, unless you're all together, you shouldn't be
11 discussing the case and you shouldn't be beginning --
12 you shouldn't be forming or expressing any opinion on
13 the case.

14 The goal of jury deliberations is to have all
15 of you, as 12 individuals out of the community, to talk
16 about the case yourself and to deliberate as a group.
17 So while, at this point, you can start deliberations,
18 you can only do it when you're together as a group. So
19 when you go back there and decide whatever and you
20 leave tonight, you know, don't start saying to people
21 Hey, you know, on one-to-one conversation, Hey, what do
22 you think? Or, you know, what -- or do you remember
23 this at trial? Wait until you all get together as a
24 group tomorrow morning to do that.

25 All right. I'll ask that the clerk swear in

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1 the marshal to take the jury back.

2 **THE CLERK:** You do solemnly swear that you
3 will keep this jury together in some private and
4 convenient place, that you will not permit any person
5 to speak with them, nor speak to them yourself, unless
6 it be by order of the Court, except to ask them whether
7 they have agreed upon a verdict, and that you will
8 return them into court when they have so agreed, so
9 help you God?

10 **THE MARSHAL:** I do.

11 **THE COURT:** Okay. Ladies and gentlemen, when
12 you leave tonight, do not talk to each other about the
13 case or about anyone who has anything to do with it
14 until you are in the jury room and beginning your --
15 and in the middle of your deliberations.

16 Do not talk with anyone else about the case
17 or about anything to do with it until you have been
18 discharged as jurors. Anyone else includes members of
19 your family and your friends. You may tell them that
20 you're a juror in a criminal case, but don't tell them
21 anything else about it until you've been discharged.

22 Do not let anyone talk to you about the case
23 or about anyone who has anything to do with it. If
24 someone should try to talk to you, please report it to
25 me immediately by contacting the marshal.

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1 Do not read any news stories or articles or
2 listen to any radio or television reports about the
3 case or about anyone who has anything to do with it.

4 Do not visit the scene of any of the events
5 mentioned during trial, undertaking investigation or
6 research of your own and until you gather together or
7 are together as a group, do not form or express any
8 opinion on any subject connected with this case.

9 All right. Ladies and gentlemen, I
10 appreciate it. It's been a long day. You've been
11 really attentive. I do thank you for that. I know the
12 parties appreciate it.

13 *(Jury exiting.)*

14 **THE COURT:** All right. When they set a time
15 for coming back tomorrow, I'll have -- unless you want
16 me to have you guys stay here and bring them back into
17 the courtroom, once they send out a note, I'll just
18 have the marshal call for today. Is that okay?

19 **MR. GUROVICH:** Whichever way; e-mail, phone.

20 **THE COURT:** Okay. We'll just e-mail you what
21 time.

22 **MS. KOLLINS:** Sure. I'm just going to give
23 Linda our phone numbers.

24 **THE COURT:** Okay.

25 **MR. GUROVICH:** Thank you, Your Honor.

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1 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
2 PROCEEDINGS.

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5 /S/ Amber M. McClane, NV CCR No. 914
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| MR. MARGOLIS: [2] 13/20 14/8 | THE COURT REPORTER: [1] 65/18 | 11:15 [1] 32/12 11:18 [2] 32/14 32/15 11th [2] 87/7 87/9 12 [12] 5/5 19/23 19/24 69/2 69/13 81/20 100/8 100/11 109/6 123/21 126/8 127/15 |
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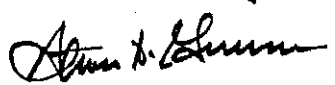
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DISTRICT COURT

CLARK COUNTY, NEVADA


CLERK OF THE COURT

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
JASON RICHARD LOFTHOUSE,)
#7019775,)
)
Defendant.)
)
)
)
)

CASE NO.: C-15-307937-1
DEPT. NO.: XX

REPORTER'S TRANSCRIPT OF JURY TRIAL, DAY 5
BEFORE THE HONORABLE JUDGE ERIC JOHNSON
DEPARTMENT XX
FRIDAY, MARCH 25, 2016
10:21 A.M.

For the State: WILLIAM MERBACK, ESQ.
Chief Deputy District Attorney
STACEY L. KOLLINS, ESQ.
Chief Deputy District Attorney

For the Defendant: DMITRY Y. GUROVICH, ESQ.
JASON MARGOLIS, ESQ.

Reported by: Amber M. McClane, NV CCR No. 914

LAS VEGAS, NEVADA; FRIDAY, MARCH 25, 2016
10:21 A.M.
* * * * *
P R O C E E D I N G S
* * * * *

(Outside the presence of the jury.)

THE COURT: Let's note for the record, State versus Lofthouse, C307937.

And counsel for both sides and the defendant are present.

I did get a note from -- yesterday from the jury after they went back. They had designated Juror No. 10, Tabitha Reyes, as their foreperson, and then they wrote on the note 9:00 a.m. tomorrow as when they were going to return today.

We received a note from them shortly ago, and this is what it says: "May we read transcript for the definition of enticement provided by the female attorney in her rebuttal closing argument? Thank you. Or can we have the definition of entice or a legal dictionary?"

MS. KOLLINS: Well, I mean, I guess our position is you can't supplement the instructions, but I don't see any reason why they can't read what was argued in rebuttal.

THE COURT: That's not the law or the

1 evidence, and I'll be quite frank, when you said that
2 you were giving them the dictionary definition, if
3 defense had objected, I would have sustained it and
4 struck that portion of it. Because by calling it the
5 dictionary definition, you give it some appearance of
6 actually being the law in the case, and you didn't ask
7 for an instruction relating to enticement. And so
8 giving them the argument back again would be improper
9 in the Court's view.

10 I am not inclined to give them any new
11 instruction relating to enticement. Here's what I plan
12 to give them, and I'll be interested to hear your
13 comments in regard to that.

14 "The statement of counsel in closing
15 argument" -- "The statements of counsel in closing
16 arguments are not evidence in the case and do not
17 constitute the law applicable to the case. The law
18 that you are to consider in deciding the case is that
19 which was given to you by the Court in the instructions
20 I read to you before closing arguments.

21 "The purpose of closing arguments is for
22 counsel for both sides to discuss the evidence
23 submitted and to suggest to you the application of that
24 evidence to the law as given by the Court. In
25 determining the meaning of any instruction or a term or

1 phrase in any instruction, you should rely on and
2 consider the instructions of the Court as a whole in
3 conjunction with your common experience."

4 Any comments?

5 **MS. KOLLINS:** I don't have an objection to
6 that, but I just do want to say for the record that
7 defense counsel defined each one of those elements of
8 kidnapping to require dominion and control so --

9 **THE COURT:** I understand what the defendant
10 did.

11 **MS. KOLLINS:** I think my --

12 **THE COURT:** And I have no problem with you
13 telling me what you believe enticement does. My issue
14 is when you said this is the dictionary definition of
15 enticement. That gave it the appearance that there was
16 somehow an agreement that this was the legal definition
17 of what enticement is. That wasn't agreed upon ahead
18 of time by the closing arguments, and that's why that
19 was improper to do at that point in time.

20 Now, I want to make it clear to the jury that
21 the instructions that I read to them is the law of the
22 case, and that they are in a position to determine what
23 enticement means.

24 Yesterday I had actually thought about
25 interrupting your close but defense didn't object, and

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1 I consider enticement to be a relatively common
2 language term and the definition that you used in the
3 dictionary was comported in large part with what I
4 perceive the common meaning of enticement to be, which
5 is why I assumed that counsel for the defense did not
6 object. But I don't want to -- I want to make it clear
7 to the jury that your definition by fact that you
8 identified it as coming from a dictionary is not the
9 law applicable to this case because we did not agree on
10 what the definition was going to be.

11 So anybody have a problem with the
12 instruction that I have just gone through?

13 **MR. GUROVICH:** Not from the defense, Your
14 Honor.

15 **THE COURT:** All right. Again, "The
16 statements of counsel in closing argument are not
17 evidence in the case and do not constitute the law
18 applicable to the case. The law that you are to
19 consider in deciding the case is that which was given
20 to you by the Court in the instructions I read to you
21 before closing arguments.

22 "The purpose of closing arguments is for
23 counsel for both sides to discuss the evidence admitted
24 and to suggest to you the application of that evidence
25 to the law as given by the Court. In determining the

1 meaning of any instruction or a term or phrase in any
2 instruction, you should rely on and consider the
3 instructions of the Court as a whole in conjunction
4 with your common experience."

5 Is that good for everybody?

6 **MR. GUROVICH:** Yes, Your Honor.

7 **MS. KOLLINS:** Yes.

8 **THE COURT:** Okay. Good deal. I will have
9 that typed up and given back to the jury. I'll let you
10 know the next time we hear something from them.

11 **MR. GUROVICH:** Thank you.

12 *(Whereupon, the proceedings adjourned at*
13 *10:25 a.m.)*

14 -o0o-

15 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
16 PROCEEDINGS.

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Amber M. McClane
/s/ Amber M. McClane, NV CCR No. 914

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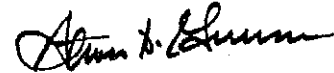
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DISTRICT COURT

CLARK COUNTY, NEVADA



CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

JASON RICHARD LOFTHOUSE,
#7019775,

Defendant.

CASE NO.: C-15-307937-1
DEPT. NO.: XX

REPORTER'S TRANSCRIPT OF JURY VERDICT

BEFORE THE HONORABLE JUDGE ERIC JOHNSON

DEPARTMENT XX

FRIDAY, MARCH 25, 2016

11:33 A.M.

For the State:

WILLIAM MERBACK, ESQ.

Chief Deputy District Attorney

STACEY L. KOLLINS, ESQ.

Chief Deputy District Attorney

For the Defendant:

DMITRY Y. GUROVICH, ESQ.

JASON MARGOLIS, ESQ.

Reported by: Amber M. McClane, NV CCR No. 914

Amber M. McClane, CCR No. 914

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1 LAS VEGAS, NEVADA; FRIDAY, MARCH 25, 2016
11:33 A.M.

2 * * * * *
3 P R O C E E D I N G S
4 * * * * *

5 THE MARSHAL: All rise. Department 20 is
6 back in session.

7 THE COURT: All right.

8 THE MARSHAL: Take your seats. Come to
9 order, please.

10 THE COURT: Good morning, everybody.

11 MS. KOLLINS: Morning, Your Honor.

12 MR. GUROVICH: Morning.

13 THE COURT: All right. I received a word
14 from the jury that they've reached a verdict.

15 Is there anything we need to talk about
16 before we bring the jury in?

17 MR. GUROVICH: No.

18 MS. KOLLINS: No, Your Honor.

19 THE COURT: Okay. Go ahead and bring the
20 jury in.

21 THE MARSHAL: All rise. Jury entering.

22 *(Jury entering.)*

23 THE COURT: I apologize. We've got new
24 chairs that they've installed this week, and we
25 obviously haven't gotten the system quite worked out

1 yet.

2 Is that everybody? Okay. Let the record
3 reflect the presence of the defendant, the presence of
4 the attorneys for both sides.

5 Do the parties stipulate to the presence of
6 the jury?

7 **MS. KOLLINS:** State does, Your Honor. Thank
8 you.

9 **MR. GUROVICH:** Yes, Your Honor.

10 **THE COURT:** All right. Let's see. All
11 right. Mr. Reyes, I understand that you were selected
12 the foreperson of the jury?

13 **JUROR NO. 10:** Yes. Yes.

14 **THE COURT:** Okay. It's also my understanding
15 that the jury has reached a verdict; is that correct?

16 **JUROR NO. 10:** We have.

17 **THE COURT:** All right. Would you give the
18 verdict form to the marshal?

19 All right. The clerk will now read the
20 verdict.

21 Defendant, please rise.

22 **THE CLERK:** District Court, Clark County,
23 Nevada. The State of Nevada, plaintiff, versus Jason
24 Richard Lofthouse, defendant. Case No. C307937,
25 Department 20.

1 Verdict: We the jury in the above-entitled
2 case find the defendant, Jason Richard Lofthouse, as
3 follows:

4 Count 1, sexual conduct between certain
5 employees or volunteers of school and pupil: Guilty of
6 sexual conduct between certain employees or volunteers
7 of school and pupil;

8 Count 2, first-degree kidnapping: Guilty of
9 first-degree kidnapping;

10 Count 3, sexual conduct between certain
11 employees or volunteers of school and pupil: Guilty of
12 sexual conduct between certain employees or volunteers
13 of school and pupil;

14 Count 4, sexual conduct between certain
15 employees or volunteers of school and pupil: Guilty of
16 sexual conduct between certain employees or volunteers
17 of school and pupil;

18 Count 5, sexual conduct between certain
19 employees or volunteers of school and pupil: Guilty of
20 sexual conduct between certain employees or volunteers
21 of school and pupil;

22 Count 6, sexual conduct between certain
23 employees or volunteers of school and pupil: Guilty of
24 sexual conduct between certain employees or volunteers
25 of school and pupil;

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1 Count 7, sexual conduct between certain
2 employees or volunteers of school and pupil: Guilty of
3 sexual conduct between certain employees or volunteers
4 of school and pupil;

5 Count 8, first-degree kidnapping: Guilty of
6 first-degree kidnapping;

7 Count 9, sexual conduct between certain
8 employees or volunteers of school and pupil: Guilty of
9 sexual conduct between certain employees or volunteers
10 of school and pupil;

11 Count 10, sexual conduct between certain
12 employees or volunteers of school and pupil: Guilty of
13 sexual conduct between certain employees or volunteers
14 of school and pupil;

15 Count 11, sexual conduct between certain
16 employees or volunteers of school and pupil: Guilty of
17 sexual conduct between certain employees or volunteers
18 of school and pupil;

19 Count 12, sexual conduct between certain
20 employees or volunteers of school and pupil: Guilty of
21 sexual conduct between certain employees or volunteers
22 of school and pupil.

23 Dated this 25th day of March, 2016. Tabitha
24 Reyes, foreperson.

25 Ladies and gentlemen of the jury, are these

1 your verdicts as read? So say you one, so say you all.

2 *(All jurors affirm.)*

3 **THE COURT:** Thank you.

4 Does either party wish to have a polling of
5 the jury?

6 **MS. KOLLINS:** Not by the State, Your Honor.
7 Thank you.

8 **MR. GUROVICH:** No, Your Honor.

9 **THE COURT:** All right. All right, ladies and
10 gentlemen. Thank you. I know this isn't an easy task.

11 As I said when we were talking at the
12 beginning, this isn't an easy task, to sit in judgment
13 of someone else, but it's a very important task and
14 it's a task that our Constitution has reserved for you,
15 the citizens out of the community.

16 I appreciate the time that you've spent here
17 this week. I know the parties here all appreciate the
18 time that you've spent here this week, and I want to
19 thank you for your service.

20 At this point in time, I am discharging you
21 as jurors. That allows you to talk about the case with
22 whoever you want to. It also allows you not to talk
23 about the case to whoever you want to. You don't have
24 to talk to anyone about it. It is very possible and
25 very likely that some of the attorneys or their staff

1 may try to approach you and ask you if you for your
2 comments and thoughts about the case. It's totally up
3 to you whether or not you want to talk to them or not.
4 It's totally appropriate for them to approach you.
5 That's how we all learn in the course of life, is you
6 learn by doing and then getting feedback and responses
7 to it. So it's not inappropriate for the parties to
8 talk to you. But, again, it's totally okay for you to
9 say no, that you don't want to talk to them.

10 If you have some time, I would appreciate an
11 opportunity to come back in the -- for you to stay in
12 the jury room, deliberation room, for just a minute.
13 I'd appreciate the opportunity to come back and
14 personally thank you for your service and also gets
15 your thoughts as to how the processes worked. I don't
16 want to get into your deliberations, but I always like
17 to ask if there's anything we could do better in terms
18 of how we handled you as jurors and how we proceed here
19 in the courtroom. So if you have a few minutes, I
20 would appreciate the chance to talk to you.

21 With that, again, you're discharged. If you
22 want to go on social media, you want to talk to your
23 friends, you want to talk to your family about the
24 experience, it's -- it's totally up to you. Hopefully
25 you've found this to be a really good experience like

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1 I've told you and at least a meaningful one. I didn't
2 say it was going to be an easy one, but I did say it
3 was going to be a good and meaningful experience, and I
4 hope that's what you've found.

5 Thank you again for your service, and I hope
6 to see you back in the jury deliberation room.

7 **THE MARSHAL:** All rise. Jury exiting.

8 *(Jury exiting.)*

9 **THE COURT:** Okay. Let's go ahead and set
10 sentencing.

11 **THE CLERK:** May 17th at 8:30.

12 **MS. KOLLINS:** Your Honor, at this time, given
13 the jury's verdict, I'd ask the defendant be held
14 without bail.

15 **THE COURT:** What is the bail set in this
16 case?

17 **MS. KOLLINS:** It was -- I think it was right
18 around 180 coming out of North Las Vegas. I could be
19 wrong.

20 **THE CLERK:** 250,000.

21 **THE COURT:** I won't change the bail.

22 Anything else?

23 **MS. KOLLINS:** No.

24 **MR. GUROVICH:** Your Honor, could we -- could
25 we have the 16th? Is it possible? Or must it be a

1 Tuesday?

2 **THE COURT:** It doesn't have to be a Tuesday.
3 Generally we do these on Tuesdays or Thursdays.

4 **MR. GUROVICH:** All right. The 17th is fine.

5 **THE COURT:** If you want to continue it a
6 week, we can continue it a week. There's nothing magic
7 in terms of that date.

8 **MR. GUROVICH:** No. That's fine. That's
9 fine. Thank you.

10 **THE COURT:** All right. Anything else at this
11 point in time?

12 **MS. KOLLINS:** No. Thank you, Your Honor.

13 **MR. GUROVICH:** No, Your Honor.

14 **THE COURT:** All right. Good job. My
15 preference, if you do want to speak to the jury, is
16 that you meet them down on the third floor at Jury
17 Services rather than up here. But if you want to talk
18 to them, you know, I appreciate you wanting to do that.

19 **MS. KOLLINS:** We wouldn't invade your time.
20 Thank you, Judge.

21 **THE COURT:** All right. Thank you, everybody.

22 **MR. MERBACK:** Thank you. Thank you to your
23 staff.

24 **MR. GUROVICH:** Thank you.
25

1 (Whereupon, the proceedings concluded at
2 11:43 a.m.)

3 -oOo-

4 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
5 PROCEEDINGS.

6
7 
8 /S/ Amber M. McClane, NV CCR No. 914
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| MR. MERBACK: [1] 9/21 | ahead [2] 2/19 8/9 | Chief [2] 1/18 1/19 |
| MS. KOLLINS: [9] 2/10 2/17 3/6 6/5 8/11 8/16 8/22 9/11 9/18 | all [19] allows [2] 6/21 6/22 also [3] 3/14 6/22 7/14 | citizens [1] 6/15 CLARK [2] 1/3 3/22 clerk [1] 3/19 come [3] 2/8 7/11 7/13 |
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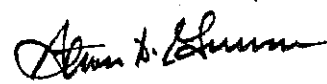
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DISTRICT COURT

CLARK COUNTY, NEVADA


CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

JASON RICHARD LOFTHOUSE,
#7019775,

Defendant.

CASE NO.: C-15-307937-1
DEPT. NO.: XX

REPORTER'S TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE JUDGE ERIC JOHNSON

DEPARTMENT XX

TUESDAY, MAY 17, 2016

10:20 A.M.

For the State: STACEY L. KOLLINS, ESQ.
Chief Deputy District Attorney

For the Defendant: DMITRY GUROVICH, ESQ.
JASON MARGOLIS, ESQ.

Reported by: Amber M. McClane, NV CCR No. 914

1 LAS VEGAS, NEVADA; TUESDAY, MAY 17, 2016
2 10:20 A.M.
3 * * * * *
4 P R O C E E D I N G S
5 * * * * *
6

7 THE COURT: All right. State of Nevada
8 versus Jason Lofthouse, Case No. C307937.

9 Counsel, please note your appearances for the
10 record.

11 MS. KOLLINS: Good morning, Your Honor.
12 Stacey Kollins on behalf of the State.

13 MR. MARGOLIS: Jason Margolis, local counsel.

14 MR. GUROVICH: Morning, Your Honor. Dmitry
15 Gurovich appearing with Mr. Lofthouse, who's present in
16 custody.

17 THE COURT: All right. I'm showing this as
18 the time set for sentencing on the jury verdict in this
19 case on March 25, 2016, to Counts 1, 3 through 7, and 9
20 through 12, sexual conduct between certain employees or
21 volunteers of school and pupil; Counts 2 and 8,
22 first-degree kidnapping; is that correct?

23 MS. KOLLINS: That is accurate, Your Honor.

24 MR. MARGOLIS: That's correct.

25 THE COURT: All right. I have a supplemental
Presentence Investigation Report dated May 13, 2016.

Counsel, Mr. Gurovich, have you had a chance

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1 to review the Presentence Investigation Report?

2 MR. GUROVICH: Yes, Your Honor.

3 THE COURT: Anything in there that you saw
4 that needed to be corrected or brought to the attention
5 of the Court?

6 MR. GUROVICH: No, Your Honor.

7 THE COURT: All right. Mr. Lofthouse, have
8 you had a chance to review your Presentence
9 Investigation Report?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Had a chance to discuss it with
12 your attorney?

13 THE DEFENDANT: Yes.

14 THE COURT: He answer all your questions?

15 THE DEFENDANT: Yes.

16 THE COURT: Anything in that report that you
17 saw that you felt needed to be corrected or brought to
18 my attention?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Then pursuant to the
21 jury's verdict in this case, I do find you guilty of
22 Counts 1, 3, 4, 5, 6, 7, 9, 10, 11, and 12 sexual
23 misconduct between certain employees or volunteers of
24 school and pupil, felonies, in violation of Nevada
25 Revised Statute 201.540.1(c); and Counts 2 and 8,

1 first-degree kidnapping, felonies, in violation of
2 Nevada Revised Statute 200.310 and 200.320.

3 State wish to make any statement?

4 **MS. KOLLINS:** Very briefly, Your Honor. You
5 know, State's cognizant with the support the defendant
6 comes before you with. You know, I've read all the
7 reports and the letters submitted by his family. But I
8 submit to the Court there's just no winner here.
9 There's no winners here. This is not a win for
10 Mr. Lofthouse or his family, this is not a win for
11 Ms. Torres, nor is it a win for her family.

12 What I want you to focus on today is
13 Michelle, and let's hope that this case doesn't define
14 how she proceeds into adulthood. What I'm going to ask
15 you for is enough incarceration so that Michelle can
16 graduate college and not have been the kid that
17 testified against her teacher defining the next few
18 years of her life.

19 The defendant was manipulative. He was
20 flirtatious. He exuded power over her that a teacher
21 is a unique position to impose. It was his
22 responsibility to put the brakes on it. It was his
23 responsibility to stop this. It was not his
24 responsibility to continue to flirt with her, to
25 continue to communicate with her.

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1 Every parent sends their kid off to school
2 with the hope that they get educated, that they're
3 mentored, and that they're safe. They do not send
4 their kids to school to be at the hands of somebody
5 like Mr. Lofthouse.

6 Interestingly enough, in his pretrial
7 psychosexual evaluation, he comes back a moderate risk
8 to reoffend. That's all based on self-reported
9 information, by the way.

10 If the Court will remember, at trial, just
11 before we started trial, defense counsel filed a motion
12 to preclude the State from making allegations about any
13 other victims or any other inappropriate relationships
14 this man has had with students. Now, there is another
15 young lady out there, and we know that because she
16 visited him in jail. We have those records. There
17 were allegations that that relationship that existed
18 prior to Michelle Torres was also on the same level,
19 but she was uncooperative. It was investigated by the
20 school district. I submit to the Court that that would
21 put him into a high risk to reoffend.

22 He should never be around kids. He should
23 never be able to teach again. He should never be in
24 our public school system. And I have those records if
25 the Court wants them.

1 You heard the facts in this case. The text
2 messages were graphic. Those communications were
3 graphic about fellatio and cunnilingus and all the acts
4 that took place in the classroom and all the acts that
5 took place in the hotel room, and those text messages
6 absolutely corroborated all of his movements and all of
7 his interactions with this kid.

8 Again, her parents sent her to be school to
9 be mentored. No parent should ever, ever have to think
10 that this is what's going to happen at school. And I
11 bet even the people in support of Mr. Lofthouse would
12 hope that their children never go to school and their
13 children never have this experience that Michelle
14 Torres had. And her parents are here to speak to you
15 today, by the way.

16 I'm cognizant of what P&P has recommended,
17 and I don't think -- I'm not asking you for a life
18 tail. I don't believe this is a life tail sentence.
19 I'm going to reasonable here today. But what I am
20 going to ask you to do is take the 5 to 15 kidnapping,
21 and instead of the consecutive 12 to 30, I'm going to
22 ask you for a consecutive 24 to 60. That means
23 Mr. Lofthouse has seven years to do on the bottom.
24 He's avoided a life tail. He will have to register as
25 a sex offender. He will be on lifetime supervision.

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1 And what that does is that gets Michelle Torres to age
2 25 so that this case does not define the next few years
3 of her life and she can move on.

4 I want absolutely no communication with this
5 family through third parties at all. I want that to be
6 part of the Judgment of Conviction and part of this
7 Court's order. I think that's fair.

8 Unless the Court wants to see the records
9 that I spoke of, I'll submit it to the Court.

10 **THE COURT:** All right. Thank you.

11 Counsel for the defendant, I did receive a
12 copy of your sentencing memorandum with all the
13 attachments, which I've had a chance to review.

14 Go ahead.

15 **MR. GUROVICH:** Your Honor, first of all, I'd
16 like to ask the Court if the Court would allow
17 Mr. Lofthouse's sister and wife to speak, to address
18 the Court, as well as Mr. Lofthouse himself.

19 Second, in addressing the points made by the
20 People, the psych analysis, I agree, identifies
21 Mr. Lofthouse has a moderate risk. However, if you
22 look at the report, it actually says that normally this
23 evaluator would identify somebody like Mr. Lofthouse as
24 a low risk. The only reason they raised it to moderate
25 is because of the teacher/student relationship. Other

1 than that, he's a low risk.

2 Any other alleged relationships, Your Honor,
3 are not before this Court. I don't know what they are,
4 who they are. They were not litigated. They were
5 not -- you know, so we should absolutely disregard them
6 at this point. I don't know even know if they exist.
7 They weren't part of the case.

8 Needing to age Michelle somehow before
9 Mr. Lofthouse is allowed out of custody, you know, I
10 don't know if that's a -- I mean, honestly, I don't
11 understand the reason for that, and even if
12 Mr. Lofthouse is allowed to request parole after five
13 years, Michelle would be out of college by then anyway.
14 So allowing him to seek parole after seven makes no
15 sense.

16 We filed a sentencing memorandum, Your Honor,
17 in this case, and I'm sure the Court has had a chance
18 to review it with all the letters and the psych eval,
19 family pictures, et cetera. We'll -- Your Honor, we'll
20 submit on that. The defense is asking for all the
21 minimums. If any case qualifies, Your Honor, for --
22 for the minimum, it would be this case. I don't think
23 there's anything -- anything less that could be done
24 here. This is the very, very minimum qualifying case.
25 I'm not -- maybe I'm not -- I'm not explaining myself

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1 properly, but I -- the -- I mean, I can't imagine any
2 other case that would qualify for anything less than
3 the minimum in this case. You know?

4 With that in mind, Your Honor, we submit, and
5 I would like to -- if the Court would allow for -- for
6 Mr. Lofthouse's sister and wife and himself to speak.

7 **THE COURT:** That's not the regular course
8 here, and it's not provided by statute. I have
9 received letters from Mr. Lofthouse's wife and his
10 sister, and I have reviewed those -- those letters. I
11 don't see it appropriate in this instance to break the
12 general format that we handle these sentencing
13 proceedings, especially in view of the fact that the
14 Court's had a chance to review those comments. I'm not
15 sure what it would add. I don't -- certainly your
16 client has a right to speak, and I will give him that
17 right.

18 Does he wish to speak?

19 **MR. GUROVICH:** He does.

20 **THE COURT:** All right. Mr. Lofthouse, go
21 ahead.

22 **THE DEFENDANT:** Your Honor, last May I made a
23 series of choices; choices that were arrogant and
24 selfish, choices that hurt those that I love and care
25 about, choices that betrayed the trust of my community.

1 Over the past 11 and a half months, not a day has gone
 2 by that I don't ask myself why I made those choices.
 3 While the answer may not be earth-shatteringly profound
 4 nor does it excuse or justify my behavior -- nothing
 5 can do that -- it is the truth. I made those choices
 6 because I was lonely. I felt unwanted and unloved. I
 7 blamed the person closest to me for those feelings when
 8 I was the cause of it. I was lonely, but it was a
 9 loneliness that I created for myself. There are people
 10 around me who love and care for me, but I pushed them
 11 away. I felt unwanted because I didn't want to be the
 12 person I was anymore. I felt unloved because I hated
 13 the man I had become. Rather than do the mature thing
 14 and confront those feelings, I chose the easy way and
 15 attempted to fill the void those feelings had created
 16 by having a physical relationship with a student, a
 17 relationship that never should have happened. And
 18 while that relationship did make me feel wanted and
 19 loved, it was temporary, superficial, and has caused
 20 more pain than what I was trying to prevent.

21 My choices have ruined my wife's life as she
 22 knew it. My choices have forced her to become a single
 23 parent of three young children. Not surprisingly, she
 24 has risen to this challenge and has been wonderfully
 25 successful. However, her role as a mother during the

1 past 11 and a half months has been bittersweet. A time
2 that is supposed to be joyful watching our children
3 learn and explore the world around them, develop their
4 personalities, has been nothing like she or I
5 envisioned because she has experienced those events
6 alone, unable to share them with me. My actions, my
7 choices have robbed my wife of those precious,
8 once-in-a-lifetime experiences and have made everyday
9 events like bedtime, bathtime more stressful than
10 enjoyable.

11 Furthermore, due to the publicity of my
12 arrest, trial, and sentencing, my choices, my betrayal
13 of her trust have forced my wife to endure the
14 humiliation and indignity of these events not in
15 private but under the knowing eyes of everyone she and
16 I know. I've caused her to question our entire
17 relationship, to question her self-worth, to question
18 my love for her. I have caused her to ask herself what
19 she could have done differently and why she wasn't
20 enough.

21 Every day I acknowledge the hate, shame, and
22 disgust that I have for myself because of the hurt,
23 anger, and sadness that I have caused my wife. Despite
24 all of this, my wife has been by my side through this
25 entire ordeal. She has been my biggest champion and

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1 defender; a decision that I know has hurt her
2 relationship with her family. She has shown me that
3 she is my best friend. I truly do not deserve her.
4 And while I know I don't deserve the opportunity, I
5 hope to show her that I am her best friend as well.

6 My choices have also hurt my beautiful,
7 innocent children. My daughters are only three and my
8 son is only one, and my actions have potentially ruined
9 my relationship with them. I have taken from them the
10 stability of having both of their parents. My
11 daughters are terrified when they wake up and can't
12 find my wife, thinking that the one parent who actually
13 deserves them has abandoned them as well. I have taken
14 from them a bedtime story every night, bathtimes that
15 are long and playful, meals that are family-oriented;
16 so many thing that I took for granted.

17 I used to think that being a father was one
18 of the few things I did well, but I've realized that I
19 don't deserve that title. A real father, a good father
20 would not be standing before you today. And despite
21 knowing the personal experience the importance of
22 having a father who is not just present but active in
23 their children's lives, I chose to be selfish and put
24 my children at risk.

25 My wife and I want them to grow up in a

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1 healthy, loving family and have parents who love,
2 support, respect, and trust each other; parents who
3 have common goals and values about life, education, and
4 ideas between right and wrong. Through my choices, I
5 have jeopardized all of these goals and jeopardized the
6 future of our family.

7 Additionally, there's going to come a time
8 when these events will have to be discussed with my
9 children because they deserve to know the truth. Most
10 children eventually discover that their parents are not
11 infallible, that they're flawed and make mistakes. My
12 children will most likely have to confront this at a
13 much earlier age, and will learn just what type of man
14 their father was and how I put our family at risk.

15 My only hope is that my wife and I will have
16 the opportunity to embody the goals and values
17 previously mentioned so as to mitigate a negative
18 impact on our children.

19 In addition to my family, my selfish choices
20 have hurt the young woman with whom I had this
21 relationship, Michelle Torres, and her family. Given
22 Michelle's character, I have no doubt that she's been
23 carrying the burden that she is somehow responsible for
24 my current situation. I can only meaning how the
25 weight of that burden has impacted an already stressful

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1 time in her life, but that responsibility is mine and
2 mine alone. I wonder every day whether my selfish
3 choices have caused her to be ridiculed by her friends,
4 her reputation to be tarnished. Because of my actions,
5 Michelle was interviewed by the police, lied to them to
6 protect me, and lied to her parents as well. My
7 selfishness has most likely broken the trust between
8 Michelle and her parents. The trust between a parent
9 and child is fragile enough without the actions of
10 someone like myself, someone who should have known
11 better, shattering that trust. I want to apologize not
12 just to Michelle but her parents as well for any
13 negative impact I've had on their relationship.

14 My choices -- because of my choices, Michelle
15 had to testify and recount intimate details about our
16 relationship, details that she thought would remain
17 private, details that are now a matter of public
18 record. I can only imagine the embarrassment she felt
19 not only having to discuss those intimate details but
20 having to justify her actions and choices as well.

21 All of the pain, anger, frustration, and
22 embarrassment Michelle and her family have experienced
23 over the past year is a direct result of my selfish
24 choices. Words cannot adequately express how very
25 sorry I am for the negative impact I've had on Michelle

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1 and her family.

2 Finally, while secondary to what I have
3 caused others, my actions have caused myself pain,
4 sadness, anger, and frustration as well. As of today,
5 it's been 347 days since I last saw my kids; 347
6 bedtimes, 347 family dinners, 347 missed opportunities
7 to play with my kids, to watch them play with each
8 other, to watch them learn and grow, to be their dad.
9 The last time I saw my son he had no teeth, could
10 barely hold his head up, and now he can walk and is
11 starting to talk. I have missed so many of his firsts,
12 and I will never forgive myself for that.

13 My twin daughters have learned an amazing
14 number of new words and have gone from basic two-word
15 sentences to much more complex ones, like telling my
16 wife to move the leaves out of the driveway or the car
17 will trip. They started to explore the world around
18 them, explore how the world around them works, and take
19 great enjoyment in doing so. And because of my
20 selfishness, I experience their development through
21 photographs and stories from my wife. I hate myself
22 for what I've done to my family, for what I've missed,
23 for what I've put my wife and kids through. The
24 thought of seeing them all again, holding them, is the
25 only thing that has gotten me through the last year.

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1 If not for them, I don't think I would have survived
2 this long.

3 My selfish choices have also ruined my career
4 as an educator; a career I enjoyed, a career I did
5 well, a career I was proud of. Now, when I look back
6 at that career, it won't be with pride but with shame.
7 Shame that I not only betrayed the trust of Michelle
8 and her family but the trust of all of my students and
9 their families. I betrayed the trust of my colleagues.
10 I betrayed the trust of my community. I betrayed the
11 trust of everyone who helped me get to where I was. I
12 have ruined my name, broken relationships with my
13 family and friends, brought shame to myself and
14 embarrassed those who love and care about me. I showed
15 myself for who I really was: A selfish and arrogant
16 man.

17 But who am I now? Who am I going to be? The
18 man who cheated on his wife? The man who abandoned his
19 children? The man who violated his duty as an educator
20 by sleeping with a student? I'm all of them, I know,
21 but I take solace in the idea that past performance is
22 not indicative of future results. I don't have to be
23 only that man. But I ask myself: Is that even
24 possible? Can I make myself a better husband, a better
25 father, a better man? And I realize that I've made

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1 myself a worse one: An absent father, an unfaithful
 2 husband, a liar by the choices I've made. It seems
 3 only fair that different choices could make me a better
 4 man. Despite the good I've done and the good I will
 5 do, the mistake I've made that is placed before you
 6 today will always be hanging over my head, but I cannot
 7 and will not let that mistake define me. I'm going to
 8 be better. I will be a better husband, a better
 9 father, a better man. I ask that you allow me the
 10 opportunity to prove to my wife, my kids, all of my
 11 loved ones, my community, and myself that I will once
 12 again be the person everyone once looked up to and
 13 respected.

14 Thank you.

15 **THE COURT:** All right. Thank you.

16 Ms. Kollins, you indicated that there were
 17 victim statements?

18 **MS. KOLLINS:** There are, Your Honor.

19 Mr. and Mrs. Torres are here, as well as
 20 Michelle.

21 **THE COURT:** All right. Who wants to go
 22 first?

23 **MS. KOLLINS:** Your Honor, it's Mr. Isidro
 24 Torres.

25 **THE COURT:** All right. Come on up here, sir,

1 safe place, that the school will check the criminal
2 record of the teachers. I hope the school will do a
3 better verification of the criminal records of the
4 teachers, and to -- and to do something so teachers
5 don't -- won't do what they did with my daughter.

6 I hope he gets punished with the maximum
7 penalty so other teachers can think about it before
8 they do what they did to my daughter.

9 My daughter has been greatly affected. Her
10 grades have been going down a lot to the point that I
11 don't know if she will be graduating. The previous
12 years she had been having very good grades. That's it.

13 **THE COURT:** All right. Thank you, sir. I
14 assume you don't have anything you want to ask?

15 **MR. GUROVICH:** No, Your Honor.

16 **THE COURT:** All right. Thank you very much,
17 sir.

18 **THE WITNESS:** Thank you.

19 **MS. KOLLINS:** Your Honor, Ms. Carolina Torres
20 would like to speak to the Court.

21 **THE COURT:** Okay. Come on up, ma'am.

22 **THE MARSHAL:** Are you okay?

23 **THE WITNESS:** Yeah.

24 **THE MARSHAL:** Just relax. Here, take your
25 shoe off. You want to take that off?

1 Just give us a second.

2 **THE COURT:** That's all right. Take as much
3 time as you need. Tell her to take as much time as she
4 needs.

5 **THE MARSHAL:** Okay. You need help? All
6 right.

7 **THE COURT:** Do you want to take a minute,
8 Ms. Torres, before you do this?

9 **THE WITNESS:** Okay.

10 **THE CLERK:** Please raise your right hand.
11 Whereupon,

12 *CAROLINA TORRES,*
13 *having been sworn to testify to the truth, the whole*
14 *truth, and nothing but the truth, was examined and*
15 *testified under oath through a Spanish interpreter as*
16 *follows:*

17 **THE WITNESS:** Yes.

18 **THE CLERK:** Please be seated.

19 Please state your name and spell your first
20 and last name for the record.

21 **THE WITNESS:** Carolina Torres.

22 **MS. KOLLINS:** Ma'am, could you spell your
23 name for the record?

24 **THE WITNESS:** C-a-r-o-l-i-n-a, T-o-r-r-e-s.

25 **MS. KOLLINS:** Good morning, Mrs. Torres.

1 What would you like to tell the Court about how this
2 has affected your family?

3 **THE WITNESS:** I feel, as a mother, very sad.
4 My life since the last year has not been the same. A
5 lot of anxiety, anger, impotence, something that marked
6 us to the family. Irrevocable damage. Taking your son
7 to school, to think that is a safe place, and ever,
8 ever imagine -- to never imagine that this is going to
9 happen because you trust that they are respectful
10 people with ethics, with morals, and the unimaginable
11 happens. I don't wish any family to live what we are
12 going through.

13 This needs to be an example for teachers, in
14 which I put our trust. I'd like the schools to
15 implement measures to stop these situations because our
16 children are the future. That's all.

17 **THE COURT:** Thank you very much, ma'am.

18 I assume, again, you don't have anything you
19 wish to ask?

20 **MR. MARGOLIS:** No.

21 **THE COURT:** Thank you. Thank you, ma'am.

22 **MS. KOLLINS:** Your Honor, that would be the
23 conclusion of our speakers this morning.

24 **THE COURT:** I'm sorry?

25 **MS. KOLLINS:** That will be the conclusion of

1 our speakers this morning.

2 **THE COURT:** All right. Thank you.

3 Ms. Kollins, you made reference to the
4 possibility of allegations relating to another student.
5 In terms of any substantive proof, is all that you have
6 is the visitation records of the jail, or is there
7 something else that you have?

8 **MS. KOLLINS:** An interview with a witness who
9 questioned that student about their relationship with
10 Mr. Lofthouse and I believe questioned Mr. Lofthouse
11 about it as well.

12 **THE COURT:** All right. And this is a
13 separate student from the one that you're suggesting
14 there are allegations of a relationship?

15 **MS. KOLLINS:** Yes, Your Honor. She graduated
16 prior to this case arising.

17 **THE COURT:** How long is that material?

18 **MS. KOLLINS:** I'm sorry?

19 **THE COURT:** How long is the interview
20 material?

21 **MS. KOLLINS:** It was a -- it was a private
22 interview between her and my investigator and my
23 co-counsel. It's not anything that was taped, if
24 that's what you're asking me.

25 **THE COURT:** All right. All right. Well,

1 Mr. Lofthouse, your -- I think the one thing that you
2 did get right in your statement is that your conduct
3 has victimized everyone in this case. It's victimized
4 the student, and I have no doubt, as her parents have
5 just gone through, that it's impacted her
6 significantly. It's going to impact her for probably
7 the rest of her life. It's impacted your wife and your
8 family. I saw your wife here in the courtroom
9 repeatedly, and I can tell that she was dying based
10 upon what you did in this case. And you victimized all
11 the people who have essentially wrote letters in
12 support, and I will tell you that this is by far the
13 biggest stack of letters that I've ever had to review.
14 You have tremendous support from family, friends, prior
15 students. That's -- your value as a teacher is
16 reflected in the fact that you at one time won an award
17 for your teaching at the high school. What you did
18 here has tremendous impact.

19 The legislature has created law to deal
20 specifically with this situation. I know that your
21 attorney has suggested that this was a consensual
22 relationship, one that did not involve coercion, but
23 what it did involve and what the legislature's
24 recognized -- and I think society has recognized -- is
25 that there's a special relationship between a teacher

and a student that can be taken advantage of, and an individual of the age of 16 or 17 is not in a position to fully evaluate and can easily be taken advantage of by a teacher. There's a situation of trust there. There's a situation of closeness that we force students to engage in as part of the educational process, and that can't be taken advantage of by the teachers. And that's what essentially the legislature has sought to protect against.

I don't see this as a situation where you need to be deterred from future conduct. You'll never teach again. Obviously there's not a rehabilitative issue here. I think you appreciate fully what you did in this case. But there are issues in terms of protection of the community and protection -- and deterrence of others, and I'm not suggesting that yours is the first relationship that's ever happened between a teacher and a student, but it is something that society and -- and -- and our -- our representatives have said cannot happen and the time has come to make sure that it's clear that this is not tolerable conduct, that there are serious, serious consequences, and in that regard, the Court is going to sentence you in this case.

The Court will sentence the defendant on

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1 Count 1, sexual misconduct between certain employees or
2 volunteers of school and pupil, to a term of 12 to 36
3 months in the Nevada Department of -- 12 to 48 months
4 in the Nevada Department of Corrections.

5 As to Count 2, the Court will sentence you to
6 a term of five years -- to a definite term of 15 years
7 with eligibility for parole beginning with a minimum of
8 five years having been served. I will make that
9 consecutive to Count 1.

10 As to Count 3, sexual misconduct between
11 certain employees or volunteers of school and pupil,
12 I'll sentence you to a term of imprisonment of 12 to 48
13 months in the Nevada Department of Corrections. I will
14 make this consecutive with Count 1, concurrent with
15 Count 2.

16 As to Count 4, sexual misconduct between
17 certain employees or volunteers of school and pupil,
18 I'll sentence you to a term of 12 to 48 months in the
19 Nevada Department of Corrections. I will make this
20 concurrent with Count 3 and concurrent with Count 2.

21 As to Count 5, sexual misconduct between
22 certain employees or volunteers of school and pupil,
23 I'll sentence you to a term of 12 to 48 months in the
24 Nevada Department of Corrections. I will make this
25 concurrent with Count 4 and concurrent with Count 2.

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1 As to Count 6, sexual misconduct between
2 certain employees or volunteers of school and pupil,
3 I'll sentence you to 12 to 48 months in the Nevada
4 Department of Corrections. I will make this concurrent
5 with Count 5 and concurrent with Count 2.

6 As to Count 7, sexual misconduct between
7 certain employees or volunteers of school and pupil, I
8 sentence you to a term of 48 -- of 12 to 48 months in
9 the Nevada Department of Corrections. I will make this
10 consecutive to the sentence in -- for Count 3, and
11 concurrent with the sentence for Count 2.

12 As to Count 8, first-degree kidnapping, I
13 sentence you to a minimum term of 15 years with
14 eligibility for parole beginning when a minimum of five
15 years has been served. I will make this concurrent
16 with Count 2 and concurrent with Count 7.

17 As to Count 9, sexual misconduct between
18 certain employees or volunteer of school and pupil,
19 I'll sentence you to a term of 12 to 48 months in the
20 Nevada Department of Corrections. I'll make this
21 consecutive to the term of imprisonment provided in
22 Count 7, and concurrent with the term provided in Count
23 2.

24 As to Count 10, sexual misconduct between
25 certain employees or volunteers of school and pupil,

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1 I'll sentence you to a minimum term of 12 to 48 months
2 in the Nevada Department of Corrections. I'll make
3 this concurrent with Count 9, and concurrent with Count
4 2.

5 As to Count 11, sexual misconduct between
6 certain employees or volunteers of school and pupil, I
7 sentence you to a minimum term of 12 to 48 months in
8 the Nevada Department of Corrections, and I make this
9 concurrent with Count 10, and concurrent with Count 2.

10 And as to Count 12, sexual misconduct between
11 certain employees or volunteers of school and pupil,
12 I'll provide for a sentence of 12 to 48 months in the
13 Nevada Department of Corrections. I'll make that
14 concurrent with Count 11 and concurrent with Count 2.

15 Pursuant to this sentence, essentially four
16 of the sexual misconduct counts between certain
17 employees or volunteers of school and pupil, will run
18 consecutive as to sentences of 12 to 48 months. And
19 then, as to the two kidnapping counts, those will run
20 concurrently with Count 2, running concurrent with all
21 of the sexual misconduct between certain employees or
22 volunteers of school and pupil counts, except Count 1,
23 which will run consecutive, resulting in an underlying
24 minimum sentence of six -- six years.

25 All right.

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1 **THE CLERK:** To what? I need a total
2 aggregate.

3 **MS. KOLLINS:** It's going to 72 to 180.

4 **THE CLERK:** 72 months to 180?

5 **MS. KOLLINS:** Yes.

6 **THE COURT:** All right. Thank you for your
7 mathematics there, Ms. Kollins.

8 **MS. KOLLINS:** Certainly.

9 **THE COURT:** I'll provide for the \$25
10 administrative assessment, the \$3 DNA administrative
11 assessment, the \$150 DNA test fee, and order the
12 defendant submit to DNA testing.

13 I will include the special sentence of
14 lifetime supervision to commence upon release from any
15 term of probation, parole, or imprisonment. I will
16 provide specifically that the defendant have no
17 communication with the victim in this case, Michelle
18 Torres, or her family.

19 Pursuant to Nevada Revised Statute 179D.460,
20 the defendant shall register as a sex offender within
21 48 hours of his release from custody.

22 Is there anything further at this point in
23 time?

24 **MS. KOLLINS:** Not by the State, Your Honor.

25 **THE CLERK:** Credit for time served.

1 THE COURT: Oh, yes, credit for time served.

2 MS. KOLLINS: I think it's 347 days.

3 THE COURT: Does the defense agree with that?

4 MR. GUROVICH: Yes, Your Honor.

5 THE COURT: All right. 347 days credit for
6 time served.

7 All right. Anything further?

8 MR. GUROVICH: No. Thank you.

9 THE COURT: All right.

10 (Whereupon, the proceedings concluded at
11 11:00 a.m.)

12 -oOo-

13 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
14 PROCEEDINGS.

15
16 
17 /S/ Amber M. McClane, NV CCR No. 914
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| MR. GUROVICH: [8] 2/11 3/1 3/5 7/14 9/18 19/14 29/3 29/7 MR. MARGOLIS: [3] 2/10 2/21 21/19 MS. KOLLINS: [20] 2/8 2/20 4/3 17/17 17/22 18/15 19/18 20/21 20/24 21/21 21/24 22/7 22/14 22/17 22/20 28/2 28/4 28/7 28/23 29/1 THE CLERK: [6] 18/10 20/9 20/17 27/25 28/3 28/24 THE COURT: [34] THE DEFENDANT: [5] 3/9 3/12 3/14 3/18 9/21 THE MARSHAL: [3] 19/21 19/23 20/4 THE WITNESS: [10] 18/9 18/13 18/18 19/17 19/22 20/8 20/16 20/20 20/23 21/2 \$ \$150 [1] 28/11 \$25 [1] 28/9 \$3 [1] 28/10 - -o0o [1] 29/12 / /s [1] 29/17 1 10 [3] 3/22 26/24 27/9 10:20 [2] 1/16 2/1 11 [5] 3/22 10/1 11/1 27/5 27/14 11:00 [1] 29/11 12 [16] 2/18 3/22 6/21 25/2 25/3 25/12 25/18 25/23 26/3 26/8 26/19 27/1 27/7 27/10 27/12 27/18 13 [1] 2/24 15 [3] 6/20 25/6 | 17 [3] 1/15 2/1 24/2 179D.460 [1] 28/19 180 [2] 28/3 28/4 2 200.310 [1] 4/2 200.320 [1] 4/2 201.540.1 [1] 3/25 2016 [4] 1/15 2/1 2/17 2/24 24 [1] 6/22 25 [2] 2/17 7/2 3 30 [1] 6/21 347 [6] 15/5 15/5 15/6 15/6 29/2 29/5 36 [1] 25/2 4 48 [13] 25/3 25/12 25/18 25/23 26/3 26/8 26/8 26/19 27/1 27/7 27/12 27/18 28/21 6 60 [1] 6/22 7 7019775 [1] 1/7 72 [2] 28/3 28/4 9 914 [2] 1/25 29/17 A a.m [3] 1/16 2/1 29/11 abandoned [2] 12/13 16/18 able [1] 5/23 about [11] 5/12 6/3 9/25 13/3 14/15 16/14 18/17 19/7 21/1 22/9 22/11 absent [1] 17/1 absolutely [3] 6/6 7/4 8/5 accurate [2] 2/21 29/13 acknowledge [1] 11/21 actions [6] 11/6 12/8 | act [2] 6/3 6/4 actually [2] 7/22 12/12 add [1] 9/15 addition [1] 13/19 Additionally [1] 13/7 address [1] 7/17 addressing [1] 7/19 adequately [1] 14/24 administrative [2] 28/10 28/10 adulthood [1] 4/14 advantage [4] 18/25 24/1 24/3 24/7 affected [2] 19/9 21/2 after [2] 8/12 8/14 again [6] 5/23 6/8 15/24 17/12 21/18 24/12 against [2] 4/17 24/9 age [4] 7/1 8/8 13/13 24/2 aggregate [1] 28/2 agree [2] 7/20 29/3 ahead [2] 7/14 9/21 all [46] allegations [4] 5/12 5/17 22/4 22/14 alleged [1] 8/2 allow [3] 7/16 9/5 17/9 allowed [2] 8/9 8/12 allowing [1] 8/14 alone [2] 11/6 14/2 already [1] 13/25 also [3] 5/18 12/6 16/3 always [1] 17/6 am [5] 6/19 12/5 14/25 16/17 16/17 amazing [1] 15/13 Amber [2] 1/25 29/17 analysis [1] 7/20 anger [4] 11/23 14/21 15/4 21/5 angry [1] 18/19 another [2] 5/14 22/4 answer [2] 3/14 10/3 anxiety [1] 21/5 |
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JASON RICHARD LOFTHOUSE,) No. 70587
)
Appellant,)
)
vi.)
)
THE STATE OF NEVADA,)
)
Respondent.)
)

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IN THE SUPREME COURT OF THE STATE OF NEVADA

| | | |
|--------------------------|---|-----------|
| JASON RICHARD LOFTHOUSE, |) | No. 70587 |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | |
| |) | |
| THE STATE OF NEVADA, |) | |
| |) | |
| Respondent. |) | |

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Oct 02 2017 08:27 a.m.
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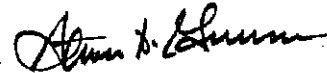
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DISTRICT COURT

CLARK COUNTY, NEVADA



CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

JASON RICHARD LOFTHOUSE,
#7019775,

Defendant.

CASE NO.: C-15-307937-1
DEPT. NO.: XX

REPORTER'S TRANSCRIPT OF JURY TRIAL, DAY 4

BEFORE THE HONORABLE JUDGE ERIC JOHNSON

DEPARTMENT XX

THURSDAY, MARCH 24, 2016

1:37 P.M.

For the State:

WILLIAM MERBACK, ESQ.
Chief Deputy District Attorney
STACEY L. KOLLINS, ESQ.
Chief Deputy District Attorney

For the Defendant:

DMITRY Y. GUROVICH, ESQ.
JASON MARGOLIS, ESQ.

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1 LAS VEGAS, NEVADA; THURSDAY, MARCH 24, 2016

1:37 P.M.

2 P R O C E E D I N G S

3
4
5 THE MARSHAL: District Court 20's in session.

6 The Honorable Judge Eric Johnson presiding.

7 THE COURT: All right. Good afternoon,
8 everybody. Be seated.

9 The State of Nevada versus Jason Lofthouse, Case
10 No. C307937.

11 Let's see. My law clerk distributed an
12 updated set of jury instructions this morning.

13 Has everybody had a chance to look through
14 those?

15 MS. KOLLINS: We have, Your Honor.

16 MR. GUROVICH: Yes, Your Honor.

17 THE COURT: All right. Let me just get --
18 let's get them on the record.

19 Instruction No. 1, any issue?

20 MS. KOLLINS: No, Your Honor. Not with the
21 State.

22 MR. GUROVICH: No.

23 THE COURT: All right. Instruction 2?

24 MS. KOLLINS: No, sir.

25 MR. GUROVICH: No.

1 THE COURT: Instruction 3?
2 MS. KOLLINS: No, sir.
3 MR. GUROVICH: No, Your Honor.
4 THE COURT: Instruction 4?
5 MR. GUROVICH: No.
6 MS. KOLLINS: No, sir.
7 THE COURT: Okay. Instruction 5?
8 MS. KOLLINS: No, sir.
9 MR. GUROVICH: No, Your Honor.
10 THE COURT: All right. Instruction 6?
11 MS. KOLLINS: No, Your Honor.
12 MR. GUROVICH: No.
13 THE COURT: Instruction 7?
14 MS. KOLLINS: No, Your Honor.
15 MR. GUROVICH: No.
16 THE COURT: Okay. Instruction 8?
17 MS. KOLLINS: No, sir.
18 MR. GUROVICH: No.
19 THE COURT: Instruction 9?
20 MR. GUROVICH: No, Your Honor.
21 MS. KOLLINS: No, sir.
22 THE COURT: Instruction 10?
23 MS. KOLLINS: No, sir.
24 MR. GUROVICH: No.
25 THE COURT: All right. Instruction 11?

1 **MS. KOLLINS:** Your Honor, as to Instruction
2 11, I saw the Court's redraft and we appreciate you
3 taking the time to do that. The only thing I would
4 suggest, and that the State is requesting, is at line
5 12 when it says, "Defendant led, took, enticed," if we
6 could separate each one of those elements by "or"
7 because those are all separate ways in which you can
8 find the kidnapping, and it sounds --

9 **THE COURT:** So you'd want it to say: "All
10 must agree that the defendant led or took or enticed or
11 carried away or detained"?

12 **MR. MERBACK:** The other -- the other issue we
13 have, Your Honor, in regards to this instruction is
14 that it sounds like while it's saying that they can
15 disagree as to which theory of intent, it sounds like
16 that they have to agree upon the theory of the action,
17 which is not correct either. They can choose -- one
18 person can believe he took; another person can believe
19 he enticed, but so long as they agree that the action
20 took place, that's sufficient.

21 So we want to make sure that the jury
22 understands they don't have to agree on which action
23 and they don't have to agree on which intent. And we
24 think that that leads them to believe they have to
25 agree on which action the defendant took.

1 **MR. GUROVICH:** Your Honor, I think the
2 instruction is clear, but I'm not opposed to, you know,
3 modifying it to make it more clear.

4 **THE COURT:** Well, I don't have any problem
5 adding in the "Lead or took or enticed or carried
6 away."

7 **MR. MERBACK:** Could we say something like,
8 However, you do not have to agree as to which action
9 the defendant took and that -- and you do not have to
10 agree as to which intent from the intents listed above,
11 so that -- so that they -- they know that they can
12 disagree as to action and they can disagree as to
13 intent so long as they all agree that it happened.

14 And I apologize to Josie. I know she did lot
15 of work on these already, so --

16 **THE COURT:** No, that's all right. If this is
17 the worst we have to deal with, then. . .

18 What about -- let's see. "However, you all
19 must agree that defendant took one of the above listed
20 actions; that is, the defendant led or took or enticed
21 or carried away or detained a minor and that he did it
22 with any one of the intents listed above."

23 **MR. MERBACK:** That's fine.

24 **THE COURT:** How's that sound to the --

25 **MR. GUROVICH:** That's fine, Your Honor.

1 **THE COURT:** All right. So it's going to
2 read: "It is not necessary for everyone to agree on a
3 particular theory of intent; however, you all must
4 agree that the defendant took at least one of the above
5 listed actions. That is, the defendant led or took or
6 enticed or carried away or detained a minor and that he
7 did it with any one of the intents listed above."

8 **MR. MERBACK:** Can we add one more line to
9 that, Your Honor?

10 "It is not necessary for everyone to
11 agree" -- this is line 11. "It is not necessary for
12 everyone to agree on a particular theory of intent or
13 action."

14 **THE COURT:** All right. Let me -- I'm going
15 to change it, "This particular theory of action or
16 intent," since it's --

17 **MR. MERBACK:** Okay.

18 **THE COURT:** All right. What's the defense --
19 is the defense okay with that change?

20 **MR. GUROVICH:** That's fine, Your Honor.

21 **THE COURT:** All right. Did you get that
22 down?

23 **MS. KOLLINS:** I can look at it on realtime
24 with Amber, so. . .

25 **THE COURT:** Okay. So with that -- with that

1 changes -- those changes, is Instruction 11 okay?

2 The State?

3 MS. KOLLINS: Yes, Your Honor.

4 THE COURT: Defense?

5 MR. GUROVICH: Yes, Your Honor.

6 THE COURT: Okay. Twelve. Any issue with
7 that instruction?

8 MS. KOLLINS: No, sir.

9 MR. GUROVICH: No.

10 THE COURT: Thirteen?

11 MS. KOLLINS: No, sir.

12 MR. GUROVICH: No.

13 THE COURT: Fourteen?

14 MR. GUROVICH: No, Your Honor.

15 MS. KOLLINS: No, sir.

16 THE COURT: Fifteen?

17 MS. KOLLINS: No, sir.

18 MR. GUROVICH: No.

19 THE COURT: Sixteen?

20 MS. KOLLINS: No, sir.

21 MR. GUROVICH: No, Your Honor.

22 THE COURT: Seventeen?

23 MR. GUROVICH: No.

24 MS. KOLLINS: No, sir.

25 THE COURT: Eighteen?

1 MS. KOLLINS: No, sir.
2 MR. GUROVICH: No.
3 THE COURT: Nineteen?
4 MR. GUROVICH: No, Your Honor.
5 MS. KOLLINS: No, sir.
6 THE COURT: Twenty?
7 MR. GUROVICH: No.
8 MS. KOLLINS: No, sir.
9 THE COURT: Twenty-one?
10 MS. KOLLINS: No.
11 MR. GUROVICH: No, Your Honor.
12 THE COURT: Twenty-two?
13 MS. KOLLINS: Not from the State, Your Honor.
14 MR. GUROVICH: No, Your Honor.
15 THE COURT: Twenty-three?
16 MR. GUROVICH: No.
17 MS. KOLLINS: No.
18 THE COURT: Any issue with the verdict form?
19 MR. GUROVICH: No, Your Honor.
20 MS. KOLLINS: No, Your Honor.
21 THE COURT: Okay. All right. We'll make the
22 one change.
23 MR. GUROVICH: Your Honor, one -- one other
24 issue with respect to jury instructions. The Defense
25 Proposed Jury Instruction 9 that we had discussed

1 yesterday, I wanted to make a record, if I may.

2 **THE COURT:** Okay. Go ahead.

3 **MR. GUROVICH:** Thank you, Your Honor.

4 Your Honor, the defense proposed jury
5 instruction that stated the following: "In order for
6 you to find the defendant guilty of both first-degree
7 kidnapping and an associate offense of sexual conduct
8 between certain employees or volunteers of school and
9 pupil, you must also find, beyond a reasonable doubt,
10 either: One, that any movements of Michelle Torres was
11 not incidental to the associated defense; two, that any
12 incidental movement of Michelle Torres substantially
13 increased the risk of harm to Michelle Torres over and
14 above that necessarily present in the associated
15 offenses; three, that any incidental movement of
16 Michelle Torres substantially exceeded that it required
17 to complete the incidental offense; four, that Michelle
18 Torres was led, taken, enticed, carried away, or
19 detained and that this substantially increased the risk
20 of harm to her or; five, the movement or restraint had
21 an independent purpose or significance."

22 Your Honor, we -- we requested that this jury
23 instruction be a part of the set. I understand how --
24 how the Court feels about that and we had discussed the
25 arguments as well.

1 I'd like to -- I'd like to incorporate all of
2 the arguments contained in the -- in the petition for
3 writ of habeas corpus previously filed in this case in
4 support of this jury instruction, Your Honor.

5 **THE COURT:** All right.

6 **MR. GUROVICH:** I don't know if it's necessary
7 to enumerate each one, but it's contained if you will
8 accept that.

9 **THE COURT:** No, I have no problem. I mean, I
10 remember the motion for the petition and so I don't
11 have any problem with noting that this -- this
12 instruction that you're providing is essentially the
13 premise on that same petition for writ.

14 Do you want anything else you want to add at
15 this point?

16 **MR. GUROVICH:** Aside from that no, Your
17 Honor.

18 **THE COURT:** Thank you.

19 **MS. KOLLINS:** Just for purposes of the
20 record, Your Honor, the State was opposed to the
21 offering of that instruction because we feel, as we
22 argued in our writ, that it's an inappropriate
23 application of Mendoza and all of that law that defense
24 counsel cites applies to the portion of the kidnapping
25 statute with the enumerated felonies. And I think

1 that's kind of where we are -- the conclusion we came
2 to yesterday.

3 What I would ask of defense counsel is to
4 have that marked and made a court's exhibit, such that
5 it can be part of the record so they'll know what was
6 offered.

7 **THE COURT:** I don't have a problem if you
8 want to mark it and make it part of the court record?

9 **MR. GUROVICH:** Yes, sir. We'll do that.

10 **THE COURT:** Go ahead and do that and this
11 will cover all bases.

12 As I have said before when we dealt with the
13 writ petition in terms of reading the statute, I think
14 that the instruction offered goes beyond the parameters
15 of what the statute requires for a conviction of
16 first-degree kidnapping.

17 As we've discussed, you know, this obviously
18 isn't the kind of case that is -- people necessarily
19 think of when they're talking about kidnapping on TV or
20 in the movies; but the statutory terms, when taken and
21 looked at separately, I think, justify the instruction
22 that we're going to offer as to the elements of
23 first-degree kidnapping in this particular instance.

24 So with that, I will deny the instruction
25 both on that basis. And, then, additionally the basis

1 that I laid out in reference to the petition for writ
2 of habeas corpus.

3 All right. Anything else, then, before we
4 bring in the jury?

5 **MR. GUROVICH:** No, Your Honor.

6 **MR. MERBACK:** Is someone coming up, do you
7 know? We're having a problem with getting the -- the
8 video linked up that we're going to play. We have

9 another witness we can call; but for the second witness
10 we're going to need that linked up.

11 **THE COURT:** Let's go ahead and bring in the
12 first witness and then check with Kelly and make sure
13 she's got IT coming up.

14 **THE CLERK:** Okay.

15 **THE COURT:** I want to try to get them in and
16 get them moving.

17 All right. Let's bring in the jury.

18 **THE MARSHAL:** Okay. Your Honor.

19 **THE CLERK:** I'll just mark it as a court's
20 exhibit or do you want it filed?

21 **MR. MARGOLIS:** It just has to be part of the
22 court record.

23 **THE CLERK:** I can do a coversheet and it will
24 be within the record, but do it as a court exhibits.

25 **THE MARSHAL:** All rise. Jury entering.

1 *(Jury entering.)*

2 **THE COURT:** Let the record reflect the
3 presence of the defendant, the presence of the
4 attorneys for both sides.

5 Do the parties stipulate to the presence of
6 the jury?

7 **MS. KOLLINS:** Yes, Your Honor.

8 **MR. GUROVICH:** Yes.

9 **MR. MARGOLIS:** Yes.

10 **THE COURT:** Okay. All right. Ladies and
11 gentlemen, good to see you. I apologize for a little
12 bit of a delay. We had a couple matters come up, but I
13 think that getting through those matters will make
14 things go much quicker this afternoon. So in the long
15 run we'll come out ahead. Again, I do appreciate your
16 patience.

17 The State may call its next witness.

18 **MR. MERBACK:** The State calls Dr. James
19 Kuzma.

20 *(Whereupon, Dr. James Kuzma enters the*
21 *proceedings.)*

22 **THE COURT:** Come on up here, Doctor, to the
23 witness stand and stay standing for just a second when
24 you get here. The clerk will swear you in.

25 **THE CLERK:** Please raise your right hand.

1 Whereupon,

2 JAMES KUZMA,

3 having been sworn to testify to the truth, the whole
4 truth, and nothing but the truth, was examined and
5 testified under oath as follows:

6 **THE WITNESS:** I do.

7 **THE CLERK:** Please be seated.

8 Please state your name and spell your first
9 and last name for the record.

10 **THE WITNESS:** James Kuzma; J-a-m-e-s,
11 K-u-z-m-a.

12 **THE COURT:** Go ahead, Counsel.

13

14 **DIRECT EXAMINATION**

15 **BY MR. MERBACK:**

16 Q. Dr. Kuzma, how are you employed?

17 A. I'm the principal at Rancho High School.

18 Q. How long have you been employed at Rancho
19 High School as the principal?

20 A. This is my seventh year.

21 Q. Prior to being the principal as Rancho High
22 School, what was your -- where -- were you a principal
23 someplace else?

24 A. Eight years at Hyde Park Middle School.

25 Q. Do you know someone by the name of Jason

1 Lofthouse?

2 A. Yes, I do.

3 Q. How do you know him?

4 A. He worked at Rancho High School since 2010 up
5 till last year.

6 Q. Do you see him here in the courtroom today?

7 A. Yes, I do.

8 Q. Can you point to him and describe an article

9 of clothing that he's swearing?

10 A. He's wearing a dark suit [indicating], and he
11 has a beard.

12 Q. What color is his tie?

13 A. Looks like purple.

14 **MR. MERBACK:** Your Honor, the record will
15 reflect the identification of the defendant?

16 **THE COURT:** The record will so reflect.

17 Q. (By Mr. Merback) Do you, through your records
18 at the Clark County School District and Rancho, know
19 Mr. Lofthouse's date of birth?

20 A. He was born September 3rd, 1982.

21 Q. I'm going to approach with what has been
22 marked as State's Proposed Exhibit 26, 27, 28, and 29
23 which I've already shown to defense counsel.

24 **MR. MERBACK:** May I approach, Your Honor?

25 **THE COURT:** Go ahead.

1 Q. (By Mr. Merback) Dr. Kuzma, I'm going to show
2 you what's been marked as State's Proposed Exhibit 26.

3 Do you recognize that?

4 A. Yes. This would be the record indicating his
5 absences for May 20th and May 28th.

6 Q. And by "him" are you referring to
7 Mr. Lofthouse?

8 A. Mr. Lofthouse.

9 Q. I'm going to show you what's been marked as
10 State's Proposed Exhibit 27.

11 Do you recognize that?

12 A. Yeah. Each year teachers are required to
13 take certain courses that are required at the beginning
14 of each year, and then also he -- courses that he took
15 during the course of his employment for professional
16 development.

17 Q. I'm going to show you what has been marked as
18 State's Proposed Exhibit 28.

19 Do you recognize that?

20 A. Yes. This would be an absence report for a
21 student.

22 Q. What's the name of the student that it's for?

23 A. Michelle Torres.

24 Q. And then I'm going to show you what's been
25 marked as State's Proposed Exhibit 29.

1 Do you recognize that?

2 A. This would be the contract that Mr. Lofthouse
3 signed to work for the 2014/'15 school year.

4 Q. Okay. Are all of these records, records that
5 are kept in the normal course of business by Rancho
6 High School in the Clark County School District?

7 A. Yes, they are.

8 Q. Do you, as the principal of Rancho High

9 School, have full access to, as well as help to
10 maintain the databases that keep track of these
11 records?

12 A. Yes.

13 Q. Are these records fair and accurate
14 depictions of the original records kept by the Clark
15 County School District and Rancho High School?

16 A. Yes, they are.

17 **MR. MERBACK:** Your Honor, State would move
18 for the admission of State's Proposed Exhibits 26, 27,
19 28, and 29.

20 **THE COURT:** Any objection?

21 **MR. GUROVICH:** No objection.

22 **THE COURT:** All right. What were those
23 again?

24 **MR. MERBACK:** 26, 27, 28, and 29.

25 **THE COURT:** 26, 27, 28, 29 will be admitted.

1 *(Whereupon, State's Exhibit 26 through 29*
2 *were admitted into evidence.)*

3 **Q. (By Mr. Merback)** You indicated that
4 Mr. Lofthouse was employed by -- at Rancho High School.
5 What was his position at Rancho High School?

6 A. He taught social studies and he was my
7 department chair.

8 **Q.** Are you aware of whether or not, in the early
9 part of 2015, Mr. Lofthouse was on some type of FMLA
10 leave?

11 A. He had his third child so he requested leave
12 for that period of time.

13 **Q.** And was that FMLA leave granted --

14 A. Yes.

15 **Q.** -- in early 2015?

16 A. Yes.

17 **THE COURT:** Why don't you make sure everybody
18 understands what FMLA leave means.

19 **MR. MERBACK:** Thank you, Your Honor.

20 **Q. (By Mr. Merback)** What is FMLA leave?

21 A. Under the law under, the birth of a child,
22 you're granted family medical leave for a certain
23 period of time, six to 12 weeks. Normally, the school
24 district, six weeks paid; if you choose to take the 12
25 weeks, then you do so with six weeks unpaid and your

1 job is guaranteed when you come back.

2 Q. After Mr. Lofthouse returned from FMLA leave
3 in 2015, was there an occasion on which he made a
4 request to transfer from Rancho High School?

5 A. Yes. During the voluntary transfer season,
6 he did go to Desert Oasis High School and accept a
7 position for the following school year, which would
8 have been this year, at Desert Oasis.

9 Q. That would be the 2015/2016 school year?

10 A. That's correct.

11 Q. After that request to transfer was made, did
12 there come a point in time when Mr. Lofthouse requested
13 the transfer to be changed?

14 A. Yes. He did approach me and indicated that
15 he had made a mistake, that he wished he had stayed at
16 Rancho and he was rather emotional at the time when he
17 made that request. I did tell him that I would work
18 with the principal at Desert Oasis to see if he would
19 allow the transfer back; but the principal at Desert
20 Oasis denied that request.

21 Q. Do you recall when Mr. Lofthouse made that
22 request to you to not be transferred to Desert Oasis
23 High School?

24 A. That would have been in late May.

25 Q. You indicated that the -- that the withdraw

1 of the transfer was not granted; is that correct?

2 A. That's correct.

3 Q. So Mr. Lofthouse was going to be transferred
4 to Desert Oasis High School?

5 A. That's correct.

6 Q. But as of May and June of 2015, was he still
7 employed at Rancho High School?

8 A. Yeah, he had -- would need to finish out the
9 school year which ended the first week of June.

10 Q. I'm going to approach, Dr. Kuzma, with what
11 has now been admitted as State's Exhibit 26 -- I'm
12 sorry -- state's Exhibit 28, which I'm going to show to
13 defense counsel.

14 MR. MERBACK: May I approach, Your Honor?

15 THE COURT: Yes.

16 Q. (By Mr. Merback) Looking at State's
17 Exhibit 28, Dr. Kuzma, you indicated that that's the
18 attendance record for a student, Michelle Torres, at
19 Rancho High School?

20 A. That's correct.

21 Q. Looking at the date of May 20th, do you show
22 any absences for Michelle Torres on that day?

23 A. It indicates that she was absent second,
24 third, fifth, and sixth period.

25 Q. So it doesn't show her being absent on fourth

1 period or seventh period; is that correct?

2 A. That's correct.

3 Q. Is that normal that some teachers would mark
4 a student absent and some teachers not mark the student
5 absent on the same day?

6 A. Unfortunately, that is true, that there could
7 be inaccuracies in the teachers taking attendance from
8 day to day.

9 Q. Is it common for teachers to make mistakes in
10 keeping attendance on a day-to-day basis?

11 A. Yes.

12 Q. Is that a problem you routinely deal with at
13 Rancho High School?

14 A. Yes, it is.

15 Q. Looking to May 28th on that same record, do
16 you show any absences on May 28th?

17 A. It shows that she was absent second period.

18 Q. But not absent any other periods; is that
19 correct?

20 A. Correct.

21 Q. Could that potentially also be teacher error?

22 A. That's correct.

23 **MR. MERBACK:** Court's indulgence.

24 Q. (By Mr. Merback) You indicated that
25 Mr. Lofthouse taught social studies.

1 Do you require -- do you recall what specific
2 class he's taught?

3 A. If I recall, he had an AP World History class
4 and an AP European Geography class for ninth graders.

5 Q. Do you know -- and if you don't that's
6 fine -- whether or not Ms. Torres was in
7 Mr. Lofthouse -- one of Mr. Lofthouse's classes and
8 which class that would have been?

9 A. I believe she had him for fourth period.

10 Q. Okay.

11 MR. MERBACK: No further questions, Your
12 Honor.

13 THE COURT: All right.

14 MR. MERBACK: May I approach to obtain the
15 exhibit?

16 THE COURT: Oh, sure.

17 Any cross-examination?

18 MR. GUROVICH: No, Your Honor.

19 THE COURT: All right. Does anyone on the
20 jury have a question for this witness? Okay. If so,
21 raise your hand. I don't see any hands. All right.

22 Sir, thank you much for coming in today and
23 testifying. You are excused.

24 THE WITNESS: Thank you.

25 MR. MERBACK: May I approach the clerk, Your

1 Honor?

2 **THE COURT:** Sure.

3 *(Whereupon, Dr. James Kuzma exited the*
4 *proceedings.)*

5 **THE COURT:** You may call your next witness.

6 **MS. KOLLINS:** Your Honor, the State calls
7 Detective Troxell.

8 **THE COURT:** All right.

9 **MS. KOLLINS:** We're still waiting for IT as
10 well.

11 **THE COURT:** I -- supposedly IT is on their
12 way.

13 Detective Troxell.

14 **THE MARSHAL:** You want him?

15 **THE COURT:** Yes.

16 *(Whereupon, Detective Ryan Troxell enters the*
17 *proceedings.)*

18 **THE CLERK:** Raise your right hand.

19 *Whereupon,*

20 *RYAN TROXELL,*

21 *having been sworn to testify to the truth, the whole*
22 *truth, and nothing but the truth, was examined and*
23 *testified under oath as follows:*

24 **THE WITNESS:** I do.

25 **THE CLERK:** Please be seated.

1 **THE WITNESS:** Thank you, Your Honor.

2 **THE CLERK:** Please state your name and spell
3 your first and last name for the record.

4 **THE WITNESS:** Ryan Troxell. It's R-y-a-n,
5 T-r-o-x-e-l-l.

6 **MS. KOLLINS:** Your Honor, if I may use the
7 podium?

8 **THE COURT:** Sure.

9 **MS. KOLLINS:** Thank you.

10

11 **DIRECT EXAMINATION**

12 **BY MS. KOLLINS:**

13 Q. Good afternoon, sir.

14 How are you employed?

15 A. I work for the Clark County School District
16 Police Department.

17 Q. How long have you been so employed?

18 A. For nine years.

19 Q. And in what capacity are you employed with
20 Clark County School District Police?

21 A. Currently, I work in the investigation
22 bureau. I'm a detective.

23 Q. Have -- how long have you been assigned as a
24 detective?

25 A. Roughly two or two and a half years.

1 Q. Okay. Are you so assigned on June 3rd of
2 2015?

3 A. Yes.

4 Q. Okay. I'm going to turn your attention to
5 June 3rd, 2015, about 8:00 o'clock in the morning. Did
6 you receive some information regarding an incident at
7 Rancho High School?

8 A. I did. I received a phone call from my
9 supervisor, Sergeant Maciszak.

10 Q. Okay. Can you spell Maciszak for the court
11 reporter.

12 A. M-a-c-i-s-z-a-k.

13 Q. Thank you.

14 And what was that regarding?

15 A. It was regarding a potential student/teacher
16 relationship at Rancho High School.

17 Q. Okay. Did you have any identifying
18 information at that time as to who the student might be
19 or who the teacher might be?

20 A. At the time of the phone call, I did not.

21 Q. Okay. What were you instructed to do by
22 Sergeant Maciszak regarding this information?

23 A. I was instructed to go to Rancho High School
24 and speak with the campus officer.

25 Q. And who was the campus officer?

1 A. Officer Patty.

2 Q. Okay. Did you, in fact, go to Rancho then
3 that morning?

4 A. I did. I believe I arrived at 8:45 in the
5 morning and I spoke with Officer Patty.

6 Q. Okay. And where did you speak with Officer
7 Patty?

8 A. In the police office.

9 Q. Okay. Is there a police office that's just
10 used by law enforcement at Rancho High School?

11 A. That's correct.

12 Q. Okay. And what did you learn from Officer
13 Patty?

14 A. I learned that a teacher had come to him --
15 Belisa Brownlee is the teacher's name -- and she
16 reported that a student came to her in confidence and
17 reported a student/teacher relationship.

18 Q. Okay. Was that teacher identified to you at
19 that time during that conversation by Officer Patty?

20 A. He was.

21 Q. And who was that teacher?

22 A. Mr. -- the defendant, Mr. Lofthouse.

23 Q. Jason Lofthouse?

24 A. Correct.

25 Q. Do you see -- do you know Jason Lofthouse?

1 A. At that time I did not.

2 Q. Do you know who he is now?

3 A. Yes.

4 Q. Do you see him in court today?

5 A. I do.

6 Q. Could you indicate where he's seated today
7 and something he's wearing in the courtroom?

8 A. He's seated at the defendant table and he's

9 wearing a suit with, looks like, a purple tie, white
10 shirt.

11 MS. KOLLINS: May the record reflect
12 identification of defendant, Jason Lofthouse?

13 THE COURT: It will so reflect.

14 MS. KOLLINS: Thank you.

15 Q. (By Ms. Kollins) Now, you knew
16 Mr. Lofthouse's identity. Did you know the student
17 with whom he was interacting?

18 A. The teacher, Ms. Brownlee, would not give
19 that information to -- or she gave -- yes, she gave --
20 I'm sorry.

21 Ms. Brownlee reported -- gave the name of the
22 student reporting, but we did not have a victim's name
23 at that time.

24 Q. Okay. So Ms. Brownlee gave the name of the
25 individual that gave her the information but not the

1 individual that was interacting with Mr. Lofthouse?

2 A. That's correct.

3 Q. Okay. And what was that student's name that
4 gave the information to Ms. Brownlee?

5 A. That student's name was Maria Aleman.

6 Q. Okay. Based on having Mr. Lofthouse's name
7 and having Ms. Aleman's name, what did you do next in
8 your investigation?

9 A. At that time, I believe it was approximately
10 09:58 hours, I attempted to make contact with Maria.

11 Q. Maria Aleman?

12 A. Yes.

13 Q. And how did you do that?

14 A. I used my work cell phone and I called the
15 number listed on her student information.

16 Q. Were you able to contact her immediately?

17 A. On that phone call, I was not. I was leaving
18 a voice mail when a minute later I -- I was receiving a
19 return phone call from the same number.

20 Q. Okay. And who returned that phone call on
21 the same number?

22 A. Zurema Castillo.

23 Q. And if you know, what is Zurema Castillo's
24 relationship to Maria Aleman?

25 A. On the school paperwork she is listed as the

1 mother of Maria Aleman.

2 Q. Did Ms. Castillo permit you to speak to her
3 daughter, Maria Aleman?

4 A. She did.

5 Q. Okay. And did you, in fact, speak to her
6 that day?

7 A. I did.

8 Q. And did you speak to her in person or

9 eventually in person or just over the phone?

10 A. Just over the phone.

11 Q. And what, if anything, did you learn from
12 Maria Aleman that you didn't already know?

13 A. I first verified that it was her, in fact,
14 who spoke to Ms. Brownlee and she verified that it was,
15 and she told me that a student, who she identified
16 as -- as -- I'm sorry -- Ms. Torres, Michelle Torres,
17 and she identified the -- the teacher as Mr. Jason
18 Lofthouse.

19 Q. Okay. About what time -- and we're still
20 talking about June 3rd. Right?

21 A. Correct.

22 Q. I'm sorry. June 1st, excuse me.

23 A. No, 3rd.

24 Q. Did I misspeak? Okay. I apologize,
25 June 3rd.

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1 A. Officer Patty walked in on -- found her in
2 Mr. Lofthouse's room.

3 Q. Okay. And once Michelle Torres was located
4 in Mr. Lofthouse's room, what did you do?

5 A. She was initially escorted to the police
6 office by Officer Patty, and then we used a magnet
7 office, I believe, that Officer Patty escorted us to
8 and that's where we spoke to her.

9 Q. Okay. When you say "we," you're referring to
10 yourself and Detective Sheryl Jones?

11 A. Correct.

12 Q. And that was about 11:15 in the morning; is
13 that about right?

14 A. Yeah, 11:18, I believe.

15 Q. 11:18?

16 A. Yeah.

17 Q. Thank you.

18 Did you record your interview with Michelle?

19 A. We did.

20 Q. Okay. Were you able to confirm any of the
21 information Maria Aleman had given Ms. Brownlee
22 regarding Jason Lofthouse having a relationship with
23 the student, with Michelle, in that interview?

24 A. At that time, we were not.

25 Q. Okay. Was it your impression that she was

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1 forthcoming with you in that interview?

2 A. She was -- she was not forthcoming.

3 Q. Okay. Were her parents contacted that day?

4 A. Her parents picked her up from school. We
5 learned that in the course of the interview. So her
6 dad was already on their way to the school.

7 Q. Her dad was on his way to the school?

8 A. Correct.

9 Q. Okay. And did you have an opportunity speak
10 to her father?

11 A. I did. I spoke with him. I met him in that
12 office -- in the magnet office, and I escorted him to a
13 different office where we spoke.

14 Q. Okay. And then Michelle was released to the
15 custody of her parents?

16 A. That is correct.

17 Q. Okay. Did you receive a phone call later in
18 the day from either one of Michelle's parents?

19 A. At approximately 13:18 hours her father
20 called me and stated that his daughter admitted to
21 everything. And I asked, What did she admit to? And
22 he said she admitted to having sex with the teacher.

23 **MR. GUROVICH:** Your Honor, objection.
24 Hearsay.

25 **THE COURT:** Sustained.

1 **MR. GUROVICH:** Motion to strike.

2 **MS. KOLLINS:** Well --

3 **THE COURT:** Granted. The last answer shall
4 be struck, and the jury shall not consider the
5 statement made by the witness.

6 **MS. KOLLINS:** Just for the record, it would
7 have been prior consistent statement.

8 **THE COURT:** There has been no attack on
9 her -- consistency of her statement.

10 **Q. (By Ms. Kollins)** In -- you said 13:18 hours,
11 That's 1:18 in the afternoon?

12 **A.** Correct.

13 **Q.** Okay. Based on the information that you
14 received from her father, what did you do?

15 **A.** I told her father we would come by the
16 residence to speak to his daughter.

17 **Q.** And did you, in fact, do that?

18 **A.** We did. About 2:20, I believe, we arrived at
19 the house.

20 **Q.** Okay. Was it your preference to interview
21 Michelle there at her home, or did you have another
22 preference that might be part of your protocol in law
23 enforcement?

24 **A.** Part of our protocol is to offer the child
25 advocacy center where they specialize in interviewing

1 children.

2 Q. Minors?

3 A. Yes.

4 Q. Okay.

5 A. Sorry.

6 Q. No. That's fine.

7 And were you able to conduct that type of
8 interview with Michelle?

9 A. No. That was offered to her father and he
10 stated he preferred that we interview his daughter
11 immediately.

12 Q. Okay. Did you interview her immediately?

13 A. We did.

14 Q. Okay. Without telling me what she said, was
15 that interview similar in nature to the previous
16 interview in the morning?

17 A. No. It was different.

18 Q. Okay. Based on the information that you got
19 from Michelle, what did you do next?

20 A. We took that information. I contacted my
21 sergeant, and we essentially agreed to meet up the next
22 day at the school.

23 Q. Okay. Did part of your investigation include
24 dispatching other officers or detectives that were part
25 of the Clark County School District Police Department

1 to both the Aliante Casino and the Cannery Casino?

2 A. Yes, I did.

3 Q. Okay. Bear with me just one second,
4 Detective. Make sure I get everything I'm supposed to
5 here.

6 Now, based on what you learned, why was it
7 important that you go to the -- or at least have someone
8 go to the Aliante and the Cannery casinos?

9 A. Based upon what we learned, it was important
10 to recover the video, if there was any, or the
11 registration information from those casinos.

12 Q. Okay. Registration information for Jason
13 Lofthouse?

14 A. Correct.

15 Q. And any video surveillance that might still
16 be available?

17 A. Correct.

18 Q. Okay.

19 **MS. KOLLINS:** Showing defense counsel what
20 have been previously stipulated to State's 4 and 5. If
21 I may approach the witness?

22 **THE COURT:** All right. Have those been
23 admitted?

24 **MS. KOLLINS:** By stipulation, Your Honor.

25 **MR. GUROVICH:** By stipulation.

1 **THE COURT:** Are we good?

2 **MS. KOLLINS:** If I may approach?

3 Thank you.

4 **Q. (By Ms. Kollins)** Showing you what has been
5 marked and admitted as State's 4. Do you recognize
6 State's 4?

7 A. I do.

8 **Q.** And what is State's 4?

9 A. That is the registration information for
10 Jason Lofthouse at the Aliante casino.

11 **Q.** And what's the date of his registration?

12 A. The arrival date is May 19th of 2015. The
13 departure date is May 21st.

14 **Q.** Okay. Is that consistent with the
15 information that you received from Michelle Torres?

16 A. Yes, it is.

17 **Q.** Okay. Showing you what has been marked and
18 admitted as State's 5, do you recognize State's 5?

19 A. I do.

20 **Q.** And how do you recognize State's 5?

21 A. It is the registration information for the
22 Cannery Hotel Casino --

23 **Q.** And --

24 A. -- for the defendant, Jason Lofthouse.

25 **Q.** And the date of check in?

1 A. The arrival date is May 27th of 2015; the
2 departure date is May 29th of the same year.

3 Q. Okay. And was that consistent with the
4 information you received from Michelle Torres?

5 A. Yes, it was.

6 **MS. KOLLINS:** Permission to publish, Your
7 Honor?

8 **THE COURT:** Go ahead.

9 Q. **(By Ms. Kollins)** And I'm showing -- that's
10 State's 4 that we just discussed, correct, the Aliante
11 registration?

12 And that's in Jason Lofthouse's name with an
13 address of 10263 Kadumba Street here in Las Vegas.
14 Correct?

15 A. Yes.

16 Q. Okay. And as to State's 6, the Cannery
17 registration, consistent with the dates, again, that
18 Michelle Torres gave you?

19 A. Yes.

20 Q. Okay. Thank you.

21 I'm going to back you up for just a second
22 until we get IT here. When you went to Michelle
23 Torres' house to interview her, did you learn whether
24 or not she had a cell phone?

25 A. We did.

1 Q. And did you ask permission to obtain that
2 cell phone?

3 A. During the first interview at Rancho High
4 School we learned she had a cell phone. So -- and when
5 speaking to her father that's when I asked for
6 permission.

7 Q. Okay. And did you learn whether her father
8 paid for and actually owned that cell phone?

9 A. I did. He stated he was the one who paid the
10 bill.

11 Q. Okay. So based on him being the true owner
12 of the phone, did he turn that over to you?

13 A. He did. He signed the consent to search for
14 us to do a forensic analysis of the phone.

15 Q. Okay. And where did you obtain that phone?

16 A. At Rancho High School I obtained it from her
17 father.

18 Q. Okay. And you kept it in your sole care,
19 custody, and control?

20 A. Correct.

21 Q. And eventually had it impounded?

22 A. Yes.

23 Q. And do you know whether or not a forensic
24 analysis was done on Michelle Torres' phone?

25 A. Yes, there was.

1 Q. Okay.

2 MS. KOLLINS: Your Honor, if I may approach
3 with State's Proposed 22?

4 THE COURT: Okay.

5 Q. (By Ms. Kollins) Showing you what's been
6 marked for purposes of identification as State's
7 Proposed Exhibit 22.

8 Do you recognize State's 22?

9 A. I do.

10 Q. How is it that you recognize that particular
11 evidence envelope?

12 A. I'm the one who filled it out.

13 Q. Okay. And does it appear to be in
14 substantially the same condition as the last time you
15 saw it, save and except the blue tape from the forensic
16 analyst?

17 A. Correct.

18 Q. Okay.

19 MS. KOLLINS: State would move for the
20 admission of 22.

21 THE COURT: Any objection?

22 MR. GUROVICH: No, Your Honor.

23 THE COURT: It shall be admitted.

24 (Whereupon, State's Exhibit 22 was admitted
25 into evidence.)

1 **MS. KOLLINS:** And contents, Your Honor, for
2 the record. I apologize.

3 **THE COURT:** The record will reflect the
4 admission of 22, which would include the envelope and
5 its contents.

6 **MS. KOLLINS:** Okay. We're kind of waiting
7 for IT here. So we're jumping around a little bit so I
8 apologize.

9 **THE COURT:** Was the IT not able to fix it?

10 **MR. MERBACK:** They are, Your Honor. He
11 indicated he's going to need us to take a break for him
12 to be able to -- to completely make it work.

13 **THE COURT:** All right. How far do you have
14 left to go?

15 **MS. KOLLINS:** I can jump ahead to the end.
16 Then we can back up to the middle.

17 **THE COURT:** All right. If you could do that.

18 **Q. (By Ms. Kollins)** Did you have contact with
19 Jason Lofthouse on June 4th?

20 **A.** On June 4th, yes, I did.

21 **Q.** And where did you have contact with Jason
22 Lofthouse?

23 **A.** At Rancho High School.

24 **Q.** And where at Rancho High School?

25 **A.** Right outside his classroom.

1 Q. Okay. And at that time, did you obtain his
2 cellular phone?

3 A. I did. We escorted Mr. Lofthouse to a more
4 private area where I placed him under arrest, and my
5 sergeant, Sergeant Maciszak, again, asked for his
6 phone. Mr. Lofthouse consented. My sergeant asked Mr.
7 -- Sergeant Maciszak asked if we could do a forensic
8 analysis and, again, Mr. Lofthouse consented to that.

9 Q. Okay. And did you, then, retain possession
10 of that phone?

11 A. My sergeant did initially.

12 Q. Subsequent to him having it, did you impound
13 it?

14 A. Correct.

15 Q. Okay. And where is the Clark County School
16 District Police impound?

17 A. Our evidence?

18 Q. Yes. Where do you keep your evidence?

19 A. Well, that was kept at our main station
20 because of the forensic analysis that was going to be
21 performed.

22 Q. Okay. And after you retrieved it -- you saw
23 Sergeant Maciszak retrieve that from Mr. Lofthouse.
24 Correct?

25 A. Correct.

1 Q. You were present for that?

2 A. Yes.

3 Q. And then he turned it over to you?

4 A. Yes.

5 Q. And then you caused it to be placed in an
6 evidence envelope?

7 A. Yes.

8 Q. And then kept it preserved for your forensic
9 technician; is that correct?

10 A. Yes.

11 MS. KOLLINS: Showing defense counsel what's
12 been marked, for purposes of identification, as State's
13 23.

14 May I approach?

15 THE COURT: Yes.

16 Q. (By Ms. Kollins) Showing you what has been
17 marked, for purposes of identification, as State's
18 Proposed Exhibit 23 and contents.

19 Do you recognize that evidence envelope?

20 A. I do.

21 Q. How is it that you recognize that?

22 A. Again, I filled out the evidence envelope.

23 Q. Okay. And when you say "fill out," that
24 means you put your name, your employee number, and the
25 date?

1 A. Correct. Along with the information.

2 Q. Okay. Does it appear to be in substantially
3 the same condition as the last time you saw it, save
4 and except the opening that's in court today and the
5 blue tape from your forensic analyst?

6 A. That's correct.

7 Q. Okay.

8 MS. KOLLINS: State would move for the
9 admission of 23.

10 THE COURT: Any objection?

11 MR. GUROVICH: No.

12 THE COURT: 23 shall be admitted.

13 THE CLERK: And the contents?

14 MS. KOLLINS: 23 and contents.

15 THE COURT: Envelope and the contents of 23
16 will be admitted.

17 *(Whereupon, State's Exhibit 23 was admitted*
18 *into evidence.)*

19 Q. *(By Ms. Kollins)* Now, when you went to
20 Mr. Lofthouse's classroom on June 4th of 2015, Officer
21 Patty took some pictures. Correct?

22 A. I'm the one who took the pictures.

23 Q. Did you take the pictures?

24 A. Yes.

25 Q. Okay. Other than taking the pictures, did

1 you retrieve any specific pieces of evidence relevant
2 to this case in his classroom?

3 A. I did. There were absence request forms
4 sitting on his desk.

5 Q. Absence request forms for whom?

6 A. For Mr. Lofthouse.

7 **MS. KOLLINS:** Okay. Showing defense counsel
8 what's been marked, for purposes of identification, as

9 State's Proposed 24, as well as what's been admitted,
10 State's 20.

11 Permission to publish 20, Your Honor?

12 **THE COURT:** Go ahead.

13 Q. (By Ms. Kollins) Showing you what's been
14 admitted, Detective, as State's 20.

15 Do you recognize that picture?

16 A. I do.

17 Q. How is it that you -- tell me what it is --
18 let me say that again.

19 How is it that you recognize that?

20 A. I'm the one who took the picture.

21 Q. Okay. And what's depicted there?

22 A. The teacher's desk, along with his computer,
23 and on the computer there's the absence request forms
24 that I retrieved.

25 Q. Okay. The piece of paper that's on the

1 computer base there, is that what you're referring to?

2 A. Yes.

3 Q. And that was an absence request form for
4 Jason Lofthouse?

5 A. Yeah, there was three of them there in a
6 stack.

7 Q. Okay. And you retrieved those?

8 A. Yes.

9 Q. And caused them to be saved into evidence; is
10 that correct?

11 A. That is correct.

12 **MS. KOLLINS:** May I approach the witness,
13 Your Honor?

14 **THE COURT:** Go ahead.

15 Q. (By Ms. Kollins) Detective, I'm going to ask
16 you take a look at State's Proposed 24, for purposes of
17 identification.

18 Do you recognize State's Proposed 24?

19 A. I do.

20 Q. How is it that you recognize that envelope?

21 A. I'm the one that filled it out.

22 Q. Okay. Again, with your name and incident
23 number attached to this event, as well as your employee
24 number?

25 A. Yes.

1 Q. Save and except the opening at the top of the
2 envelope, look to be in substantially the same
3 condition?

4 A. Yes, it does.

5 MS. KOLLINS: State would move for the
6 admission of 24 and contents.

7 THE COURT: Any objection?

8 MR. GUROVICH: No.

9 MS. KOLLINS: Okay.

10 THE COURT: 24 will be admitted.

11 *(Whereupon, State's Exhibit 24 was admitted*
12 *into evidence.)*

13 MS. KOLLINS: Thank you, Your Honor.

14 Q. (By Ms. Kollins) What's contained within
15 State's 24?

16 A. Those are the three absence request forms.

17 Q. Could you remove those for us today?

18 A. Yes.

19 Q. Do you have an independent recollection of
20 the dates of those absence requests without looking at
21 them?

22 A. I remember they -- they confirm the two days
23 in question that we were looking at, and there was an
24 additional day as well.

25 Q. Okay. That would be the --

1 **THE COURT:** Hold on. Counsel, you're
2 blocking one of the jurors.

3 **MS. KOLLINS:** I'm sorry.

4 **Q. (By Ms. Kollins)** When you talk about the two
5 dates in question, are you talking -- are you
6 referencing the stays at the Aliante and the Cannery
7 Casino?

8 **A.** Yes.

9 **Q.** Okay.

10 **MS. KOLLINS:** State would request permission
11 to publish, Your Honor.

12 **THE COURT:** Go ahead.

13 **Q. (By Ms. Kollins)** And would that be the
14 employee absence request for May 20th?

15 **A.** Yes.

16 **Q.** Okay. And showing you -- would that be the
17 request for May 28th?

18 **A.** Yes.

19 **Q.** Okay. And the other date is unrelated as far
20 as you know?

21 **A.** Yes.

22 **Q.** Okay. Detective, when you sent detectives
23 and Clark County School District officers to both of
24 those hotels and casinos, did you make a request for
25 them to obtain any video surveillance that was

1 available?

2 A. Yes.

3 Q. Okay. Were you successful at getting any
4 video surveillance from the Aliante?

5 A. No, we were not.

6 Q. Do you know why that is?

7 A. They said that after seven days their video
8 erases -- records over itself, essentially.

9 Q. Okay. Were you successful at obtaining any
10 video surveillance of Jason Lofthouse and Michelle
11 Torres present at the Cannery Casino on May 28th of
12 2015?

13 A. We were.

14 Q. Okay. Did -- along with recovering that
15 video, did you also recover some still images?

16 A. Yes.

17 Q. Okay. And those were produced by the
18 surveillance team at --

19 A. Yes. By the security specialist, I believe.

20 Q. Okay. Have you seen those photos before?

21 A. I have.

22 Q. Have you compared them to the videotape?

23 A. Yes.

24 Q. Okay.

25 **MS. KOLLINS:** Showing defense counsel what

1 have been marked, for purposes of identification, as
2 State's Proposed 7 and 8.

3 Continued permission, so I don't have to ask
4 every time?

5 **THE COURT:** Go ahead.

6 **Q. (By Ms. Kollins)** Showing you what has been
7 marked as State's Proposed Exhibit 7.

8 Do you recognize State's Proposed 7?

9 A. I do.

10 **Q.** And what is depicted in State's 7 that you
11 recognize?

12 A. I recognize the defendant, Mr. Lofthouse, and
13 Michelle Torres kissing.

14 **Q.** Okay. And they appear to be in what kind
15 of --

16 A. They appear to be in an elevator.

17 **Q.** Okay. And that's still --

18 **THE COURT:** Can you move back just a little?

19 **Q. (By Ms. Kollins)** That still photograph is a
20 fair and accurate depiction of what was taken off the
21 videotape?

22 A. Yes.

23 **Q.** Okay.

24 **MS. KOLLINS:** State would move for the
25 admission of 7.

1 **THE COURT:** Any objection?

2 **MR. GUROVICH:** No.

3 **THE COURT:** 7 shall be admitted.

4 *(Whereupon, State's Exhibit 7 was admitted*
5 *into evidence.)*

6 **Q. (By Ms. Kollins)** Similarly, showing you what
7 has been marked, for purposes of identification,
8 State's Proposed Exhibit 8.

9 Do you recognize Exhibit 8?

10 A. I do.

11 **Q.** How is it that you recognize State's Proposed
12 Exhibit 8?

13 A. Again, it's from the video from the Cannery,
14 and it's Mr. Lofthouse and Michelle Torres appearing to
15 leave the elevator.

16 **Q.** Fair and accurately depict what you viewed on
17 the video surveillance?

18 A. Yes.

19 **MS. KOLLINS:** Okay. The State would move for
20 the admission of 8.

21 **THE COURT:** Any objection?

22 **MR. GUROVICH:** No, Your Honor.

23 **THE COURT:** 8 will be admitted.

24 *(Whereupon, State's Exhibit 8 was admitted*
25 *into evidence.)*

1 **MS. KOLLINS:** And permission to publish,
2 please?

3 **THE COURT:** Go ahead.

4 **Q. (By Ms. Kollins)** I've placed State's 7 on the
5 monitor, that's what we were discussing up there.
6 That -- that photograph is a still from the
7 surveillance tape. Correct?

8 **A.** Yes, from the Cannery Casino.

9 **Q.** Okay. And from May 28th of 2015. Correct?

10 **A.** Correct.

11 **Q.** In State's 8, that's Mr. Lofthouse and his
12 student, Michelle Torres, getting off the elevator?

13 **A.** Correct.

14 **Q.** Thank you.

15 **MS. KOLLINS:** I think we're going to have to
16 take that break. I've done about everything I can do.

17 **THE COURT:** All right. Ladies and gentlemen,
18 I apologize but we need to do a little IT assistance
19 here. And apparently the -- they're going to need to
20 have a little bit of free reign to the cording to get
21 the equipment to work right. So let's take a 15-minute
22 break. It's now 2:25. Let's be back before 2:40, and
23 hopefully they will zip through it and we'll be able to
24 get moving right after that.

25 Thank you very much for your patience.

1 **THE MARSHAL:** All rise. Jury exiting.

2 *(Jury exiting.)*

3 **MR. MERBACK:** I can play it on my computer,
4 Your Honor. It's just a matter of --

5 **THE COURT:** No, I understand. I mean, we
6 obviously want people to be able to see it. Hopefully
7 they'll be able to get it to work quickly; otherwise,
8 we'll see it on your computer and the jury will have it
9 available when they go back to the jury room.

10 Detective, could I ask you to step out and
11 let me show you to the jury deliberation room and that
12 way maybe we can conduct some business while we're
13 waiting.

14 *(Whereupon, Detective Ryan Troxell exited the*
15 *proceedings.)*

16 **THE COURT:** All right. After this witness,
17 who do you have left?

18 **MS. KOLLINS:** No one, Your Honor.

19 **THE COURT:** No one? This is your last
20 witness?

21 **MS. KOLLINS:** Yes, sir.

22 **THE COURT:** Is now an appropriate time to
23 canvass the defendant as to his Fifth Amendment rights?

24 **MR. GUROVICH:** Your Honor, Mr. Lofthouse is
25 not going to testify.

1 **THE COURT:** Well, I still have to canvass him
2 of his rights. I appreciate what you're saying, but I
3 still have to do that.

4 All right. Mr. Lofthouse, I haven't had a
5 chance to introduce myself to you directly, but I'm
6 Judge Eric Johnson. I'm obviously the judge presiding
7 over your trial. At this stage, in a little bit, the
8 State has indicated that it's going to rest its case.

9 At that point in time, I will give your
10 counsel the opportunity, if it so chooses, to present
11 any evidence and you would have the opportunity, if you
12 so chose to do so, to testify.

13 If your counsel puts on any evidence,
14 eventually he'll reach the end of where he's going to
15 put on anything, the defense will rest. The
16 government -- or the State would have a right to put on
17 rebuttal case and, absent that, the case would go to
18 the jury.

19 Do you understand that?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** All right. You have a right,
22 under the Constitution of the United States and under
23 the Constitution of the state of Nevada, not to be
24 compelled to testify in this case.

25 Do you understand that?

1 **THE DEFENDANT:** Yes, I do.

2 **THE COURT:** That means that no one can make
3 you take the witness stand and make you answer any
4 questions.

5 Do you understand that right, sir?

6 **THE DEFENDANT:** Yes, Your Honor.

7 **THE COURT:** All right. You may, if you wish,
8 give up this right and you may take the witness stand

9 and testify. If you do, you will be subject to
10 cross-examination by the District Attorney, as well as
11 your own attorney, and anything that you say, whether
12 it is in an answers to questions put to you by your
13 attorney or by questions put to you by the Assistant
14 District Attorney, will be subject to fair comment when
15 the District Attorney speaks to the jury in final
16 argument.

17 Do you understand that?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** If you choose not to testify, the
20 Court will not permit the District Attorney to make any
21 comment to the jury concerning the fact that you have
22 not testified.

23 Do you understand that?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** If you elect not to testify, the

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1 Court will instruct the jury, if your attorney
2 specifically requests, an instruction which reads
3 substantially as follows: The law does not compel a
4 defendant in a criminal case to take the stand and
5 testify, and no presumption may be raised and no
6 inference of any kind may be drawn from the failure of
7 a defendant to testify.

8 Do you understand that?

9 **THE DEFENDANT:** I do.

10 **THE COURT:** All right. Do you have any
11 questions that you'd like to ask me about your
12 constitutional rights?

13 **THE DEFENDANT:** No, Your Honor.

14 **THE COURT:** All right. Have you -- I don't
15 want to get into the substance here, but have you
16 discussed whether or not you should testify with your
17 attorneys in this case?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** All right. And have they
20 answered all your questions in regard to that right?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** And are you satisfied with them
23 as your attorneys and the advice they've given you?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** All right. Have you decided, at

1 this point -- and you don't need to make a decision --
2 but at this point do you intend to testify or not?

3 **THE DEFENDANT:** No, sir, I do not.

4 **THE COURT:** All right. I want to make sure
5 you understand that, until your attorney says that the
6 defense rests -- in other words, I'm going to ask your
7 attorney if he wants to put on any evidence. Up until
8 the point that he says, "The defense rests," you have
9 the right to change your mind.

10 Do you understand that?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** But once he says "The defense
13 rests," unless the State puts on some sort of rebuttal
14 evidence in which your testimony might be relevant,
15 then you will have essentially waived a chance to
16 testify at this trial.

17 Do you understand that?

18 **THE DEFENDANT:** Yes, Your Honor.

19 **THE COURT:** All right. Does the State
20 require anything further?

21 **MS. KOLLINS:** I'm sorry?

22 **THE COURT:** In terms of the canvass, does the
23 State require anything further?

24 **MS. KOLLINS:** No, sir. Thank you.

25 **THE COURT:** Okay. All right. Thank you,

1 Mr. Lofthouse.

2 **THE DEFENDANT:** Thank you, sir.

3 **THE COURT:** Are we working?

4 **MR. MERBACK:** We're good, Your Honor.

5 **THE COURT:** All right. Well, we got ten
6 minutes more to go until the jury will be back.

7 **THE MARSHAL:** Do you want to bring the
8 witness back in yet or --

9 **THE COURT:** He might as well relax out there
10 as opposed to sitting up here.

11 **THE MARSHAL:** Okay.

12 **THE COURT:** All right. If anyone needs to
13 use the restroom or anything, let's take a -- let's go
14 ahead and do a break.

15 *(Recess was taken from 2:31 p.m. to 2:43*
16 *p.m.)*

17 **THE COURT:** Let's go ahead -- if they're
18 ready, let's go ahead and bring them in.

19 **THE MARSHAL:** You ready?

20 **THE COURT:** Yeah. Go ahead.

21 **THE MARSHAL:** All rise. Jury entering.

22 *(Jury entering.)*

23 *(Whereupon, Detective Ryan Troxell reenters*
24 *the proceedings.)*

25 **THE COURT:** All right. Let the record

1 reflect the presence of the defendant, the presence of
2 the attorneys for both sides.

3 Do the parties stipulate to the presence of
4 the jury?

5 MS. KOLLINS: State does, Your Honor.

6 MR. GUROVICH: Yes, sir.

7 THE COURT: Okay. All right. Go ahead,
8 Detective, sit down.

9 THE WITNESS: Thank you.

10 THE COURT: Continue with your testimony.

11 MS. KOLLINS: Thank you, Your Honor.

12 Your Honor, we had a stipulation to State's
13 Exhibit 6. It's a video surveillance tape from the
14 Cannery. I'm showing that to defense counsel.

15 THE COURT: Is that correct, Counsel?

16 MR. GUROVICH: It is, Your Honor.

17 THE COURT: All right. Are you moving to
18 admit it?

19 MS. KOLLINS: It's been admitted, Your Honor.

20 THE COURT: Okay. All right.

21 MS. KOLLINS: I just want to show it to the
22 Detective, if I may?

23 THE COURT: Go ahead.

24 Q. (By Ms. Kollins) Detective, you caused a copy
25 of the video surveillance tape from the Cannery to be

1 obtained and impounded and preserved; is that correct?

2 A. That is correct.

3 Q. Provided a copy to my office at my request?

4 A. Yes.

5 Q. Does that appear to be the copy that you
6 provided to my office?

7 A. That is.

8 Q. Okay. And you've had a chance to review that
9 video surveillance tape?

10 A. Yes.

11 **MS. KOLLINS:** Your Honor, at this time I
12 would request permission to publish the surveillance
13 tape to the jury.

14 **THE COURT:** Okay. And, again, what -- you
15 may have just said it, but this is of the Cannery on
16 what date?

17 **MS. KOLLINS:** May 28th of 2015.

18 **THE COURT:** And what approximate time?

19 **THE WITNESS:** The video's time-stamped, Your
20 Honor.

21 **THE COURT:** Is the video time-stamped?

22 **THE WITNESS:** Yeah. I believe it's slightly
23 before 8:00 o'clock.

24 **THE COURT:** All right. Go ahead.

25 (Video played.)

1 **THE WITNESS:** There's them entering and them
2 exiting as well. That's the exiting.

3 **Q. (By Ms. Kollins)** And the time stamp on this
4 one is not the 8:00 o'clock you referred to; is that
5 correct, Detective?

6 **A.** No. This one's the 14:00 hours at the
7 bottom. So roughly 2:00 o'clock.

8 **Q.** Okay. And that's from what floor of the
9 Cannery, do you recall, Detective?

10 **A.** I believe it's the second floor.

11 **Q.** And depicted in that video, is that the
12 student you know as Michelle Torres?

13 **A.** Yes.

14 **Q.** And that is also the person you identified
15 here in court today, Jason Lofthouse?

16 **A.** Yes.

17 **Q.** Thank you, Detective.

18 Detective, do you know why we have this parking
19 lot sequence?

20 **A.** Top, left-hand corner of your video is
21 Mr. Lofthouse and Ms. Torres exiting.

22 **Q.** Very small up there in the top, left-hand
23 corner. Correct?

24 **A.** Yes.

25 **Q.** Thank you.

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1 And this is the surveillance from earlier in the
2 day; is that correct?

3 A. Correct.

4 Q. And the bottom right quad, we saw
5 Mr. Lofthouse and Ms. Torres, that was them in the
6 bottom right quad and now entering the elevator?

7 A. Correct.

8 Q. Okay. And the time stamp on this, Detective?

9 A. Is 7:46 in the morning.

10 Q. And, again, the Aliante videotape was not
11 available?

12 A. Correct.

13 Q. Okay. And I don't know if I asked you this
14 previously. Did you learn defendant's date of birth?

15 A. I did.

16 Q. And what was that?

17 A. It was September 3rd of 1982.

18 Q. Okay.

19 **MS. KOLLINS:** I will pass the witness, Your
20 Honor.

21 **THE COURT:** All right. Any
22 cross-examination?

23 **MR. GUROVICH:** No, Your Honor.

24 **THE COURT:** Does any member of the jury have
25 a question for this witness? Okay. Anybody? If so,

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1 please raise your hand. I'm not seeing any hands.

2 All right. Thank you very much, sir, for
3 your testimony. You are excused.

4 **THE WITNESS:** Thank you, Your Honor.

5 **THE COURT:** Okay. State may call its next
6 witness.

7 **MS. KOLLINS:** Court's indulgence.

8 Your Honor, at this time the State, being
9 satisfied that all of their evidence has been admitted,
10 the State's prepared to rest.

11 **THE COURT:** All right. Well, are you
12 resting?

13 **MS. KOLLINS:** Yes, sir.

14 **THE COURT:** Okay. All right. Ladies and
15 gentlemen, as I explained earlier, the State has the
16 burden of proof. They get to put on their evidence
17 first to prove the elements of the crimes charged in
18 the information against the defendant.

19 At this point in time, the State has rested,
20 which means they've put on all their evidence for their
21 case-in-chief. As I said before, the defense has the
22 opportunity, at this point, to put on any evidence that
23 it wishes to do so. But as I explained at the
24 beginning, the defense does not have an obligation to
25 put on anything, and if the defense doesn't put on

1 anything, it's still ultimately your obligation, as
2 jurors, to evaluate the State's case and determine if
3 the State has proven and met its burden of proving the
4 case beyond a reasonable doubt.

5 At this point in time, does the defense wish
6 to present any evidence?

7 **MR. GUROVICH:** No, Your Honor. The defense
8 rests.

9 **THE COURT:** All right. All right. Ladies
10 and gentlemen, the defense rests.

11 Since both sides have rested now in terms of
12 the presentation of evidence, the evidence in this case
13 has now been admitted, and we are at the point of doing
14 closing arguments or summation.

15 Do you need any time to set up to do your
16 closing argument?

17 **MR. MERBACK:** We may need a couple minutes
18 based upon some changes, Your Honor. But we may need a
19 couple minutes, if that's okay with the Court?

20 **THE COURT:** All right. I'm not sure where we
21 are in terms of printing out the jury instructions.

22 **THE MARSHAL:** Let me check.

23 **THE COURT:** Would you check and see how close
24 we are to printing out the jury instructions? Is this
25 a couple minutes of private time that you need, or can

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1 you just go ahead and do it while we keep the jury
2 here?

3 **MR. MERBACK:** We can do it while we keep the
4 jury here, Your Honor.

5 **THE COURT:** Okay.

6 **MR. MERBACK:** Once the final is printed. . .

7 **THE COURT:** Go ahead and get set up, and
8 hopefully we're close to having the jury instructions
9 printed.

10 **THE MARSHAL:** They're being printed right
11 now, Your Honor.

12 **THE COURT:** Okay. Are we close or far away?

13 **THE MARSHAL:** I think we're close.

14 **THE COURT:** Okay. Good. If you all want to
15 stand up and stretch and, like I said, chitchat about
16 anything you want, except the case, with each other.
17 Back it up, it's March Madness today. I don't know if
18 any games have been played yet or not.

19 **THE COURT REPORTER:** Are we still on the
20 record?

21 **THE COURT:** No.

22 *(Pause in the proceedings.)*

23 *(Off-the-record discussion at the sidebar.)*

24 **THE COURT:** All right. Ladies and gentlemen,
25 the marshal's handing out now copies of the jury

1 instructions, which are the law relevant to the charges
2 in this case and the consideration of the evidence in
3 this case.

4 I'm going to read the instructions to you
5 here in a second. You can follow along in the draft
6 that you have. You can mark on -- you can take it back
7 into the jury room with you so you can mark on it if
8 something catches your mind and you want to write
9 something on it, you can do that. If during the
10 closing arguments an attorney says something or refers
11 to an instruction and there's something you want to
12 think about or note, feel free to write on it. You can
13 take those back with you into the jury room and have
14 them for your reference during deliberations.

15 Does everybody have a copy?

16 Okay. I think everybody does.

17 Do the parties and both sides have copies?

18 **MS. KOLLINS:** Yes, sir.

19 **MR. GUROVICH:** Yes, Your Honor.

20 **THE COURT:** Okay. All right.

21 *(Jury instructions read by Judge Johnson in*
22 *open court.)*

23 **THE COURT:** Also, before I read the last
24 instruction, can I see counsel at sidebar, please?

25 *(Whereupon, a sidebar was held as follows:)*

1 **THE COURT:** All right. You had requested
2 that the defendant didn't testify and that shouldn't be
3 held against him. That didn't make it into the final
4 set. Do you want that?

5 **MR. GUROVICH:** Yes. Absolutely. I missed
6 that. Thank you for pointing it out, Your Honor.

7 **THE COURT:** All right. All right. Do you
8 want me to -- let me give this to Kelly to print out.

9 So I'll say here: "The law does not compel a
10 defendant in a criminal case to take the stand and
11 testify, and no presumption may be raised and no
12 inference of any kind may be drawn from the failure of
13 the defendant to testify."

14 **MR. GUROVICH:** Mm-hmm.

15 **THE COURT:** Is that sufficient?

16 **MR. GUROVICH:** Yes, Your Honor.

17 **MS. KOLLINS:** Yes.

18 **THE COURT:** All right. Any objection from
19 the State?

20 **MS. KOLLINS:** No, sir. I'm going to go back
21 out. I'm fixing my computer.

22 *(Whereupon, Stacey Kollins exited the*
23 *sidebar.)*

24 *(Pause in the proceedings.)*

25 **THE COURT:** All right. Let's go on and we'll

1 get moving.

2 *(Sidebar concluded.)*

3 **THE COURT:** All right. I provided the jury
4 with an additional instruction, which is No. 23. Prior
5 instruction, in your packets, which was instruction --
6 numbered Instruction No. 3 has been renumbered as
7 Instruction No. 24, and I've given you a new page that
8 shows the instruction with the renumbering as 24.

9 Let's continue on with the reading of the
10 law. Instruction No. 23.

11 *(Jury instructions continue being read by*
12 *Judge Johnson in open court.)*

13 **THE COURT:** All right. We'll be pleased to
14 hear the opening argument -- opening-closing argument
15 of the State.

16 **MR. MERBACK:** Can we switch the screen over?

17
18 **STATE'S CLOSING STATEMENT**

19 **MR. MERBACK:** Your Honor, counsel,
20 co-counsel, ladies and gentlemen of the jury, we
21 appreciate your time here this week. This is the
22 closing argument, and the purpose of the closing
23 argument is to refresh your memory as to the evidence
24 that you've heard and then apply that evidence to the
25 law. And that's the law that's contained in your jury

1 instructions.

2 Now, there are 12 different charges in this
3 case. Ten counts of sexual conduct between certain
4 employees or volunteers of school and pupil, and two
5 counts of first-degree kidnapping.

6 Now, each of those charges has a set of
7 material elements that the State must prove beyond a
8 reasonable doubt to prove each charge. What we're
9 going to do is we're going to go through both of those
10 charges. We're going to lay out the elements of those
11 charges and apply the evidence that you've heard to
12 each of those elements showing that the State, in this
13 case, has proven each of the 12 charges beyond a
14 reasonable doubt.

15 We're going to start with sexual conduct
16 between certain employees or volunteers of school and
17 pupil.

18 Is it switched over? It's not tracking
19 the -- there we go. I apologize, Your Honor.

20 **THE COURT:** No problem.

21 **MR. MERBACK:** So we're going to start with
22 this first offense: "Sexual conduct between certain
23 employees or volunteers of school and pupil."

24 And this is the instruction, Instruction
25 No. 13, that defines this charge. It says: "A teacher,

1 while employed or having been previously employed or
2 volunteering in a position of authority at a public or
3 private school, who is over 21 years of age, who
4 engages in sexual conduct with someone who was 16 or 17
5 years of age at the time, and who was enrolled in or
6 attending the school at which the teacher was or
7 previously had been employed is guilty of sexual
8 conduct between certain employees or volunteers of
9 school and pupil."

10 Now, when we look at that instruction, we can
11 know that there are five elements to that charge. Five
12 elements the State must prove to sexual conduct between
13 employees and pupil.

14 Number 1, that you have to have a teacher or
15 volunteer who was in a position of authority; number 2,
16 that person must be over the age of 21; number 3, they
17 must engage in some type of sexual conduct; number 4,
18 that has to be with someone who is 16 or 17 years of
19 age and; number 5, that that person is a student at
20 that school.

21 The State has to prove all five of these
22 material elements. And the State, in this case, has
23 proven all five of these elements for the ten charges
24 of sexual conduct between employees and pupil.

25 Now, four of these elements are going to be

1 student at Rancho High School. She testified to that.
2 Belisa Brownlee testified to that. Principal Kuzma
3 testified to that. We also have her attendance records
4 for the 2014/2015 school year that have been admitted
5 into evidence.

6 Let's talk about that third element: Engages
7 in sexual conduct. There's an instruction, it's
8 Instruction No. 13, that defines what sexual conduct is
9 and it has a number of different options. But the
10 first two are the ones that apply in this case.

11 Number 1: Sexual conduct is ordinary sexual
12 intercourse. And Number 2 -- or Number 2: It's
13 fellatio, cunnilingus, or other genital -- oral genital
14 contact. Fellatio being female mouth on male
15 genitalia; cunnilingus being male mouth on female
16 genitalia.

17 Now, let's go through each charge and look at
18 the specific sexual conduct that applies to each
19 charge. Count No. 1 was oral sex, fellatio that
20 Michelle performed on the defendant in his classroom
21 and that occurred sometime between May 6th of 2015, and
22 May 19th of 2015. Michelle performed oral sex on the
23 defendant in his classroom during this time frame. And
24 this happened some time prior to them going to the
25 Aliante on May 28 -- on May 20th. So we know that it

1 was -- it was May 19th or prior. We also know that it
2 happened some time after May 5th and we know this from
3 the text messages.

4 The May 5th text messages indicate that. If
5 you look at these messages, it says -- this is from the
6 defendant: Yeah, it really was you. You make me
7 nervous, but in a good way. A way -- I was very close
8 to kissing you.

9 So we know from May 5th that they haven't
10 actually kissed yet.

11 From the defendant: I was thinking that one
12 of these days you should stay after class.

13 This is from Michelle: Just tell me when?

14 From the defendant: Always.

15 From Michelle: Laugh out loud. As tempting
16 as that sounds, I shouldn't.

17 From the defendant: Well, I wasn't really
18 thinking "always," just once or twice and for five or
19 ten minutes, just enough time for us to kiss -- for a
20 kiss or two.

21 That's May 5th. So we know that it starts
22 some time on May 6th. Sometime between May 6th and
23 May 19th is when Count 1, oral sex, happens in the
24 classroom.

25 We can see from the text messages, as well,

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1 that these encounters between the defendant and
2 Michelle begin on May 6th. And you can see where
3 they're talking about being together, then they are
4 together, and then there's the reaction to it.

5 This is from the defendant: So I think I
6 need to talk to you about your long essay after class
7 today.

8 This is from Michelle: Ha ha. Okay.

9 From the defendant: I like you.

10 From Michelle: I like you too.

11 From the defendant: That was amazing.

12 Notice that the time gap here -- the
13 I-like-you-too-text is and at 9:11. That
14 that-was-amazing-text is at 11:00 o'clock.

15 And the text comes rapidly after that, I can
16 still smell you on my hands, from the defendant.

17 From Michelle: It was amazing.

18 From the defendant: Yeah. We are definitely
19 going to do that again.

20 So these -- these encounters, that we can see
21 from these text messages, really begin on May 6th.

22 There's another example of that from May
23 15th. This is still prior to the May 20th Aliante
24 date.

25 This is from Michelle: All we are doing in

1 math is watching videos again, so I'm not going. Laugh
2 out loud.

3 When know that -- we know that Michelle said
4 that math was her last class. That Precalculus class
5 was that last period, the seventh period.

6 Message from the defendant: Yay.

7 Message from the defendant: Wow.

8 So we've got -- and look at the time gap
9 here. We've got the "Yay" when she announces she's not
10 going to go to math class at 13:03, it's 1:03; And
11 then, the "Wow" from defendant a little more than an
12 hour later at 14:14, so 2:14.

13 And then, from the defendant: You're
14 amazing.

15 We can all look at the testimony of Officer
16 Patty. On June 3rd, Officer Patty testified that he
17 went looking for Michelle Torres, that he ends up in
18 front of Room 803 at Rancho High School, which is the
19 defendant's room. He realizes that the door is locked
20 but the light is on. And we know -- it's actually in
21 the text messages, we know that these are lights, in
22 the defendant's room, that if no one is moving around
23 in the room, they turn off. So Officer Patty believes
24 that there's somebody in the room. The door's locked,
25 but the light is on.

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1 He doesn't knock on the door. He simply
2 unlocks it himself and walks into the room and when he
3 walks into the room, he comes -- you can see in the
4 right portion of this picture, you can see the door
5 that Officer Patty entered through. And in the left
6 corner of the picture, in the far -- the far back wall,
7 you can see those file cabinets, which is the corner
8 that Michelle said they would spend their time in
9 together and that's exactly where Officer Patty found
10 them when he arrived there on June 3rd.

11 He sees them in the corner of that room. He
12 sees that they're really close together. The
13 defendant's back is to him and he's either crouching or
14 sitting. He sees that there's a female student facing
15 the defendant.

16 When the defendant gets up, turns and says,
17 "What can I do to help you" to Officer Patty, Officer
18 Patty realizes that that's Michelle Torres and they
19 were in that room. Nobody else was in that room except
20 for the two of them.

21 And we know that that's not the only time
22 that they use that corner. We look at a text message
23 from May 8th. It says -- this is from the defendant:
24 I can't look at our corner of the room without smiling.
25 And that's the corner -- and the thing about that

1 corner, if you look at, is that's probably the only
2 place in that room that you can't see if you look
3 through that window that's in that door.

4 Finally, we can also know that the defendant
5 and Michelle Torres -- that Michelle Torres performed
6 oral sex on the defendant some time prior to them going
7 to the Aliante because the defendant said that she did.

8 Look at the text from May 17th. This is a
9 message from Michelle: I just want to be -- I just
10 want it to be Wednesday already.

11 Message from the defendant: So do I.

12 Message from the defendant: I want you to
13 suck my cock again.

14 This is May 17th. Sometime between that
15 May 6th and May 19th date.

16 So we know, from all those pieces of
17 evidence, that the defendant committed that crime of
18 sexual conduct between employee and -- and pupil some
19 time prior to May 20th and that happened in his
20 classroom.

21 Moving on to Count 4, which is oral sex,
22 fellatio, at the Aliante on May 20th. Now, Count No. 4
23 and Count No. 3 are -- are out of order. Michelle
24 testified when they went to the Aliante she performed
25 oral sex on him first, which would be fellatio. He

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1 then performed oral sex on her, which would be
2 cunnilingus; but the counts are switched.

3 So Count 4, we'll start with that one, is
4 the -- is fellatio. So it's Michelle performing oral
5 sex on the defendant at the Aliante on May 20th.
6 Besides Michelle's testimony in regards to that, we
7 also have the -- the record of the room rental that the
8 defendant got. Remember, it shows him checking in the
9 day before and checking out the next day so that he can
10 have that entire morning and day, from about 7:00 to
11 about 2:00 with Michelle at the Aliante.

12 She testified they went straight to the room.
13 And when they got to the room, they talked a lit bit.
14 Then she performed oral sex on the defendant first.
15 She said that there were two beds in the room and that
16 all of the sexual conduct happened on that bed that was
17 closer to the window.

18 She remembered the defendant ejaculating. She
19 couldn't remember, at the Aliante, whether he
20 ejaculated on her stomach or on the bed, but she does
21 remember him ejaculating when she performed oral sex on
22 him.

23 He then performs oral sex on her, which is
24 Count 3, cunnilingus, at the Aliante. Michelle -- she
25 testified as to that.

1 Count 5, at the Aliante, is sexual
2 intercourse between Michelle and the defendant.
3 Michelle testified they had sexual intercourse after
4 they both performed oral sex. This was the defendant's
5 penis in her vagina. She remembered it being on that
6 same bed by the window. She remembered the defendant
7 didn't use a condom and that he ejaculated, she
8 couldn't remember, if it was on the bed or on her
9 stomach. After they had oral sex, and then after they
10 had ordinary sexual intercourse, they took a shower
11 together.

12 Michelle testified that they didn't have sex
13 in the shower; but then when they got out of the
14 shower, they had sexual intercourse again at the
15 Aliante; and that's Count 6, the second count of sexual
16 intercourse at the Aliante.

17 Now, there's an instruction -- we're talking
18 about all of these acts of -- all of these sex acts on
19 the same day, at the same location. There's an
20 important instruction that applies to that. It says,
21 where multiple -- this is Instruction No. 16: "Where
22 multiple sexual acts occur as a part of a single
23 criminal encounter, a defendant may be found guilty for
24 each separate or different act of sexual conduct."

25 So this is telling you that even though

1 Counts 3 and 4 and 5 -- I'm getting some feedback here,
2 I apologize. Even though Counts 3 and 4 and 5 and 6
3 all occur on the 20th, and all occur inside that hotel
4 room at the Aliante, they can each be charged as
5 separate counts because they are separate acts that
6 have occurred. We have an act of fellatio; an act of
7 cunnilingus; an act of sexual intercourse; and then a
8 shower, breaking that first act of sexual intercourse
9 up from the second act of sexual intercourse, which
10 occurs after the shower. So even though they're all
11 the same date, the same place, they can all be charged
12 as separate counts.

13 Moving on to Count No. 7, which is oral sex,
14 fellatio, that occurred in the classroom after the
15 Aliante but before the Cannery. Michelle testified
16 that some time again between the Aliante and the
17 Cannery she performed oral sex on the defendant.

18 Moving on to Count 9, which is oral sex at
19 the Cannery, that occurred on May 28th of 2015. They
20 went to the Cannery on the morning of the 28th. Again,
21 we have the room record showing the defendant renting
22 the room the day before and keep keeping it for the day
23 after so they can be there from 7:00 till about 2:00 on
24 the 28th. She performs oral sex on the defendant. She
25 says they get there, they started kissing when they

1 first got there, she then performs oral sex on the
2 defendant. It's on that same -- there's two beds in
3 the room, just like the Aliante. It's on the bed
4 that's closer to the window.

5 He, then, performs oral sex on her,
6 cunnilingus. That would be Count 10 at the Cannery.

7 Count 11 is, then, sexual intercourse at the
8 Cannery with the defendant's penis going inside
9 Michelle's vagina. She said that this time the
10 defendant had brought some condoms, but they didn't use
11 them. She, then, said that after they had sexual
12 intercourse that first time at the Cannery, they ate
13 some frozen fruit. And if you watch that video --
14 you're going to have that video that we played, you can
15 see the defendant, when they walk into the Cannery that
16 morning, you can see him carrying a bag that has that
17 frozen fruit in it. They, then, ate some of that
18 frozen fruit.

19 They, then, had sexual intercourse again,
20 which is Count 12. She did testify that the defendant
21 ejaculated both times and both times it was on her
22 stomach at the Cannery.

23 There's a couple of other instructions in
24 regards to sexual conduct between employee or pupil
25 that I want to talk about. Instruction No. 14, it says

1 "Consent is not a defense. Consent is not a defense to
2 sexual conduct with certain employees or volunteers of
3 school and pupil."

4 Clearly, Michelle consented to having sex
5 with the defendant. There's no doubt about that. The
6 State asked her that question. The defense asked her
7 that question. She consented to having sex with the
8 defendant; but consent is not a defense. That he is
9 the teacher and over 21; and that she is the student
10 and is under 18 and that they engaged in sexual conduct
11 is all that is required. Consent is not an issue.
12 Consent is not a defense in this case.

13 Another instruction, Instruction 18: "Where
14 a sexual conduct is alleged, the State is not required
15 to prove a specific date, but may prove a time frame
16 with which in the act took place."

17 So for those two counts of oral sex that
18 occur in the classroom where we don't have a specific
19 date but we have a time frame, that's sufficient. The
20 State can simply prove the time frame and that's
21 enough.

22 A couple more instructions in regards to
23 sexual conduct between employee and pupil. Force or --
24 this is Instruction 14: "Force or threat of force is
25 not required to find that someone committed the crime

1 of sexual conduct with certain employees or volunteers
2 of school and pupil."

3 There was some questions in regards to
4 whether or not Michelle felt that she was forced or
5 that she had to be there. That is not a defense. That
6 is not an element. Force is not something that has to
7 be proved to prove sexual conduct between employee and
8 pupil.

9 Simply that he is the teacher; she is the
10 minor and a student that had sexual conduct is
11 sufficient.

12 "Corroboration. There is no requirement that
13 the testimony of the victim" -- this is Instruction 15,
14 I'm sorry. "There is no requirement that the testimony
15 of a victim or -- of a sexual conduct crime be
16 corroborated, and her testimony standing alone, if
17 believed beyond a reasonable doubt, is sufficient to
18 sustain a verdict of guilty."

19 So while there is corroborating evidence in
20 this case, there's video, there's text messages,
21 there's records from hotel rooms, there's -- there's
22 school records. It's not necessary. Simply the
23 testimony of Michelle, if believed beyond a reasonable
24 doubt, is sufficient.

25 Clearly, the State has proven all five

1 elements of the crime of sexual conduct between
2 employee and pupil. That the defendant was the
3 teacher, that he was over 21, that he engaged in sexual
4 conduct with her, that she was 16 or 17, and that she
5 was a student at the school. That is what is required.
6 Consent is not a defense. Force is not required.
7 Those are the elements, from your instructions, that
8 are required to prove this crime.

9 Consequently, the defendant is guilty of all
10 ten counts of sexual conduct between employee --
11 certain employees or volunteers of school and pupil.

12 Let's go to the second charge, first-degree
13 kidnapping. And there's an instruction. This is
14 Instruction 11 that defines first-degree kidnapping.
15 It says: "In order to return a verdict of guilty, as to
16 first-degree kidnapping, you must find the State has
17 proven the following elements.

18 No. 1, that the defendant led or took or
19 enticed or carried away or detained a minor and; No. 2,
20 that he acted with one or more of the following
21 intents: A, with the intent to keep, imprison, or
22 confine her from her parents, guardians, or any other
23 person having lawful custody of the minor; or B, with
24 the intent to hold the minor to unlawful service; or C,
25 with the intent to perpetrate upon the person of the

1 minor any unlawful act."

2 Now, one thing I really want you to pay
3 attention to when you read that instruction is the
4 "ands" and the "ors." Where are there "ands" and where
5 are there "ors"? Because that's really important in
6 terming what are the element of first-degree kidnapping
7 in the case.

8 Let's break down what the elements are.

9 Number one, there's two elements to the crime
10 of first-degree kidnapping. Number one, you have to
11 lead or take or entice or carry away or detain a minor.
12 That is the first element to first-degree kidnapping.

13 And element number two is, you have to do
14 that with the intent to keep or imprison or confine the
15 minor from her parents, or hold the minor to unlawful
16 service, or C, perpetrate upon the person of the minor
17 any unlawful act.

18 Let's talk about the first element: Lead,
19 take, entice, or carry away or detain a minor. Notice
20 the "ors." If you go back to the instruction, you'll
21 see the "ors." The lead or took or enticed or carried
22 away or detain. Any one of those is sufficient and you
23 are not required to agree upon which one it is. If one
24 of you believe that it was "enticed," and one of you
25 believe that it was "took," that's okay. So long as

1 each of you -- all of you believe that it was at least
2 one of those listed in Count No. 1 -- or in element
3 No. 1.

4 So while the State only has to prove one of
5 those, we've actually proven three of them. We've
6 proven that the defendant led and took and enticed
7 Michelle to go to both the Cannery and to the Aliante.
8 He started this by creating this relationship with her.

9 Look at this text -- these set of texts from
10 May 3rd. So this is -- this is very early on. We know
11 before they've kissed because we know, as of May 5th,
12 they hadn't kissed yet.

13 This is from -- from the defendant: I love
14 just being in the same room as you. Catching your eye
15 across the room makes me smile.

16 And this is from Michelle: I am confused.

17 This is from the defendant: About?

18 From Michelle: What do you want from me?

19 From the defendant: I don't entirely know.

20 What do you want from me?

21 From Michelle: Sometimes it seems like you
22 genuinely care.

23 From the defendant: If what I said made you
24 uncomfortable or was confusing, I apologize. I was
25 just trying to say that I liked being around you. I

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1 like looking at you partly because you're so hot and
2 partly because when you look back you give this smile
3 that turns me on. I'm probably just digging myself a
4 bigger hole, so I'll shut up for now. Laugh out loud.

5 This is early on the defendant starts to
6 create this relationship. He created this plan. As
7 of -- as early as May 11th, he's creating this plan
8 about taking her to a hotel room.

9 This is a series of texts from the 11th.

10 Message from the defendant: I already have
11 an idea how to go about it. Just -- I just have to
12 figure out how to get you there.

13 This is from the defendant: I really miss
14 you.

15 And then from Michelle: How?

16 Asking how? What's -- what's your idea, how
17 are you going to get me there? And I miss you.

18 And then from the defendant: I get a hotel
19 room. We both take a day from school and enjoy each
20 other's company as long as we want. So as of May 11
21 he's already planning on taking her to a hotel room.

22 He actually goes and gets the hotel room.

23 This is from May 18th.

24 Message from the defendant: I have to leave
25 early tomorrow to check out -- to check into the hotel.

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1 From Michelle: Which hotel?

2 From the defendant: The Aliante.

3 From Michelle: That's kind of by me. Laugh
4 out loud.

5 From the defendant: I know. That was the
6 point, and it's basically the only thing by you.

7 He even texts her -- once he's there and
8 checks in, he texts her a photo of the room. He's
9 enticing her to come. This is where -- this is where
10 we're going to go.

11 He comes and he picks her up in his blue
12 Toyota. It's the defendant that comes and picks her
13 up, waiting until her parents are gone and all is

14 clear. Picking her up the next street over, not in
15 front of her house, making her come to the next street
16 over.

17 Look at these texts from the 20th -- and
18 that's small on that screen, I apologize.

19 I'm 15 minutes away. Okay --

20 This is from the defendant: I'm 15 minutes
21 away. Okay.

22 From Michelle: My mom should drop off my
23 sister at, like, 7:10 or 7:15.

24 This is from the defendant: That's when
25 she'll leave?

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1 This is the defendant asking her, that's when
2 your mom's going to be gone? Because he doesn't want
3 to come there and pick her up when her mom is there.

4 From Michelle: Yeah.

5 From the defendant -- or from Michelle:

6 Around that time.

7 From the defendant: Okay. I saw the steps
8 where you were talking about on Ranch House.

9 From Michelle: Okay. Cool. Now I'm just
10 waiting.

11 From the defendant: Just let me know when
12 you can leave.

13 From Michelle: I can leave.

14 From the defendant: Okay. I'll meet you at
15 the steps.

16 From the defendant: I miss you.

17 Now, notice the time gap here.

18 The "Okay. I'll meet you at the steps" is at
19 7:23 in the morning on the 20th. And the "I miss you"
20 is at 2:36. Exactly the time frame in which Michelle
21 would have gone to school and in which Michelle would
22 have returned home from school, more or less. She
23 didn't always come home at the same day [sic], but
24 basically the time in which school got out. The
25 defendant is waiting for her mom to be gone so that he

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1 can pick her up in his car so that he can drive her to
2 a hotel room so that he can --

3 I'll move back, Your Honor, I apologize.

4 **THE COURT:** Okay.

5 **MR. MERBACK:** So that he can drive her --

6 I was just moving forward because of the screen,
7 so I apologize.

8 **THE COURT:** That's all right.

9 **MR. MERBACK:** So he is picking her up in his
10 car. He is driving her to a hotel that he has rented.
11 He is purposefully coming at a time when her mom is not
12 there. When her mom won't know where she's going.
13 When her mom won't see him. He is driving her to that

14 hotel room where he is spending the entire day with her
15 and then he is driving her back to her house and
16 dropping her off a street over so that it looks like
17 she's coming home from school. This is his plan. He
18 proposed the hotel room. He went and rented the hotel
19 room. He came and picked her up. He figured out how
20 to do this.

21 Then, on May 28th, he does the same thing.

22 Permission to move forward just for this one,
23 Your Honor.

24 **THE COURT:** Go ahead.

25 **MR. MERBACK:** Thank you.

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1 This is May 28th when they go to the Cannery.

2 This is from Michelle: Tell me when you're
3 almost there.

4 From the defendant: Almost there.

5 From Michelle: Laugh out --

6 From the defendant -- I'm sorry -- laugh out
7 loud.

8 From the defendant: I'm by the Tropical
9 Smoothie just waiting.

10 He is -- he is so afraid of her mother or
11 father catching him that he is waiting at a business
12 some distance from their home until she gives him the
13 text saying, "Mom and dad aren't going to be there,

14 come and get me." He's sitting at this business
15 waiting, so that he doesn't get caught picking this
16 girl up.

17 Message from Michelle: Laugh out loud.

18 Okay. I'm waiting too.

19 Message from the defendant: Sounds good.

20 Message from Michelle: I can leave.

21 So here it is. Mom and dad aren't there.

22 I'm available.

23 Message -- Message from the defendant: Okay.

24 I'll be at the steps.

25 Message from Michelle: Okay.

1 Message from the defendant: I miss you.

2 Notice the gap again. It's so close to the
3 same time. You're going to have these text messages
4 when you go back. The "Okay. I'll be at the steps" is
5 7:27. Almost the same time he picked her up for the
6 Aliante. And the text "I miss you" is at 14:19, right
7 around -- 2:19, right around the time school gets out,
8 right around the time he dropped her off last time.

9 Ladies and gentlemen, he is her teacher. He
10 thinks of the hotel. He plans how to get there. He
11 goes and buys the room. He comes and picks her up. He
12 makes sure that her parents aren't there. He makes
13 sure her parents don't know anything about him. He

14 drop -- he picks her up around the time school starts
15 and he drops her off right around the time that school
16 gets out. The defendant led Michelle to the Aliante
17 and the Cannery Casino. He took Michelle at those
18 places and he enticed her to go those places.

19 Let's go to element No. 2 -- I'm sorry,
20 element No. 2. So we have to -- the State has proven
21 that he led or took or enticed a minor, Michelle, to go
22 with him.

23 The second thing we have to prove for
24 first-degree kidnapping is the intent with which he did
25 it. That he had the intent to, A, keep, imprison, or

1 confine the minor from her parents; B, hold the minor
2 to unlawful service; or, C perpetrate upon the person
3 of the minor any unlawful act.

4 Again, notice the "ors" that -- No. A "or" --
5 or letter A "or", letter B "or," letter C "or," it only
6 has to be one of those three. Obviously, in this case,
7 it's not A. The State is not arguing to you that the
8 defendant kept her imprisoned or confined Michelle.
9 That's not what happened in this case.

10 And it's not B. The State's not arguing to
11 you that he held the minor for unlawful service. That
12 didn't happen either.

13 It's C, he -- he led, took, and enticed her

14 away with the intent to perpetrate upon the person of
15 the minor, upon Michelle, any unlawful act. He took
16 her to the Cannery Hotel and Casino so that he -- with
17 the intent to commit an unlawful act.

18 Now, the question becomes: How do we know
19 when the defendant led and took and enticed Michelle to
20 those hotels, how do we know what his intent was? And
21 there there's an instruction that tells us how we know
22 intent.

23 "The intent with which an act is done is
24 shown by the facts and circumstances surrounding the
25 case." You can know the defendant's intent by looking

1 at what happened. You can look at what he did, you can
2 look at what he said, and that will help you to know
3 what his intent was.

4 When the defendant got her to those hotels,
5 both of them, once he led, enticed, and took her there,
6 he committed unlawful acts upon her. Having oral sex,
7 having fellatio and cunnilingus, having ordinary sexual
8 intercourse. Those are unlawful acts. He is a teacher
9 over 21. She is a minor, student at his school. Those
10 are unlawful acts. We've already talked about why
11 they're unlawful acts. That was his intent. That's
12 what he did when he got there. That's how you know his
13 intent.

14 You can also -- you can also know his intent
15 because he told you. He tells you what his intent is.
16 Look at these texts from May 15th.

17 Message from Michelle: It's really big.

18 Message from the defendant: Can I tell you a
19 secret?

20 Message from Michelle: Yes.

21 Message from the defendant: I wasn't even
22 completely hard.

23 Notice that these -- these are May 15th.

24 This is prior to the Aliante on the 20th, prior to the
25 Cannery on the 28th. The defendant is telling you what

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1 his intent is when he gets her those places.

2 Message from the defendant: I wasn't even
3 completely hard.

4 Message from Michelle: I'm going to die. Ha
5 ha.

6 Message from the defendant: I am serious.
7 And no, you're not. We'll go nice and slow that time.

8 Message from Michelle: You make me so wet.

9 Message from the defendant: You'll be on
10 to -- he intended to -- it looks like to say "top"
11 there -- so you can see yourself -- so you ease
12 yourself on me.

13 Message from the -- from the defendant: I
14 can't wait to taste you.

15 He's telling you, on May 15th, what his
16 intent is on May 20th and on May 28th.

17 A couple other instructions in regards to
18 first-degree kidnapping. Just like with sexual conduct
19 between -- between the employee and pupil, consent is
20 not a defense. Michelle consented. We have
21 acknowledged that from the beginning. She told you she
22 did. She wanted to be there. She consented. But
23 consent is not a defense. That's what the law tells
24 you. Consent of a minor -- this is one of your -- this
25 is Instruction No. 11: "Consent of a minor under the

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1 age of 18 years is not a defense to kidnapping in the
2 first degree. That the defendant took, led, and
3 enticed Michelle to come with him to the Aliante and
4 the Cannery with the intent to commit an unlawful act,"
5 and remember, the unlawful act is having sexual conduct
6 with a student who's a minor, is enough. That's what
7 the State has to prove for first-degree kidnapping.
8 Her consent is not an issue and it's not a defense in
9 this case.

10 One other part of Instruction 11, it says:
11 "Force or threat of force is not an element of
12 first-degree kidnapping." Just like with consent,
13 just -- Michelle consented. She also was not forced.
14 He did not force her to go with him. She indicated to
15 you that she felt she could leave at any time. But
16 force is not required. Force or threat of force is not
17 an element of first-degree kidnapping. The State does
18 not have to prove force. It's not an element of the
19 offense.

20 The State has met both of the elements as to
21 first-degree kidnapping. That the defendant led, took,
22 and enticed Michelle, a minor, and that he did it with
23 the intent to commit an unlawful act upon her having
24 sexual conduct with her in those hotel rooms.

25 Let's talk a little bit more about

1 kidnapping. As was discussed in jury selection, many
2 people probably have a preconceived notion about what
3 kidnapping is. What do you think of when you hear the
4 word "kidnapping?" Kidnapping is not duct taping
5 someone and throwing them in the back of a van.
6 That -- there are portions of the statute that do allow
7 for that type of kidnapping.

8 But the portion of the kidnapping statute
9 that is here, that we are dealing with in this case,
10 does not require that. Doesn't require the TV version
11 of what we think of as kidnapping, the preconceived
12 idea of what kidnapping is.

13 Kidnapping is two elements. First-degree
14 kidnapping is leading or kicking or enticing or
15 carrying away or detaining a minor; and it's doing that
16 with the intent to have one of these three intents.
17 And we talked about it's intent C in this case,
18 "Perpetrate upon the person of the minor any unlawful
19 act." That is kidnapping. That is what the law tells
20 you. And that is the law that the Court has given you
21 and the law you are to follow. Follow the
22 instructions -- follow the law as contained in your
23 jury instructions.

24 Just a couple more instructions and I'll
25 finish up here. This is -- this is Instruction No. 17.

1 It says: "For both sexual conduct between certain
2 employees or volunteers of school and pupil and
3 first-degree kidnapping, there is no requirement that
4 the defendant knew that the minor was under the age of
5 18." Proof that the minor was under the age of 18 at
6 the time is sufficient, so whether the defendant knew
7 that Michelle was 17 years old is not a defense.
8 Simple -- simply proof that she was under 18, that she
9 was 17 years old, is sufficient. It doesn't matter
10 whether the defendant knew or didn't know that. The
11 fact that he is a teacher and over 21, the fact that
12 she is a student and a minor and they engaged in sexual
13 conduct, and that he led or -- led, enticed, and took
14 her to those casinos with that intent is sufficient.

15 Last instruction I want to talk about.
16 "Although you are to consider only the evidence in the
17 case in reaching a verdict, you must bring to the
18 consideration of the evidence your everyday common
19 sense and judgment as reasonable men and women."

20 This instruction tells you to use your common
21 sense. In other words, consider all of this evidence
22 in light of what you know to be true and realistic and
23 apply it to the law. Follow the law as contained in
24 your jury instructions. Think about the testimony of
25 Michelle and her parents, the testimony of the officers

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1 and the detectives, the testimony of the principal, the
2 text messages, the video, the cell phones, the other
3 evidence that's been presented in this case. Follow
4 the law as given to you in your instructions, use your
5 common sense, and apply the evidence to that law.

6 And if you do this, there is only one
7 possible verdict for you to reach. And that is the
8 defendant is guilty of: Count 1, sexual conduct
9 between certain employees or volunteers of school and
10 pupil, and that is for oral sex, fellatio, that
11 occurred in the classroom between May 6th and May 19th;

12 Count 2, first-degree kidnapping for taking
13 Michelle Torres to the Aliante on May 20th;

14 Count 3, sexual conduct between certain
15 employees and pupils, that is for oral sex,
16 cunnilingus, at the Aliante on May 20th;

17 Count 4, sexual conduct between certain
18 employees or pupils, that's oral sex, fellatio, at the
19 Aliante;

20 Count 5, sexual conduct for sexual
21 intercourse -- Count 5 and Count 6 are sexual conduct
22 for sexual intercourse at the Aliante on the 20th;

23 Count 7, which is sexual conduct, oral sex.
24 That's the oral sex that they had some time between
25 May 21st and 27th between the time of the Aliante and

1 the Cannery;

2 Count 8, first-degree kidnapping for taking
3 Michelle to the Cannery Hotel and Casino on the 28th;

4 Count 9, sexual conduct, or oral sex,
5 fellatio, at the Cannery;

6 Count 10, sexual conduct, or oral sex,
7 cunnilingus, at the Cannery;

8 And Count 11 and 12 for the two acts of
9 sexual intercourse at the Cannery on May 28th.

10 Consequently, we ask you to return a verdict
11 of guilty as to all 12 counts, thank you.

12 **THE COURT:** All right. Thank you, Counsel.

13 Are we all doing okay with the bathroom, or
14 do we need to take a bathroom break? I see one hand
15 for a bathroom break.

16 All right. Let's -- if we can, try to make this
17 as quick as possible, maybe ten minutes. See if we can
18 get back about 4:20 and we'll, at that time, be pleased to
19 hear from the defense.

20 Again, at this point in time, just as a
21 reminder, so even though we've finished the evidence
22 and we've started the arguments, do not talk to each
23 other about the case. Do not talk with anyone else
24 about the case or anyone who has anything to do with
25 it. Do not let anyone talk to you about the case or

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1 about anyone who has anything to do with it. Do not
2 read any news stories or articles or listen to any
3 radio or television reports about the case. Do not
4 visit the scene of any events mentioned during the
5 trial or undertake any investigation or research on
6 your own. And still, at this point, do not form or
7 express any opinion on any subject connected with this
8 case until it's finally submitted to you. All right.

9 **THE MARSHAL:** All rise. Jury exiting.

10 *(Jury exiting.)*

11 **THE COURT:** Okay. Hopefully they'll be
12 quick, and we'll get started with yours.

13 *(Recess was taken from 4:13 p.m. to 4:22*
14 *p.m.)*

15 **THE MARSHAL:** Remain seated. Court 20 is
16 back in session.

17 **THE COURT:** We're not back in session until
18 Amber says we're back in session.

19 All right. Shall we go ahead and bring the
20 jury on in?

21 **THE MARSHAL:** All rise. Jury entering.

22 *(Jury entering.)*

23 **THE COURT:** All right. Let the record
24 reflect the presence of the defendant, the presence of
25 the attorneys for both sides.

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1 Does counsel stipulate to the presence of the
2 jury?

3 MS. KOLLINS: Yes, Your Honor.

4 MR. GUROVICH: Yes.

5 THE COURT: Okay. All right. Thank you,
6 ladies and gentlemen, for getting back so quick.

7 We'll now be pleased to hear from the
8 defense.

9 MR. GUROVICH: Thank you, Your Honor.

10

11 DEFENSE'S CLOSING STATEMENT

12 MR. GUROVICH: Good afternoon. Well, let me
13 start by saying that the teacher/student sex
14 accusation, I think we all know that it happened. It's
15 clear as day. We have testimony. We saw videos. We
16 saw photographs. We looked at the text messages. It
17 is what it is. Okay? Jason Lofthouse had sex with
18 Michelle Torres. Okay? That's it. There's no
19 argument there.

20 However, there's a big argument as to whether
21 that relationship can be characterized as kidnapping.
22 It cannot. I'll explain why.

23 In -- one second. If you look at Jury
24 Instruction No. 11, if you guys open up to that page,
25 you will see that it's divided into two parts

1 basically. The first part talks about what a defendant
2 did; and the second part gives three possible intents
3 that a defendant may have had while he was doing part
4 No. 1.

5 So let's take a look at the intent part. He
6 had to have acted with one or more of the following
7 intents: A, with the intent to keep, imprison, or
8 confine her from her parents; B, with the intent to
9 hold a minor to unlawful service; or C, with the intent
10 to perpetrate upon the person of the minor any unlawful
11 act.

12 Now, I know that the prosecution has told you
13 that they're not proceeding on A and B. They're only
14 looking at C. However, I would like to address the
15 first part of that, A, just so we're all on the same
16 page, the intent to keep, imprison, or confine from
17 parents.

18 I mean, all of the -- all of the acts
19 occurred during school hours. What does that mean?
20 That means that the parents could not have had any
21 expectation to be with Michelle during those hours. So
22 whether she was at school or whether she was with
23 Mr. Lofthouse did not encroach on their time with her
24 in any way.

25 Likewise, the parents weren't expected to be

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1 in Michelle's school either. She was -- they were
2 really hands off. If you -- if you remember the dad
3 and the mom testifying, the dad -- the only thing --
4 the only connection to the school was dropping and
5 maybe sometimes picking up somebody from the school,
6 Michelle. The mom came into the school for tennis, I
7 believe, singing, and cheerleading. That's it. I
8 doubt that either one of them knew Mr. Lofthouse or any
9 of the other teachers.

10 So to expect the parents to be in school
11 during school hours is also not an expectation. In
12 other words, because everything happened during school
13 time, during school hours, there couldn't have had --
14 couldn't have been any intent to deprive the parents of
15 her company because they just wouldn't have her
16 company. Period.

17 Also, Michelle told us that she did not
18 inform her parents every time that she hung out with
19 her friends. And back then, she had friends -- some of
20 her friends -- who were adults, who were over 18. And
21 she wouldn't necessarily tell her parents.

22 Now, the third point -- the third intent, let
23 me put it that way, is the intent to perpetrate upon
24 the person of the minor any unlawful act. And I'd like
25 you guys to take a look at the word "perpetrate" and

1 the phrase "perpetrate upon the person of the minor." I
2 mean, to me, that implies some type of control. A
3 control exerted over the minor. "Perpetrate upon the
4 purpose of the minor any unlawful act." To me, that
5 seems control.

6 Now, I don't think we even get there. We
7 don't even get to the intents, to intent A, B, or C.
8 You know why? Because we do not get past the first
9 point, the first section of the kidnapping charge. And
10 that first section is the act. What did Mr. Lofthouse
11 do?

12 He led -- allegedly -- he led, took, enticed,
13 or carried away or detained. And the prosecution wants
14 you to focus on led or took or enticed. Those three.
15 But think about it. All -- all of those, all five of
16 those, they imply control or dominion over somebody;
17 lead, take, entice, carry away, or detain. That's
18 control. That is absolute control. It doesn't have to
19 be force. It doesn't have to be threat of force.
20 That's not what the statute talks about.

21 But when it says that somebody took or
22 carried away, or enticed, that implies some type of
23 control, control that is absolutely absent in this
24 case. There is no control over Michelle.
25 Mr. Lofthouse, Jason Lofthouse, exerted zero control

1 over Michelle. Zero. She didn't feel forced. She
2 didn't feel confined, trapped, unable to leave, or not
3 in control. She felt she was in control.

4 He did not use his influence as a teacher.
5 He made no promises to her. If you -- if you can
6 remember her testimony, she said, He made no promises
7 to me. He gave me no gifts, no changing grades. In
8 fact, she did not need to get a better grade, she said.

9 She also felt free to leave at any point in
10 time. She had her cell phone with her. She could have
11 called anybody, her friends, her parents and she also
12 didn't feel that Jason Lofthouse kept her from her
13 parents as well.

14 Both of them equally initiated all sexual
15 encounters. And both of them equally selected the type
16 of sex and the positions. That's what she said. Look,
17 whatever you -- whatever you think of Jason Lofthouse,
18 okay? Whatever you think of him and -- and what he
19 did, you have to agree that their relationship was
20 mutual. There was absolutely no enticement or taking
21 or leading away.

22 The -- the State wants you to believe that
23 when you look at the text messages, they somehow show
24 that Jason Lofthouse enticed Michelle into this
25 relationship. And they start three, four, five days

1 into the actual messages.

2 But if you look at the messages right off the
3 bat, which start on the first of May, there's a message
4 to Jason Lofthouse from Michelle. It says: Hi.

5 Message from Jason: Well, hello. Fancy
6 meeting you here. And he continues: Well, I like that
7 you're so direct. It's very attractive, sexy.

8 She says to him: Now I like how you think.
9 Laughing out loud.

10 They're flirting. Whatever you think of this
11 relationship, whether you feel it's right or wrong,
12 because it's a teacher/student, it's immoral, whatever
13 it is. Okay? Take a step back and just look at it,
14 look at this interaction. This is flirting. That's
15 all it is. It's flirting. Whether it's right or
16 not -- or wrong. It is simple flirting.

17 On May 2nd she says to him: I want to be --
18 I'm sorry. He says to her: I want to be close to you
19 too. There's no message before that. I'm assuming she
20 says she wants to be close to him that's why he
21 responded, I want to be close to you too.

22 And she responds: I would like that.

23 Okay? Where is the enticement? I -- I
24 don't -- honestly, I don't see it.

25 If you -- if you go into -- into more of the

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1 messages on -- on 5/6, she tells him: I can't wait to
2 do it again, with a smiley face. And again she says:
3 I wish we could do it more often.

4 On -- on 5/15, she says -- and I think we --
5 we actually read that part of it in the prosecution
6 closing: You make me so wet, she says to him. I can't
7 wait either. She says, you're sexy, she calls him. I
8 mean, is this a person that's being enticed into
9 something?

10 I think this is -- this is mutual. This is
11 mutual attraction. They like each other. Whether it's
12 right or wrong. Okay? Whether we like it or not, we
13 cannot characterize this as enticement. It just is
14 not.

15 On 5/16 he says: What are you in the mood
16 for?

17 She answers: For you. With a smiley face.

18 She says to him: I miss your mouth.

19 He asks her: Is there anything -- on 5/17 --
20 is there in particular you'd like me to wear on
21 Wednesday?

22 Her response: Nothing. Ha ha.

23 Okay? Is this a person that's being enticed?
24 Is being led, taken, carried away? This is a mutual
25 relationship. Okay?

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1 Now, the law says that this relationship is
2 forbidden between a teacher and a student. Fine. But
3 is this kidnapping? Does this mean that Mr. Lofthouse
4 somehow led or took or enticed her?

5 There's an interesting, interesting message
6 on 5/12 at 18:03 and 59 seconds. From Michelle to
7 Jason and it says: This will be so much easier if I
8 drove.

9 Okay? Now, if we -- if we assume that Jason
10 Lofthouse took her to the -- to the hotel, led her
11 away, enticed her, does this sound like a message from
12 somebody that was -- that was enticed or led away or
13 taken? It would be so much easier if I drove, she
14 says. They both got in the car and they went to the
15 hotel twice. Both of them. It's not that he took her
16 in his car. It's that they made arrangements to drive
17 there together. That's the difference.

18 Michelle testified that she was the one that
19 asked for Jason's number first. She initiated that.
20 Not he. Michelle did. She asked for his number. They
21 were both flirting at the same time. I mean, if you
22 read the -- the messages, and I -- I really suggest
23 that you guys do. There are a lot of them, I know; but
24 if you go through them, you will see what I mean. They
25 were just mutual feelings developing. This was a

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1 relationship. They were flirting. They liked each
2 other. Okay? They both discussed getting a hotel;
3 both planned on what to do, how to get there. She said
4 she felt it was absolutely mutual.

5 Now, today, we're almost a year later. It's
6 been a year since this occurred. Okay? She's an
7 adult. She's over 18. If she felt that she was
8 somehow enticed, I mean, you know, look, this happened
9 about a year ago. I'm sure she thought back about it
10 many times. Thinking back about it, reliving it in her
11 mind. If she would have felt that he somehow enticed
12 her, again, led her away, exerted some form of control
13 or dominance over her. It's been a year. She's an
14 adult. She reflected back on this, I'm sure. She
15 would have told us. But that's not her understanding.
16 That's not how she feels.

17 She believes the same thing she believed
18 then. That this is mutual.

19 She told us she's not emotionally vested, if
20 you recall her testimony. She was just attracted to
21 him. And she said that if he were just a guy at the
22 mall or working at Starbucks, she'd probably have a
23 relationship with him anyway because she just liked
24 him. She was attracted to him.

25 Look, we can -- we can -- strike that.

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1 The prosecution can characterize these text
2 messages whichever way they want. Okay? They can tell
3 you that it's enticement, it's this and that. But, you
4 know the old saying, you know, if it looks like a duck
5 and walks like a duck and quacks like a duck. It's a
6 duck. It's not a chicken. Okay? It's a duck. This
7 is flirting. That's all it is. It's flirting. It
8 shouldn't have happened. He's a teacher. She's a
9 student. Should never have happened; but this is not
10 kidnapping. This is flirting. This is not enticement.
11 He never exercised any control or dominance over her.

12 Now, the prosecution wants you to believe
13 that when he sent her a photograph of the room, that
14 was -- of the hotel room -- that was somehow
15 enticement. I mean, that was a hell of a room, I got
16 to say, to entice somebody to have sex with them --
17 with you, you know? To send them a photograph of -- of
18 a hotel room, that's somehow enticing them to have sex
19 with you? I think that's silly. Honestly.

20 And it's Michelle that actually tells Jason
21 where to pick her up. She tells him, you know, there
22 are these steps et cetera, et cetera. It's not his
23 idea; it's hers. She's the one that tells him where.

24 And I completely agree with the State.
25 Michelle clearly consented to have sex with Jason

1 Lofthouse. Clearly consented.

2 Again, going back to the kidnapping statute,
3 the first part of it, "Defendant led or took or enticed
4 or carried away or detained a minor." He did not do
5 that. They admitted it themselves. They said Michelle
6 clearly consented to have sex with Jason. The first
7 part of the statute is not met. There's no evidence to
8 support that. Absolutely not.

9 Okay. So what's the next argument by the
10 State? They're going to say -- and they're right about
11 that, consent of a minor is not a defense to
12 kidnapping. Okay? She was a minor. She was under 18.
13 She cannot legally consent to be kidnapped. But the
14 interesting part is that, in order to -- in order to
15 even begin to discuss whether there's a defense to a
16 charge, you need to first establish the charge. That
17 has not been done here.

18 They need to first prove that she was
19 kidnapped. They need to prove Part I and Part II of
20 the kidnapping statute, of your Jury Instruction 11.
21 And if they prove that, then the next question is,
22 well, if she was kidnapped, is there a defense to that?
23 And then you get to this issue, can a minor consent to
24 being kidnapped? And a minor can't. That's the law.

25 But what I'm telling you is, they have not

1 established that a crime has been committed here in
2 terms of kidnapping. There was no kidnapping. That's
3 why we don't even get to the question of whether there
4 is a defense, or lack of a defense, to kidnapping. The
5 State has not established the necessary elements of
6 kidnapping.

7 You guys are going to go back into the jury
8 room to deliberate, and what I'd like you to do is --
9 as one of the things that you -- that you do in
10 addition to looking at the text messages and everything
11 else, look at the video. Look at the last -- the last
12 piece of evidence offered in this case, the video.
13 Does Michelle look like somebody who was kidnapped,
14 pursuant to Jury Instruction No. 11? She's smiling.
15 She's laughing. She -- she looks carefree. She's
16 kissing him. She gets up on her tippy toes three or
17 four times. Does that look like somebody who was
18 kidnapped?

19 Look, again, whatever you guys think of what
20 Jason Lofthouse did, okay? Whether it's moral,
21 immoral, in your mind okay. He was married. He
22 cheated on his wife. Okay? I agree with you. But
23 that does not mean that he kidnapped Michelle,
24 according to the law as stated in your jury
25 instructions. It just doesn't. He did the sex

1 teacher -- teacher and student. Not the kidnapping.
2 You need to -- you need to return a verdict of guilty
3 or not guilty in this case. Okay? And you need to be
4 sure, beyond a reasonable doubt, whether all of the
5 elements have been met in each -- in each of the
6 counts.

7 What I'm telling you is, I'm not telling you
8 that there's reasonable doubt that there was
9 kidnapping. I'm telling you that there is no doubt
10 that there wasn't the kidnapping. There was no
11 kidnapping here. Period. This was consensual, this
12 was mutual, mutually planned, mutually executed. Read
13 the text messages. Read all of them. And watch the
14 video.

15 Thank you very much.

16 **THE COURT:** All right. Ladies and gentlemen,
17 as I expressed before, the State has the burden to
18 prove all the elements of the crime beyond a reasonable
19 doubt. And for that reason, the State gets to go first
20 in closing arguments and also gets to go last in
21 closing arguments.

22 At this time, we'll be pleased to hear the
23 State's rebuttal closing argument.

24 **MS. KOLLINS:** Thank you very much, Your
25 Honor.

STATE'S REBUTTAL CLOSING STATEMENT

MS. KOLLINS: Good afternoon, again. I know it's been a long few days. I will just take just a few minutes of your time again.

On behalf of my co-counsel, Mr. Merback, and myself on behalf of the Clark County District Attorney's Office, I want to thank you again for your time.

I guess what we need to start talking about in this case is the law in the United States, and particularly in the state of Nevada, carves out special protections for people under the age of 18. We do it all the time. People under the age of 18 can't drink. They can't smoke. They can't join the military. They can't make their own medical decisions without their parents. There's lot of things that we, as a society, say that 18 year olds can't do. There's certain employment they can't have. They can't sell liquor. They can't go to adult entertainment. There are a lot of things, in the law, that are specifically designed to protect those under 18, and there's reasons for that. Because people under 18 don't always make the best decisions. They don't always know what the consequences are. They don't always know when they're being lured or talked to in a manner. They don't

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1 always know that. And that's why we give them special
2 consideration, and we reposit with the adults the
3 responsibility not to cross those boundaries.

4 It's a lot talk about the kidnapping statute
5 today, and that portion of the kidnapping statute was
6 designed by our legislature and it's been in effect
7 since the '40s, in one fashion or another, to protect
8 minors in certain situations. We have told you --

9 Could you turn that on for me?

10 **MR. MERBACK:** Can you switch it?

11 **MS. KOLLINS:** Can you switch that on for me?

12 Thanks.

13 It was drafted and it was enacted --

14 Mr. Merback's going to pull that up for me in a
15 second.

16 It was drafted and enacted to protect those
17 under 18, and for good reason. I agree -- and I'm only
18 going -- I'm only going to talk to you about enticement,
19 not lead, because I think Mr. Merback did a fine job of
20 explaining to you how Mr. Lofthouse led this girl to
21 behavior.

22 Defense counsel wants you to believe that we
23 need to have dominion and control and that presupposes
24 some kind of physical control or mental control or
25 physical dominion. That is not required in the

1 statute. And, again, this statute was designed to
2 protect those under the age of 18.

3 And here's the circumstance: If a stranger
4 pulls up to a 16 or a 17-year-old girl or boy and says,
5 "Hey, I know where a party is. I know where there's beer.
6 I know where there's a band. Do you want to go with me?"
7 And the 16 or 17 year old gets in the van with the person;
8 they don't know who they are, but they're 16 or 17, and
9 they make the poor decision to consent to that conduct.
10 And then that person takes them somewhere and forces them
11 to commit a crime; say, stealing a car. If it weren't for
12 this statute and the way it's drafted, that person that
13 lured and enticed that kid into the car, with beer and a
14 notion of a party, would go unpunished.

15 I want you to look at the whole first-degree
16 kidnapping statute, and you'll understand -- and it's your
17 Instruction 11. You'll understand how this was designed
18 to specifically apply to minors. As to -- we'll leave
19 Section 1 away -- alone for a second.

20 But as to A, with the intent to keep,
21 imprison, or confine from their parents, guardians, or
22 others having lawful custody. This was drafted in the
23 event that a child was kidnapped but no crime was
24 perpetrated upon them. Someone was taken from their
25 parents, not amounting to a custodial parent situation,