


CLERK OF THE COURT

1 **INFM**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JENNIFER CLEMONS
6 Chief Deputy District Attorney
7 Nevada Bar #10081
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 I.A. 11/10/16
13 10:00 AM
14 G. MODAFERRI

15 THE STATE OF NEVADA,
16
17 Plaintiff,

CASE NO: C-16-319125-1

18 -vs-

DEPT NO: XIX

19 WILLIS TYRONE BROWN,
20 #7034656

21 Defendant.

INFORMATION

22 STATE OF NEVADA }
23 COUNTY OF CLARK } ss.

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

26 That WILLIS TYRONE BROWN, the Defendant(s) above named, having committed
27 the crimes of **LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category A
28 Felony - NRS 201.230 - NOC 50975) and LEWDNESS WITH A CHILD UNDER THE
29 AGE OF 16 (Category B Felony - NRS 201.230 - NOC 58747)**, on or between January 1,
30 2016 and August 1, 2016, within the County of Clark, State of Nevada, contrary to the form,
31 force and effect of statutes in such cases made and provided, and against the peace and dignity
32 of the State of Nevada,

33 COUNT 1 - LEWDNESS WITH A CHILD UNDER THE AGE OF 16

34 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
35 or with the body, or any part or member thereof, of a child, to-wit: J.L., a child under the age

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1 of 16 years, by touching and/or rubbing the lower back and/or buttocks of the said J.L., with
2 the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the
3 Defendant, or J.L.

4 COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 16

5 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
6 or with the body, or any part or member thereof, of a child, to-wit: J.L., a child under the age
7 of 16 years, by touching and/or rubbing the lower back and/or buttocks of the said J.L., with
8 the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the
9 Defendant, or J.L.

10 COUNT 3 - LEWDNESS WITH A CHILD UNDER THE AGE OF 16

11 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
12 or with the body, or any part or member thereof, of a child, to-wit: A.W., a child under the
13 age of 16 years, by touching and/or rubbing and/or stroking the upper leg of the said A.W.,
14 with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of
15 the Defendant, or A.W.

16 COUNT 4 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

17 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
18 or with the body, or any part or member thereof, of a child, to-wit: H.H., a child under the age
19 of 14 years, by touching and/or rubbing and/or fondling the thigh(s) and/or upper leg and/or
20 side of the stomach, breasts and/or chest of the said H.H., with the intent of arousing, appealing
21 to, or gratifying the lust, passions, or sexual desires of the Defendant, or H.H.

22 COUNT 5 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

23 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
24 or with the body, or any part or member thereof, of a child, to-wit: H.H., a child under the age
25 of 14 years, by touching and/or rubbing and/or fondling the thigh(s) and/or upper leg and/or


26 ///

27 ///

side of the stomach, breasts and/or chest of the said H.H., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the Defendant, or H.H.

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

BY


JENNIFER CLEMONS
Chief Deputy District Attorney
Nevada Bar #10081

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

<u>NAME</u>	<u>ADDRESS</u>
APICLLA, ALISON	3468 Famiglia Dr LVN 89141
APICLLA, JOEY	3468 Famiglia Dr LVN 89141
DEESE, MARIAN	6170 West Levi Ave LVN 89141
DETWEILER, WALTER	LVMPD #5460
HARRIS, MARILYN	Address Unk
L.J.	C/O CCDA
MARTINEZ, ARTURO	LVMPD #7775
SAMPLES, LAWRENCE	LVMPD #9354
THERIOUS, M	CAC
W.A.	C/O CCDA
WILLIS, ERICK	312 Magnolia Arbor St LVN 89144
WILLIS, TINA	312 Magnolia Arbor St LVN 89144

16F13242X /jm/SVU
LVMPD EV#160811237
(TK5)


CLERK OF THE COURT

1 **RET**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JENNIFER CLEMONS
6 Chief Deputy District Attorney
7 Nevada Bar #010081
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 State of Nevada

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 In the Matter of Application,

10 of

11 WILLIS TYRONE BROWN,
12 #7034656

13 for a Writ of Habeas Corpus.

CASE NO: C-16-319125-1

DEPT NO: XIX

14 **STATE'S RETURN TO WRIT OF HABEAS CORPUS**

15 DATE OF HEARING: MARCH 20, 2017
16 TIME OF HEARING: 8:30 A.M.

17 COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent,
18 through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through
19 JENNIFER CLEMONS, Chief Deputy District Attorney, in obedience to a writ of habeas
20 corpus issued out of and under the seal of the above-entitled Court on the 19th day of January
21 2017, and made returnable on the 20th day of March, 2017, at the hour of 8:30 o'clock A.M.,
22 before the above-entitled Court, and states as follows:

23 1. Respondent admits the allegations of Paragraph 1 of the Petitioner's Petition for
24 Writ of Habeas Corpus.

25 2. Respondent denies the allegations of Paragraph 3 of the Petitioner's Petition for
26 Writ of Habeas Corpus.

27 3. Paragraphs 2, 4, 5, and 6, do not require admission or denial.

28 ///

1 4. The Petitioner is in the constructive custody of JOE LOMBARDO, Clark
2 County Sheriff, Respondent herein, pursuant to a Criminal Information, a copy of which is
3 attached hereto as Exhibit 1 and incorporated by reference herein.

4 Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the
5 Petition be dismissed.

6 DATED this 3rd day of March, 2017.

7 Respectfully submitted,

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

10 BY /s/ JENNIFER CLEMONS
11 JENNIFER CLEMONS
12 Chief Deputy District Attorney
 Nevada Bar #010081

13
14 POINTS AND AUTHORITIES

15 STATEMENT OF FACTS PERTINENT TO THIS RETURN

16 Defendant, WILLIS BROWN, is charged by way of Criminal Information with the
17 crimes of Lewdness with a Child Under the Age of 14 (Category A Felony – NRS 201.230)
18 and Lewdness with a Child Under the Age of 16 (Category B Felony – NRS 201.230). The
19 crimes occurred on or between January 1, 2016 and August 1, 2016. The victims are A.W.,
20 J.L., and H.H. At the time of the incidents the Defendant was the director of the Boys and
21 Girls Club located in Southern Highlands. The victims were participants and/or volunteers at
22 the Boys and Girls club.

23 The Preliminary Hearing Testimony of Defense Witness Nakesha Duncan
24 Pertinent to this Return

25 On November 1, 2016, Nakesha Duncan testified that she was employed as an attorney
26 at Springel and Fink, hired by the Boys and Girls Club. Nakesha Duncan responded to a
27
28

1 subpoena by the defense which requested the participant attendance activity log for August 1,
2 2016. Preliminary Hearing Transcript (Hereinafter "PHT"), pp. 9-10.¹

3 Nakesha Dunkin testified that she gave defense counsel a copy of the participant
4 attendance activity log in response to the Subpoena Deuces Tecum, which she received
5 directly from her client; but, she could not testify as to the content or what it records. PHT, pp.
6 10-11.

7 **The Preliminary Hearing Testimony of H.H. Pertinent to this Return**

8 H.H. testified that her birth date is June 7, 2004, she was 12 years of age and in the 7th
9 grade. H.H. further testified that she was living in San Jose, California, but she had lived with
10 her aunt and uncle in Las Vegas when she was in the sixth grade. PHT pp. 19-20. When she
11 lived in Las Vegas, H.H. would go to the Boys and Girls Club in the Southern Highlands
12 neighborhood of Clark County. H.H. would go there almost every day, except for when her
13 aunt was off work. H.H. would go there during the school year and during the summer. H.H.
14 stopped going when she moved back to California with her mom. PHT, p. 21.

15 H.H. knew the Defendant from going to the Boys and Girls Club. H.H. would talk to
16 Defendant if she saw him outside of his office. H.H. would only go into his office if she got
17 into trouble. H.H. testified that when she was in the Defendant's office the door would be
18 closed. H.H. testified that she got into trouble for taking food and for talking back. PHT, pp.
19 22-24. H.H. testified that when she was in the Defendant's office, the Defendant would touch
20 her on the thigh when he went to hug her. PHT, p. 24. H.H. thought that the touching occurred
21 after Christmas break when she was in the sixth grade. H.H. testified that the touching made
22 her feel uncomfortable. PHT, p. 26.

23 H.H. testified that after Defendant was done hugging her, he would brush his hands up
24 and touch her stomach up to where her rib cage was located. PHT, p. 28. H.H. testified that
25 Defendant would do the touching in his office when she got into trouble and that it happened
26 more than one time. H.H. testified it happened when she got into trouble for taking food

27 ¹ There are two different transcripts of the preliminary hearing in this case. The first transcript is 51 pages long and
28 contains the testimony of Nakesha Duncan and H.H. After H.H.'s testimony the court took a recess. The second
transcript contains the second half of the preliminary hearing and contains the testimony of A.W., J.L. and Alejandra
Guerrero. The transcripts are not labeled Volume 1 and 2.

1 (COUNT 4) and it happened again when she got into trouble for talking back. (COUNT 5).
2 H.H. testified that she told J.L. and A.W. that the Defendant also touched the side of her breasts
3 when he brushed against her. PHT, pp. 30-31. H.H. also illustrated for the Court how
4 Defendant brushed his hand(s) up along her body up to the side of her breasts. PHT, p. 41.
5 When the defense attorney challenged H.H. on her demonstration alleging it did not comport
6 with her testimony, H.H. clarified that she said near rib cage because she did not want to say
7 "boob." PHT p. 41. Her demonstration indicated the Defendant touched the side of her breast.
8 H.H., a twelve year old child, was visibly embarrassed to say the word "boob" in court.

9 **The Preliminary Hearing Testimony of A.W. Pertinent to this Return**

10 A.W. testified that her birthday is April 17, 2001; that she is 15 years of age; and, that
11 she was in the 10th grade. A.W. testified that she was in the ROTC and armed drill team at
12 school. A.W. further testified that she liked to write and sing. PHT, pp. 3-4. A.W. testified
13 that she would go to the Boys and Girls Club in the Southern Highlands neighborhood of Clark
14 County. A.W. started going there after school and during the summer, when it first opened and
15 she was in the sixth grade. While going to there, A.W. met the Defendant, whom she referred
16 to as Coach Will. PHT, p. 5.

17 Over the last summer, A.W. attended the Boys and Girls club for part of the summer,
18 beginning in August. Prior to that, A.W. had been in California. On August 1, 2016, A.W.
19 arrived at the club when it first opened at 7 a.m., and the Defendant was sitting behind the desk
20 because the lady that normally sat there was not in yet. A.W. sat behind the desk with the
21 Defendant where they talked and got caught up. PHT, pp. 6-7.

22 A.W. testified that little kids were coming in and going into the cafeteria and things got
23 quiet between her and the Defendant. A.W. was wearing a short romper and the Defendant
24 told her that she had amazing legs and asked if he could touch them. A.W. chuckled because
25 she thought it was weird, but told him "sure, I guess." When the Defendant touched A.W.'s
26 leg he started at her inner thing and slowing moved his hand down to her ankle. The Defendant
27 told A.W. her legs were soft and cool. The Defendant asked A.W. if she would come into his
28

1 office when the lady arrived. A.W. stopped talking and did not say anything because she was
2 creeped out. PHT, pp. 8-9.

3 When the [front desk] lady arrived for work, A.W. went into the Defendant's office
4 where they continue to catch up. The Defendant inquired about a boyfriend A.W. had at that
5 time and if she had done sexual things with him. The Defendant asked A.W. what her favorite
6 position was. A.W. just chuckled when the Defendant asked her the questions and told him
7 that those were personal questions. A.W. testified the door to the office was closed. A.W.
8 further testified that she had been in the Defendant's office before. The Defendant told A.W.
9 that she did not need to be scared because he had two daughters and was a good listener. The
10 Defendant also told A.W. that he had worked at other Boys and Girls Clubs where girls had
11 thrown themselves at him. A.W. testified that she got really creeped out by the conversation
12 and left the office. PHT, pp. 10-11.

13 A.W. testified that she avoided the Defendant for the rest of the day and she told J.L.
14 about the incident that same day. Thursday of that same week, A.W. told her counselor about
15 the interaction and the police were called. PHT, pp. 11-12.

16 **The Preliminary Hearing Testimony of J.L. Pertinent to this Return**

17 J.L. testified that she was 15 years of age and her birthday is February 12, 2001. J.L.
18 further testified that she was in the 10th grade. PHT, p. 39. J.L. testified that she had been to
19 the Boys and Girls Club in the Southern Highlands neighborhood of Clark County; and, that
20 she would go there almost every day after school. J.L. became a member there and then began
21 helping out with the kids. J.L. started going there when she was 14, and she met the Defendant
22 there. PHT, pp. 40-41.

23 J.L. volunteered at the club during part of the summer after going to Hawaii to visit her
24 family. When J.L. came back in July, the Defendant started acting a little different and would
25 ask her inappropriate questions. PHT, p. 42. J.L. testified that the Defendant asked her if she
26 were a virgin, when she lost it, and if she liked it. The Defendant asked J.L. these questions
27 in his office while the door was closed. The Defendant also asked J.L. for a hug, which she
28 gave him. J.L. had hugged the Defendant on prior occasions, but during this hug the Defendant

1 touched her butt. PHT, p. 44. J.L. testified that the Defendant hugged her and touched her
2 butt before he asked her the inappropriate questions that day. PHT, p. 45.

3 A couple days later, J.L. was in the kitchen to get something for one of the leaders. The
4 Defendant was coming into the kitchen and asked her to hold the door open for him. Once the
5 Defendant got into the kitchen he asked J.L. for a hug, during which he touched her butt with
6 both of his hands. PHT, p. 46. J.L. testified that the Defendant's touching made her feel
7 uncomfortable and she told her boyfriend about it. PHT, p. 47.

8 **LEGAL ARGUMENT**

9 **STANDARD OF PROOF AT PRELIMINARY HEARING**

10 In order to hold a person for trial, a justice of the peace must find probable cause to
11 believe that an offense was committed and that the defendant in question committed the
12 offense. NRS 172. 155; Kirksey v. State, 112 Nev. 980, 923 P.2nd 1102, 1108 (1996). In
13 other words, during the preliminary proceeding, the State must elicit sufficient evidence
14 demonstrating probable cause that a crime was committed and that the accused *was likely* the
15 perpetrator. Sheriff v. Miley, 99 Nev. 377, 379, 663 P.2d 343, 344 (1983); NRS 172.155. As
16 such, an Information will be sustained where the State submits sufficient legal evidence to
17 establish probable cause. Sheriff v. Simpson, 109 Nev. 430, 434-35, 851 P.2d 428, 431- 32
18 (1993).

19 "The finding of probable cause may be based on slight, even 'marginal' evidence,
20 because it does not involve a determination of the guilt or innocence of an accused." Id. at
21 435, 851 P.2d at 432 (quoting Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980)
22 (citations omitted)). A preliminary hearing need not be perfect; the proceeding need only
23 provide a defendant with fair consideration. Franklin v. State, 89 Nev. 382, 389, 513 P.2d
24 1252, 1257 (1973). The preliminary hearing functions merely to determine whether the State
25 has sufficient probable cause to pursue charges against the defendant. Since the burden of
26 proof at a preliminary hearing is so much lower than that required at trial, the evidence adduced
27 at the hearing need not be sufficient to support a conviction. Abbott v. Sheriff, 87 Nev. 397,
28 487 P.2d 1067 (1971). The State need not produce the quantum proof necessary to establish

1 guilt of the accused beyond a reasonable doubt. Id. The State only has to present enough
2 evidence to support a reasonable inference that the accused committed the crime and does not
3 need to negate all possible inferences as to doubt. See, Lamb v. Holsten, 85 Nev. 566, 568,
4 459 P.2d 771, 772 (1969); Johnson v. State, 82 Nev. 338, 341, 418 P.2d 495, 496 (1966).
5 Further, a Petition for Writ of Habeas Corpus is not a vehicle to determine factual disputes as
6 those are matters reserved for the trier of fact at the time of trial. Brymer v. Sheriff, 92 Nev.
7 598 (1976); Wrenn v. Sheriff, 87 Nev. 85 (1971).

8 If the evidence produced at the preliminary examination establishes a *reasonable*
9 *inference* that the defendant committed the charged crimes, probable cause exists to order the
10 defendant to answer in the district court. Morgan v. Sheriff, 86 Nev. 23, 476 P.2d 600 (1970).
11 An inference is a deduction which the trier of facts makes from the facts proved without an
12 express direction of law to that effect. It must be reasonable and not so remote as to be
13 unwarranted. Probable cause requires that the evidence be weighed toward guilt, though there
14 may be room for doubt. The facts must be such as would lead a person of ordinary caution and
15 prudence to believe and conscientiously entertain a strong suspicion. State v. von Brincken,
16 86 Nev. 769, 476 P.2d 733 (1970); Ex parte Kline, 71 Nev. 124, 282 P.2d 367 (1955).

17 Finally, the Nevada Supreme Court has explicitly held that a preliminary examination
18 is "not a substitute for trial," and that the "full and complete exploration of all facets of the
19 case" should be reserved for trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847
20 (1969); *see also*, Robertson v. Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969).

21 In fact, the Nevada Supreme Court has held that "it is exclusively within the province
22 for the trier of fact to weigh the evidence and pass on the credibility of witnesses and their
23 testimony." Lay v. State, 110 Nev. 1189, 1192, 886 P.2d 448, 450 (1994).

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1 **I. THE STATE PRESENTED SUFFICIENT EVIDENCE THAT DEFENDANT**
2 **COMMITTED THE CRIME OF LEWDNESS WITH A CHILD UNDER THE**
3 **AGE OF 14 AND THE CRIME OF LEWDNESS WITH A CHILD UNDER THE**
4 **AGE OF 16 AS CHARGED IN COUNTS 1 THROUGH 5 OF THE**
5 **INFORMATION**

6 NRS 201.230(1)(a) and (b) is applicable and states:

7 1. A person is guilty of lewdness with a child if he or she:

8 (a) Is 18 years of age or older and willfully and lewdly commits
9 any lewd or lascivious act, other than acts constituting the crime
10 of sexual assault, upon or with the body, or any part or member
11 thereof, of a child under the age of 16 years, with the intent of
12 arousing, appealing to, or gratifying the lust or passions or sexual
13 desires of that person or of that child;

14 (b) Is under the age of 18 years and willfully and lewdly commits
15 any lewd or lascivious act, other than acts constituting the crime
16 of sexual assault, upon or with the body, or any part or member
17 thereof, of a child under the age of 14 years, with the intent of
18 arousing, appealing to, or gratifying the lust or passions or sexual
19 desires of that person or of that child.

20 Pursuant to NRS 201.230, the only material elements of the crime charged are the acts
21 of lewdness, the victim's age, and the intent to arouse, appeal to, or gratify the lust or passion
22 of the accused or the child.

23 With regard to intent, as this Court is well aware, we do not have a camera that flashes
24 in a defendant's mind and produces a photograph for us of what the specific intent of that
25 individual is at any given time. Without direct statements by a defendant as to what his intent
26 was, intent has to be decided by judges and juries based upon the totality of the other
27 circumstances and facts that are involved. Intent is an essential element of the crime of
28 lewdness. Likewise, intent is a particularly difficult element to prove in charges of lewdness
because the state must prove that the defendant had a lewd and lascivious mental state and
prove that his actions were motivated by his intent to seek sexual gratification. However, the
law does not require that the State prove that the lusts, passions or sexual desires of the child
or Defendant were actually aroused, appealed to, or gratified. See, NRS 201.230.

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1 In Farrell v. State, 83 Nev. 1, 2-3 (Nev. 1967), defense appealed an order of the district
2 court denying appellant's discharge on habeas corpus based on insufficiency of evidence. In
3 that case the child witness testified at the preliminary hearing in summary that "she was invited
4 into appellant's house, given candy and taken into a bedroom. She further stated appellant put
5 his hand into her panties, at least twice and maybe three times. Appellant then gave her two
6 nickels and indicated the matter was to be a secret between them." Id. at 2. The Appellant was
7 interviewed by a detective of the Las Vegas Police Department and Appellant "admitted [that]
8 the child had been invited into his home and given candy on the day in question. He further
9 admitted he stooped over to tie his shoelace and may have accidentally rubbed against her
10 private parts." Id. at 2-3. The Nevada Supreme Court found the State had met its burden "to
11 present enough evidence so as to support a reasonable inference that the accused committed
12 the offense" and upheld the District Court's decision. Id. at 3.

13 In Wilson v. State, 2011 Nev. Unpub. LEXIS 1322; 2011 WL 6181386, *cited by the*
14 *State for its persuasive value*, the Nevada Supreme Court upheld Defendant's conviction of
15 eight counts of lewdness with a child and one count of unlawful contact with a child finding
16 that the NRS 201.230 requires a lewd or lascivious act and that a lewd act must be accompanied
17 by necessary sexual intent; and, concluding that a rational jury could find beyond a reasonable
18 doubt that Wilson's conduct lewd or lascivious, and he acted with sexual intent. In affirming
19 Wilson's conviction, the Court stated:

20 We conclude that the State presented sufficient evidence that
21 Wilson's conduct was lewd or lascivious, and was sexually
22 motivated as required by NRS 201.230(1). The charges against
23 Wilson involved two young girls who are sisters, A.S. and C.S.
24 Wilson lived next door to the girls with his girlfriend Tonja, her
25 teenage daughter J.F., and other family members. From February
26 2007 to early 2008, J.F. and Tonja babysat A.S. and C.S. while
27 their mother worked the night shift as a cabdriver. Occasionally,
28 the two girls would sleep at Wilson's home while their mother
worked. A.S. and C.S. were 8 and 10 years old, respectively, when
this childcare arrangement began.

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1 During that time, Wilson at various times touched A.S.'s genitals,
2 breasts, buttocks, and the "roof of her buttocks. Wilson also
3 showed her pornography on his cell phone and on the walls of his
4 garage, though A.S. explained that he did not touch her during
5 those incidents. Similarly, Wilson touched C.S.'s buttocks,
6 clavicle area, sides of her breasts, and thighs. He also touched her
7 on her shoulders, lower back, and sides of her body while showing
8 her pornography. Additionally, he told both girls that he would
9 hurt their mother if they told anyone about the touchings. Based
10 on this evidence, we conclude that a rational juror could find
11 beyond a reasonable doubt that Wilson committed eight counts of
12 lewdness with a minor under the age of 14 years.

13 Therefore, we affirm the district court's judgment of conviction
14 Wilson, 2011 Nev. Unpub. LEXIS 1322, pp. 7-8.

15 **A. THE STATE PRESENTED SUFFICIENT EVIDENCE THAT THE**
16 **DEFENDANT COMMITTED THE CRIME OF LEWDNESS WITH A**
17 **CHILD UNDER THE AGE OF 14 CHARGED IN COUNTS 4 AND 5**
18 **INVOLVING VICTIM H.H.**

19 Count 4 and 5 of the Information charges Defendant as follows:

20 COUNT 4-

21 did willfully, lewdly, unlawfully, and feloniously commit a lewd
22 or lascivious act upon or with the body, or any part or member
23 thereof, of a child, to-wit: H.H., a child under the age of 14 years,
24 by touching and/or rubbing and/or fondling the thigh(s) and/or
25 upper leg and/or side of the stomach, breasts and/or chest of the
26 said H.H., with the intent of arousing, appealing to, or gratifying
27 the lust, passions, or sexual desires of the Defendant, or H.H.

28 COUNT 5 -

did willfully, lewdly, unlawfully and feloniously commit a lewd
or lascivious act upon or with the body, or any part or member
thereof, of a child, to-wit: H.H., a child under the age of 14 years,
by touching and/or rubbing and/or fondling the thigh(s) and/or
upper leg and/or side of the stomach, breasts and/or chest of the
said H.H., with the intent of arousing, appealing to, or gratifying
the lust, passions, or sexual desires of the Defendant, or H.H.

The State presented evidence that H.H. was 12 years of age, well under the age of 14;
and, that the Defendant touched and/or rubbed and/or fondled her thigh(s) and/or upper leg

1 and/or side of her stomach, breasts and/or chest², on two separate occasions, after she had been
2 sent to his office for discipline. The first for taking food without permission and the second
3 for talking back. The victim provided testimony that these incidents occurred after Defendant
4 solicited hugs from her while she was in his office with the door closed. Additionally, the
5 child victim illustrated to the Court how the Defendant swept his hands upward along her
6 body, stopping his touching of her, only after touching her on the sides of her breasts. The
7 touching made H.H. feel uncomfortable. PHT, p. 19; pp. 26-31. In addition, the child victim
8 stated, "I said he brushed up near my rib cage. I didn't want to say boob." PHT, p. 41.

9 The fact that this Defendant, then the Director of the Boys and Girls Club in Southern
10 Hills, Clark County, asked a young 12 year old girl for hugs, while she was in his office to be
11 disciplined, and then used his hands to touch and or rub and/or fondle the thigh(s) and/or upper
12 leg and/or sides of the stomach, breasts and/or chest of the young victim in this case certainly
13 signals a specific intent on the Defendant's part of arousing, appealing to, or gratifying the lust
14 or passions or sexual desires of the Defendant or of the child. The victim's demonstration of
15 how the Defendant's hand would sweep up the side of her body touching the side of her breasts
16 clearly indicates this "hug" was not incidental conduct as the defendant alleges, but lewd
17 conduct with sexual intent. The State clearly established intent on Counts 4 and 5 based upon
18 the facts elicited at the preliminary hearing regarding the Defendant's conduct with H.H.

19 The Defendant argues that the Justice of the Peace improperly borrowed the intent from
20 Counts involving victims A.W. and J.L. when finding sufficient evidence to hold the
21 Defendant to answer to Counts 4 and 5 involving victim H.H. This argument is belied by the
22 record. While the Justice of the Peace initially expressed concerns regarding the State being
23 able to prove the Defendant's intent with regards to the touching of H.H., he ultimately agreed
24 that there was sufficient evidence for counts 4 and 5 based upon the repeated nature of
25 Defendant's conduct. The transcript reads,

26 ///

27 ///

28 _____
² All of which are lewd or lascivious acts

1 THE COURT: It happened, according to her [H.H.] testimony, it happened at
2 least twice.

3 MS. CLEMONS: Yes

4 MR. MODAFFERI: In the same exact manner?

5 THE COURT: Pretty much. That's exactly what she said. It happened 2 times.
6 The way I characterize her testimony is it was like if it had happened just one
7 time, she would have brushed it off as an accident, but it happened almost exactly
8 the same twice. The second time she [H.H.] concluded that it wasn't an accident,
9 it was intentional. That's basically what she testified to.

10 PHT p. 89-90.

11 The Defendant argues that the Court had "a legal duty to compartmentalize and
12 distinguish the evidence produced on each count." Defendant's PWHC p. 20. However, the
13 Defendant does not cite to any legal authority to support this contention. "Intention is
14 manifested by the circumstances connected with the perpetration of the offense, and the sound
15 mind and discretion of the person accused." NRS 193.200. The intent with which an act is
16 done is shown by the facts and circumstances surrounding the case. See, State v. McNeil, 53
17 Nev. 428 (1931) The State is permitted to introduce into evidence at trial crimes of other bad
18 acts to prove both intent, motive and absence of mistake or accident under NRS 48.045(2).
19 The State is also permitted to introduce evidence of other sexual offenses in a prosecution for
20 a sexual offense to show propensity under NRS 48.045(3). The "bad acts statute," as it is
21 commonly referred, demonstrates that juries and courts are permitted to look at other conduct
22 outside the charged count to determine intent. Based upon Nevada's statutory scheme it is not
23 improper for the Justice Court to consider the evidence as a whole in assessing whether the
24 State has presented slight or marginal evidence as to each count. Lastly, whether the
25 Defendant had requisite intent for the crimes charged is a question for the jury. State v. Crane.
26 88 Nev. 684 (1972); McNeil, 53 Nev. 428.

27 ///

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1 **B. THE STATE PRESENTED SUFFICIENT EVIDENCE THAT THE**
2 **DEFENDANT COMMITTED THE CRIME OF LEWDNESS WITH A**
3 **CHILD UNDER THE AGE OF 16 CHARGED IN COUNT 3 VICTIM**
4 **A.W.**

Count 3 charges Defendant as follows:

COUNT 3-

did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to-wit: A.W., a child under the age of 16 years, by touching and/or rubbing and/or stroking the upper leg of the said A.W., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the Defendant, or A.W.

10 The State provided testimony that A.W. was 15 years old, well under the age of 16;
11 and, that on one occasion, while she was attending the Boys and Girls Club, the Defendant
12 told her that she had amazing legs and asked if he could touch them. A.W. chuckled because
13 she thought it was weird but told him, "sure, I guess." When the Defendant touched A.W.'s
14 leg he started at her inner thigh and slowly moved his hand down her leg, to her ankle. The
15 Defendant told A.W. her legs were soft and cool. The Defendant asked A.W. if she would
16 come into his office A.W. stopped talking and did not say anything because she was creeped
17 out. PHT, pp. 3-9. A.W. and the Defendant went into his office to continue talking. The
18 Defendant closed the door and began asking A.W. if she had done sexual things with her
19 boyfriend. PHT, p. 10.

20 The fact that this Defendant, then the Director of the Boys and Girls Club in Southern
21 Hills, Clark County, told a 15 year old girl that she had nice legs and asked if he could touch
22 them; and, did so by starting at her mid-thigh and sliding his hand down to her ankle, certainly
23 signals a specific intent on Defendant's part of arousing, appealing to, or gratifying the lust or
24 passions or sexual desires of Defendant or of the child. As if the touching itself were not
25 enough, the Defendant also engaged in asking the young girl if she had done sexual things
26 with her boyfriend and told her that he worked at a previous Boys and Girls Club where "girls"
27 had thrown themselves at him, all of which creeped her out.

28 ///

1 The Defendant alleges that since he presented testimony from a Boys and Girls Club
2 employee who stated she did not witness this conduct between the Defendant and A.W. that
3 the State has failed to demonstrate probable cause. This is not correct. As noted above, the
4 Nevada Supreme Court has held that "it is exclusively within the province for the trier of fact
5 to weigh the evidence and pass on the credibility of witnesses and their testimony." Lay v.
6 State, 110 Nev. 1189, 1192, 886 P.2d 448, 450 (1994). Any conflicts in the evidence are for
7 the trier of fact to assess, not the Justice of the Peace. The State presented sufficient evidence
8 to hold the Defendant to answer to Count 3.

9
10 **C. THE STATE PRESENTED SUFFICIENT EVIDENCE THAT THE**
11 **DEFENDANT COMMITTED THE CRIME OF LEWDNESS WITH A**
12 **CHILD UNDER THE AGE OF 16 CHARGED IN COUNTS 1 AND 2**
13 **INVOLVING VICTIM J.L.**

14 Counts 1 and 2 charge Defendant as follows:

15 **COUNT 1-**

16 did willfully, lewdly, unlawfully and feloniously commit a lewd
17 or lascivious act upon or with the body, or any part or member
18 thereof, of a child, to-wit: J.L., a child under the age of 16 years,
19 by touching and/or rubbing the lower back and/or buttocks of the
20 said J.L., with the intent of arousing, appealing to, or gratifying the
21 lust, passions, or sexual desires of the Defendant, or J.L.

22 **COUNT 2 --**

23 did willfully, lewdly, unlawfully and feloniously commit a lewd
24 or lascivious act upon or with the body, or any part or member
25 thereof, of a child, to-wit: J.L., a child under the age of 16 years,
26 by touching and/or rubbing the lower back and/or buttocks of the
27 said J.L., with the intent of arousing, appealing to, or gratifying the
28 lust, passions, or sexual desires of the Defendant, or J.L.

29 The State provided testimony that J.L. was 15 years of age, well under the age of 16;
30 and, that she volunteered at the Boys and Girls club during part of the summer after going to
31 Hawaii to visit her family. J.L. testified that the Defendant asked her if she were a virgin,
32 when she lost it, and if she liked it. The Defendant asked J.L. these questions in his office
33 while the door was closed. The Defendant also asked J.L. for a hug, which she gave him. J.L.
34 had hugged the Defendant on prior occasions, but during this hug the Defendant touched her

1 butt. PHT, p. 44. J.L. testified that the Defendant hugged her and touched her butt before
2 asking her the inappropriate questions that day. PHT, p. 45.

3 A couple days later, J.L. was in the kitchen to get something for one of the leaders. The
4 Defendant was coming into the kitchen and asked her to hold the door open for him. Once the
5 Defendant got into the kitchen, he asked J.L. for a hug, during which he touched her butt with
6 both of his hands. PHT, p. 46. J.L. testified that the Defendant's touching made her feel
7 uncomfortable and she told her boyfriend about it. PHT, p. 47.

8 Again, the fact that this Defendant, then the Director of the Boys and Girls Club in
9 Southern Hills, Clark County, hugged a 15 year old girl and grabbed her butt during that hug
10 and then had a conversation with her immediately afterward about whether she was virgin and
11 liked sex clearly signals a specific intent on Defendant's part of arousing, appealing to, or
12 gratifying the lust or passions or sexual desires of Defendant or of the child. The fact that the
13 Defendant hugged the victim and grabbed her butt with both hands a couple days later further
14 shows this act was intentional and not an accident as Defendant alleges in his motion.

15 As the facts of the instant case are applied to all of the aforementioned applicable case
16 law, it should be clear to this Court that there was sufficient probable cause adduced during
17 the preliminary hearing to hold Defendant to answer to the charges in Counts 1 through 5 of
18 the Information.

19 CONCLUSION

20 Based upon the above and foregoing Points and Authorities the State respectfully
21 requests Defendant's Petition for Writ of Habeas Corpus be DENIED.

22 DATED this 3rd day of March, 2017.

23 Respectfully submitted,

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

26
27 BY /s/ JENNIFER CLEMONS
28 JENNIFER CLEMONS
Chief Deputy District Attorney
Nevada Bar #010081

1 CERTIFICATE OF ELECTRONIC FILING

2 I hereby certify that service of State's Return to Writ of Habeas Corpus, was made this
3 3rd day of March, 2017, by Electronic Filing to:

4
5 GARY MODAFFERI, ESQ.
6 modafferilaw@gmail.com

7
8 /s/ J. MOSLEY
9 Secretary for the District Attorney's Office
10
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EXHIBIT “1”



CLERK OF THE COURT

1 **INFM**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **JENNIFER CLEMONS**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #10081**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

12 **I.A. 11/10/16**
13 **10:00 AM**
14 **G. MODAFERRI**

DISTRICT COURT
CLARK COUNTY, NEVADA

15 **THE STATE OF NEVADA,**
16
17 **Plaintiff,**

CASE NO: C-16-319125-1

18 **-vs-**

DEPT NO: XIX

19 **WILLIS TYRONE BROWN,**
20 **#7034656**
21
22 **Defendant.**

INFORMATION

23 **STATE OF NEVADA**
24 **COUNTY OF CLARK** } **ss.**

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

27 **That WILLIS TYRONE BROWN, the Defendant(s) above named, having committed**
28 **the crimes of LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category A**
29 **Felony - NRS 201.230 - NOC 50975) and LEWDNESS WITH A CHILD UNDER THE**
30 **AGE OF 16 (Category B Felony - NRS 201.230 - NOC 58747), on or between January 1,**
31 **2016 and August 1, 2016, within the County of Clark, State of Nevada, contrary to the form,**
32 **force and effect of statutes in such cases made and provided, and against the peace and dignity**
33 **of the State of Nevada,**

34 **COUNT 1 - LEWDNESS WITH A CHILD UNDER THE AGE OF 16**

35 **did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon**
36 **or with the body, or any part or member thereof, of a child, to-wit: J.L., a child under the age**

of 16 years, by touching and/or rubbing the lower back and/or buttocks of the said J.L., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the Defendant, or J.L.

COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 16

did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to-wit: J.L., a child under the age of 16 years, by touching and/or rubbing the lower back and/or buttocks of the said J.L., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the Defendant, or J.L.

COUNT 3 - LEWDNESS WITH A CHILD UNDER THE AGE OF 16

did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to-wit: A.W., a child under the age of 16 years, by touching and/or rubbing and/or stroking the upper leg of the said A.W., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the Defendant, or A.W.

COUNT 4 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to-wit: H.H., a child under the age of 14 years, by touching and/or rubbing and/or fondling the thigh(s) and/or upper leg and/or side of the stomach, breasts and/or chest of the said H.H., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the Defendant, or H.H.

COUNT 5 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to-wit: H.H., a child under the age of 14 years, by touching and/or rubbing and/or fondling the thigh(s) and/or upper leg and/or


///

///

1 side of the stomach, breasts and/or chest of the said H.H., with the intent of arousing, appealing
2 to, or gratifying the lust, passions, or sexual desires of the Defendant, or H.H.

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

6 BY


JENNIFER CLEMONS
Chief Deputy District Attorney
Nevada Bar #10081

8
9 Names of witnesses known to the District Attorney's Office at the time of filing this
10 Information are as follows:

11	<u>NAME</u>	<u>ADDRESS</u>
12	APICLLA, ALISON	3468 Famiglia Dr LVN 89141
13	APICLLA, JOEY	3468 Famiglia Dr LVN 89141
14	DEESE, MARIAN	6170 West Levi Ave LVN 89141
15	DETWEILER, WALTER	LVMPD #5460
16	HARRIS, MARILYN	Address Unk
17	L.J.	C/O CCDA
18	MARTINEZ, ARTURO	LVMPD #7775
19	SAMPLES, LAWRENCE	LVMPD #9354
20	THERIOUS, M	CAC
21	W.A.	C/O CCDA
22	WILLIS, ERICK	312 Magnolia Arbor St LVN 89144
23	WILLIS, TINA	312 Magnolia Arbor St LVN 89144

24
25
26
27 16F13242X /jm/SVU
28 LVMPD EV#160811237
(TK5)

EXHIBIT “2”



Neutral

As of: March 2, 2017 6:36 PM EST

Wilson v. State

Supreme Court of Nevada

December 9, 2011, Filed

No. 54814

Reporter

2011 Nev. Unpub. LEXIS 1322 *; 2011 WL 6181386

MICHAEL DUWAIN WILSON, Appellant, vs. THE
STATE OF NEVADA, Respondent.

Notice: AN UNPUBLISHED ORDER SHALL NOT BE
REGARDED AS PRECEDENT AND SHALL NOT BE
CITED AS LEGAL AUTHORITY. SCR 123.

Subsequent History: Reported at Wilson v. State,
2011 Nev. LEXIS 1945 (Nev., Dec. 9, 2011)

Writ of habeas corpus denied Wilson v. State, 2014
Nev. Unpub. LEXIS 28 (2014)

Writ of habeas corpus dismissed, in part Wilson v.
LeGrand, 2015 U.S. Dist. LEXIS 152428 (D. Nev., Nov.
9, 2015)

Core Terms

lewd, sexual, lascivious, district court, sexual intent,
touched, reasonable doubt, new trial

Judges: [*1] Salta, C.J., Douglas, J., Cherry, J.,
Gibbons, J., Parraguirre, J. PICKERING, J., with whom
HARDESTY, J. agrees, concurring.

Opinion

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction,
pursuant to a jury verdict, of eight counts of lewdness
with a child under the age of 14 years and one count of
unlawful contact with a child. Eighth Judicial District
Court, Clark County; Valerie Adair, Judge.

Appellant Michael Wilson was convicted of eight counts
of lewdness with a minor under the age of 14 years, and
one count of unlawful contact with a child. On appeal,
Wilson raises numerous arguments, only one of which

we address in detail in this order.¹

Wilson argues that the State presented insufficient
evidence to support several of the convictions for
lewdness with a child under the age of 14 years. In
particular, he claims that the State failed to prove that
the acts were lewd or lascivious because the conduct
was not sexual and a nonsexual act is not a "lewd or
lascivious" act under NRS 201.230.

Based on the evidence presented in this case, we
conclude that a rational jury could find beyond a
reasonable doubt that Wilson's actions were lewd and
lascivious with the necessary sexual intent. We
therefore affirm the judgment of conviction.

Discussion

Wilson argues that the State presented insufficient
evidence because it failed to prove that his acts with the
children were sexual, and nonsexual acts cannot be
considered lewd or lascivious for purposes of NRS
201.230. Although we agree that the statute requires a
lewd or lascivious act and that a lewd act must be
accompanied by the necessary sexual intent, we
conclude that a rational juror could find beyond a
reasonable doubt that Wilson's conduct was lewd or
lascivious, and he acted with the necessary sexual
[*3] intent.

¹ Wilson argues that: (1) the district court erred when it denied
his motion for a judgment of acquittal or new trial because it
applied the wrong standard of review, (2) his conviction
violates the Double Jeopardy Clause, (3) A.S. and C.S. were
not competent to testify, (4) the district court erred when it
provided incorrect jury instructions, (5) the State committed
prosecutorial misconduct during closing arguments, and (6)
the district court erred when it denied his pretrial motions
challenging the court's jurisdiction and seeking severance.
[*2] After thorough review, we conclude that these
contentions are without merit.

When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether any rational juror could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). It is for the jury to assess the witnesses' credibility and determine the weight to give their testimony, and the jury's verdict will not be disturbed on appeal where substantial evidence supports the verdict. McNair, 108 Nev. at 56, 825 P.2d at 573; Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Wilson's sufficiency-of-the-evidence challenge raises two questions: (1) whether NRS 201.230 requires the prosecution to prove both sexual motivation and that a lewd or lascivious act occurred, and (2) what constitutes a lewd or lascivious act. We address these questions in turn.

Statutory interpretation is a question of law that we review de novo. Sims v. Dist. Ct., 125 Nev. 126, 129-30, 206 P.3d 980, 982 (2009). When a statute is clear and unambiguous, this court gives effect to the plain and ordinary meaning of the words [*4] and does not resort to the rules of construction. Seput v. Lacayo, 122 Nev. 499, 502, 134 P.3d 733, 735 (2006), abrogated on other grounds by Buzz Stew. LLC v. City of N. Las Vegas, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008). When interpreting statutes, the primary consideration is the Legislature's intent. Cleghorn v. Hess, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993). This court, however, will not render any part of the statute meaningless and will not read the statute's language so as to produce absurd or unreasonable results. Leven v. Frey, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007).

NRS 201.230(1) defines the crime of lewdness with a minor under 14 years:

A person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of lewdness with a child.

(Emphasis added.) The material elements of the crime of lewdness with a minor are (1) a lewd or lascivious

act, (2) upon or with the child's [*5] body or any part of the child's body, ² (3) the child's age, and (4) the intent to arouse, appeal to, or gratify, the lust or passion of the accused or the child. NRS 201.230(1); Gay v. Sheriff, 89 Nev. 118, 119 n.1, 508 P.2d 1, 2 n.1 (1973); see also 43 C.J.S. Infants § 120 (2004).

The statute plainly and unambiguously prohibits only lewd or lascivious acts with a minor under the age of 14 years. A contrary reading of the statute would render the modifier "lewd or lascivious" meaningless so that any act with the requisite sexual intent would be criminal. That is simply not the social harm that NRS 201.230 seeks to prohibit. If it were, the Legislature easily could have proscribed that any act upon or with the body of a child with sexual intent is the crime [*6] of lewdness with a minor. It did not do so. In Berry v. State, 125 Nev. 265, 282, 212 P.3d 1085, 1097 (2009), abrogated on other grounds by State v. Castaneda, 126 Nev. . . n.1, 245 P.3d 550, 553 n.1 (2010), we concluded that the term "lewd" was sufficiently definite to give notice of the prohibited conduct such that it was not unconstitutionally vague. Berry, 125 Nev. at 282, 212 P.3d at 1097; see also Summers v. Sheriff, 90 Nev. 180, 521 P.2d 1228 (1974). We noted that

[m]odern authorities define "lewd" as pertaining to sexual conduct that is "[o]bscene or indecent; tending to moral impurity or wantonness," Black's Law Dictionary 927 (8th ed. 2004), "evil, wicked" or "sexually unchaste or licentious," Merriam-Webster's Collegiate Dictionary 715 (11th ed. 2003), and "[p]reoccupied with sex and sexual desire; lustful," The American Heritage Dictionary of the English Language 1035 (3d ed. 1996).

Berry, 125 Nev. at 281, 212 P.3d at 1096 (alterations in original).

We conclude that the State presented sufficient evidence that Wilson's conduct was lewd or lascivious, and was sexually motivated as required by NRS 201.230(1). The charges against Wilson involved two young girls who are sisters, [*7] A.S. and C.S. Wilson lived next door to the girls with his girlfriend Tonja, her

²This court has held that the statute does not require that the accused have physical contact with the child; instead, "[a]n act committed 'with' the minor's body indicates that the minor's body is the object of attention," and thus, "the perpetrator need only cause the child to perform a lewd act upon him or herself to satisfy the elements set forth in the statute." State v. Catanio, 120 Nev. 1030, 1033-34, 102 P.3d 588, 591 (2004).

teenage daughter J.F., and other family members. From February 2007 to early 2008, J.F. and Tonja babysat A.S. and C.S. while their mother worked the night shift as a cabdriver. Occasionally, the two girls would sleep at Wilson's home while their mother worked. A.S. and C.S. were 8 and 10 years old, respectively, when this childcare arrangement began.

During that time, Wilson at various times touched A.S.'s genitals, breasts, buttocks, and the "roof of her buttocks. Wilson also showed her pornography on his cell phone and on the walls of his garage, though A.S. explained that he did not touch her during those incidents. Similarly, Wilson touched C.S.'s buttocks, clavicle area, sides of her breasts, and thighs. He also touched her on her shoulders, lower back, and sides of her body while showing her pornography. Additionally, he told both girls that he would hurt their mother if they told anyone about the touchings. Based on this evidence, we conclude that a rational juror could find beyond a reasonable doubt that Wilson committed eight counts of lewdness with a minor under the age of 14 years.

Therefore, [*8] we affirm the district court's judgment of conviction.³

It is so ORDERED.

/s/ Saitta, C.J.

Saitta

/s/ Douglas, J.

Douglas

/s/ Cherry, J.

Cherry

³We note that the district court did not use the correct standard in deciding the motion for a new trial. Wilson sought a new trial based on conflicting evidence. The standard enunciated in Evans v. State, 112 Nev. 1172, 926 P.2d 265 (1996), requires the district court to conduct an independent evaluation of the conflicting evidence. Here, the district court concluded that it must defer to the jury rather than independently evaluate and resolve any conflicting evidence for purposes of the motion for a new trial. Though the district court was not obligated to order a new trial even if it disagreed with the jury, it may not abrogate its duty to independently evaluate the evidence and resolve conflicting evidence of guilt by deferring to the jury. We nevertheless conclude that the error was harmless beyond a reasonable doubt.

/s/ Gibbons, J.

Gibbons

/s/ Parraguirre, J.

Parraguirre

Concur by: PICKERING; HARDESTY

Concur

PICKERING, J., with whom HARDESTY, J. agrees, concurring:

While I concur in the result, I respectfully disagree with the majority's statutory analysis, in particular, [*9] its statements that NRS 201.230(1) "plainly and unambiguously prohibits only lewd or lascivious acts with a minor under the age of 14 years"; that "[a] contrary reading of the statute would render the modifier 'lewd or lascivious' meaningless so that any act with the requisite sexual intent would be criminal [which] is simply not the social harm that NRS 201.230 seeks to prohibit"; and that "the Legislature easily could have proscribed . . . any act upon or with the body of a child with sexual intent [but] did not do so."

Nevada's lewdness with a child statute is almost identical to California's. Compare NRS 201.230(1) with Cal. Penal Code § 288. Although it does not cite the decision, the majority's element-based statutory analysis appears to be drawn from People v. Wallace, 11 Cal. App. 4th 568, 14 Cal. Rptr. 2d 67 (Ct. App. 1992), which a unanimous California Supreme Court overruled in People v. Martinez, 11 Cal. 4th 434, 45 Cal. Rptr. 2d 905, 903 P.2d 1037, 1045-46 (Cal. 1995) (rejecting Wallace's statutory analysis as "hyperliteral" and unsound). Martinez explains why we should not introduce the Wallace formulation into Nevada law, even in an unpublished disposition.

The existence of a "lewd or lascivious act" cannot be determined separate [*10] and apart from the perpetrator's intent:

It is common knowledge that children are routinely cuddled, disrobed, stroked, examined, and, groomed as part of a normal and healthy upbringing. On the other hand, any of these intimate acts may also be undertaken for the purpose of sexual arousal. Thus, depending upon the actor's motivation, innocent or sexual, such behavior may fall within or without the protective

purposes of [the lewdness with a child statute]. As the vast majority of courts have long recognized, the only way to determine whether a particular touching is permitted or prohibited is by reference to the actor's intent as inferred from all the circumstances. . . . [A]ny other construction could exempt a potentially broad range of sexually motivated and harmful contact from the statute's reach. In light of the statutory purpose, we cannot conceive that the Legislature intended such a result.

in such general terms is consistent with the basic purpose of the statute," which "recognizes that children are uniquely susceptible to [sexual] abuse as a result of their dependence upon adults, smaller size, and relative naivete," that "young victims suffer profound harm whenever they are perceived and used as objects of sexual desire," and that "such concerns cannot be satisfied unless the kinds of sexual misconduct that result in criminal liability are greatly expanded where children are concerned." Martinez, 903 P.2d at 1042 (citations and quotations omitted).

Id. at 1046 (emphasis added). Parsing NRS 201.230(1) in such a way as to require an inherently lewd act, separate and apart from the sexual intent that motivates the act, "is not supported by [the statute's] language, context, purpose, and long-settled construction." It also runs counter "to [*11] the overwhelming weight of authority," Martinez, 903 P.2d at 1041, including prior Nevada case law. See State v. Catano, 120 Nev. 1030, 102 P.3d 588 (2004) (cataloguing the many mainstream Nevada cases in this area and citing with approval People v. Austin, 111 Cal. App. 3d 110, 168 Cal. Rptr. 401 (Ct. App. 1980), a case Wallace disapproved, 14 Cal. Rptr. 2d at 71-74, but Martinez specifically endorsed, Martinez, 903 P.2d at 1044 in overruling Wallace).

Although old enough to be called "venerable," Martinez, 903 P.2d at 1041, the wording used in NRS 201.230(1) does not support the "plain meaning" the majority ascribes to it. By its terms, the statute applies to any contact "upon or with the [victim's] body, or any part or member thereof," so long as the requisite sexual motivation and intent are shown. Martinez, 903 P.2d at 1041 (alteration in original) (emphasis added) (citations and quotations omitted). "When contact with or penetration of a specific body part or cavity is required, or when use of a particular appendage or instrument is necessary to commit the offense, this fact has been made eminently clear" by the Legislature. Id. Thus, "[w]e can only assume that the absence of similar language in [the [*12] lewdness with a child statute] was deliberate, and that the statute was intended to include sexually motivated conduct not made criminal elsewhere in the scheme." Id. See also NRS 201.230(1) (excluding sexual assault from the crime of lewdness with a child; NRS 200.366 defines sexual assault in terms of "sexual penetration," which NRS 200.364(4) in turn defines in terms of intrusion into "the genital or anal openings of the body of another").

"The Legislature's decision to cast a prohibited lewd act

For these reasons, I would not endorse, even in dictum, the argument that no crime occurs unless the victim was touched in an [*13] inherently lewd manner. I would instead follow Martinez and the weight of authority elsewhere that holds that any touching of an underage child is "lewd and lascivious" within the meaning of NRS 201.230(1) when sexual arousal or gratification is its goal.

/s/ Pickering, J.

Pickering

I concur:

/s/ Hardesty, J.

Hardesty

End of Document



CLERK OF THE COURT

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

In the Matter of the Application of

Case No. C-16-319125-1

WILLIS BROWN

Dept No. XIX

For a Writ of Habeas Corpus.

TRAVERSE

COMES NOW, WILLIS BROWN, Petitioner herein, by and through his Counsel, GARY A. MODAFFERI, ESQ., of the Law Office of Gary A. Modafferi, LLC, and respectfully tenders the following Traverse in support of Petitioner's Writ of Habeas Corpus (Pre-Trial). This Traverse focuses on whether the State presented probable cause to sustain an Indictment on any of the alleged offenses. It specifically targets the question of whether the Justice Court erred in borrowing or transferring proof from counts 1-3 to sustain a probable cause finding as to counts 4 and 5. This Traverse is offered in addition to any evidence and/or argument adduced at a hearing on this matter.

DATED this 14th day of March, 2017.

By: /s/ Gary A. Modafferi
Gary A. Modafferi, Esq.
Nevada Bar No. 12450
Attorney for Defendant/Petitioner

TRAVERSE

I. Introduction

The Defense is shocked by the State's refusal to recognize the Justice Court's legal duty to compartmentalize and assess evidence of probable cause independently as to each count. The State cites no legal authority that legally allows the Justice Court to borrow evidence from other counts to make deficient counts whole. This is not the law. The State wrote in its Return that, "The Defendant argues that the court had "a legal duty to compartmentalize and distinguish the evidence produced on each count" Defendant's PWHC at p.20. However, the Defendant does not cite to any legal authority to support this contention."¹ This argument is specious. It is also legally unsupportable.

The absolute right to have each count considered and proven separately both at preliminary hearing and at trial is black letter law. The Justice Court clearly stated on the record that the two H.H. counts (counts 4 and 5) were deficient if analyzed for probable cause independently, as the law requires. The Justice Court stated, **"here is my take on this, and this is kind of troubling me. Counsel, you are not incorrect. These counts have to be considered separately and independently based on evidence provided on each of the counts. I got to tell you the counts involving H.H. are not very strong. When you take the testimony of that little 12 year old girl completely isolated by itself, it wouldn't amount to squat in terms of criminal conduct."**²

The Justice Court's instincts were absolutely correct; however, its judgment finding probable cause as to counts 4 and 5 were incorrect and unsupported by the record. In a

¹ State's Return to Writ of Habeas Corpus, hereinafter, "Return" at p.12.

1 recent death penalty case involving this Counsel, the State actually submitted and the
2 District Court accepted and gave a standard jury instruction demanding that, “**Each charge**
3 **and the evidence pertaining to it should be considered separately.**”³ This instruction is
4 routinely given to juries in every criminal case in the State of Nevada. It is also routinely
5 given across the country.

7 The State is incorrect in its unsupported assertion that “Based upon Nevada’s statutory
8 scheme it is not improper for the Justice Court to consider the evidence as a whole in
9 assessing whether the State has presented slight or marginal evidence as to each count.”⁴
10 Counsel for the Defense respectfully argues that exactly the opposite is true. The case law is
11 replete with examples where courts specifically instruct jurors that it is impermissible to
12 “borrow” evidence from other joined counts in order to convict on weaker counts. These
13 weaker counts, which if considered separately, would not be sustained by the appropriate
14 standard of proof. Allowing for such a procedure would undermine the probable cause
15 protection of the writ process and deny Petitioner due process of law.

18 **II. Legal Argument**

19 **A. The State failed to present sufficient probable cause to sustain counts 4** 20 **and 5.**

21 Limiting instructions of law, such as one proposed by the State in the Belcher case, are
22 historically relied upon in both State and Federal Court to prevent exactly what the State is
23

25 ² TR2 at p.86. (emphasis supplied)

26 ³ Instructions to the jury, State v. Belcher, C-11-270562-1, filed on December 14, 2016, at Introduction No. 3,
27 at p.6, attached as Exhibit A for court’s convenience. These instructions were submitted by the Clark County
28 District Attorney’s Office. They mandate separate consideration of counts by the jury. Proof for each count
must be established beyond a reasonable doubt without transference or borrowing proof from stronger counts
to support weaker counts thereby lessening the State’s standard and burden of proof.

1 arguing should be the legal process in this matter. The Justice Court recognized that counts 4
2 and 5 could not stand if considered in isolation. It then went on to improperly borrow or
3 transfer from the minimal proof presented by the other two complainants in sustaining a
4 finding of probable cause as to counts 4 and 5.
5

6 Probable cause and not slight or marginal evidence remains the necessary quantum of
7 proof which must be shown to sustain each and every count alleged. The State did not meet
8 their burden as to counts 4 and 5 when those counts were examined separately- both the
9 Justice Court and apparently the State are in agreement with that proposition.
10

11 Simply put the State must prove: (1) Probable cause to believe that counts 4 and 5 were
12 committed and (2) probable cause exists to believe the Petitioner committed counts 4 and 5.⁵
13 The Justice Court, by recognizing that probable cause did not exist as to counts 4 and 5;
14 when those counts were individually examined, simply passed on the legally mandated task
15 of dismissal of counts 4 and 5 to the District Court.
16

17 In Tabish and Murphy, the Nevada Supreme Court recognized that in certain instances
18 the prejudicial joinder of counts could not be sustained because, as in Tabish and Murphy, it
19 could not “conclude beyond a reasonable doubt that a limiting instruction was sufficient to
20 mitigate the prejudicial impact of the joinder on the jury’s consideration of Appellant’s guilt
21 on the remaining counts.”⁶ The Nevada Supreme Court in Tabish and Murphy noted the law
22
23

24 ⁴ Return at p.12.

25 ⁵ Franklin v. State, 89 Nev. 382, 513 P.2d 01252 (1973)

26 ⁶ Tabish and Murphy v. State, 119 Nev. 293, 294, 72 P.3d. 584, 586 (2003) The court cited in fn. 16 C.F. U.S.
27 v. Smith, 795 F.2d 841, 851 (10th Cir. 1986)(holding that refusal to sever charges was not manifestly
28 prejudicial where both the prosecution and court took great pains to avoid emphasizing the charges were
somehow connected) In Petitioner’s case, the prosecution is arguing exactly the opposite approach should be
taken and that the void of proof as to counts 4 and 5 should be filled by borrowing it or transferring it from the
other counts.

1 permits joinder of counts in certain instances when it can be assured that there will be no
2 borrowing of proof from one count to the other to establish guilt for another joined count.
3 The Court stated, "...the jury is then expected to follow the instruction in limiting its
4 consideration of evidence."⁷ The Nevada Supreme Court, in underscoring the need for
5 separate, discrete, and compartmentalized assessment of proof as to each count, stated that
6 such a failure may "...prevent the jury from making a reliable judgment about guilt or
7 innocence. In our view, the Binion charges presented the jury with a close case, and the
8 joinder of the Casey counts rendered the Binion counts fundamentally unfair."⁸ The
9 Supreme Court's concerns on this matter were eventually realized upon retrial with Ms.
10 Murphy's subsequent acquittal on the murder allegation concerning Mr. Binion. The
11 Supreme Court noted that the limiting instruction demanding independent consideration of
12 proof as to each count in the first trial, **"was inadequate to prevent the improper**
13 **"spillover" effect of improper joinder."**⁹

14
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17 In Tracy, the United States Court of Appeals for the First Circuit held that, "The district
18 court carefully instructed the jury at both the beginning and end of the case that it must
19 consider each charge separately and make a separate determination on each count without
20 regard to the others. By repeatedly instructing the jury to consider each charge separately,
21 the district court "minimized any possible prejudice" from the joinder of offenses." It is the
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27 ⁷ Id at 591.

28 ⁸ Id at 591-92.

⁹ Id at 592. (emphasis supplied)

1 State's argument that the Justice Court had no duty to follow this law in considering whether
2 independent probable cause was presented to sustain counts 4 and 5.¹⁰

3 In Tabish and Murphy, the Nevada Supreme Court specifically addressed the
4 fundamental due process error of borrowing evidence or proof from one count to sustain
5 proof of another. In citing Bean, the Nevada Supreme Court noted that improper
6 consolidation, which permitted spillover or the failure to compartmentalize proof as to each
7 count, led the jury – as with the Justice Court magistrate below – to infer criminal
8 propensity.¹¹

9
10
11 “In other words, there was an unacceptable risk that the jury found the defendant guilty
12 of the second murder simply because it thought he was a bad person for having committed
13 the first murder.”¹² In Bean, this impermissible inference allowed the jury to convict on
14 prosecution's weak case for one of the murders by relying on the stronger evidence of
15 another joined murder. Similarly, as in this Petitioner's case, the State's weaker case on the
16 Binion counts was bolstered by combining it with the stronger case against Tabish on the
17 Casey counts. Thus, the prejudice in this case constitutes the same type of due process
18 violation found in both Tabish and Murphy and Bean.¹³

19
20
21 Count 4 and 5 were sustained not because sufficient proof amounting to probable cause
22 was presented but because, according to the Justice Court, “**taken as a whole**, the Defendant
23 engaged in the conduct of conversations completely and totally inappropriate. It just adds
24 one more link as to whether or not these were intentional and sexually oriented
25

26 ¹⁰ United States v. Tracy, 989 F.2d. 1279, 1284 (1st Cir. 1993) .This is not aberrational law. This law is
27 commensurate with similar black letter law holdings throughout the country.

¹¹ Tabish and Murphy, supra at 592. Citing Bean v. Calderon, 163 F.3d. 1073 (9th Cir. 1999)

¹² Id.

1 conversations. **As to everything as a whole**, the court finds that based upon the vastly
2 amended criminal complaint, and the evidence that's been adduced at this preliminary
3 hearing, there is cause to believe the Defendant committed 5 counts."¹⁴ It must be stressed
4 that there were absolutely no improper conversations alleged to have taken place with H.H.
5 Improper conversations as to H.H. were not proof as to counts 4 and 5 presented at the
6 preliminary hearing. There can be no dispute that evidence was borrowed from counts 1-3 in
7 order to find probable cause as to counts 4 and 5.
8

9 The Justice Court violated longstanding law meant to protect due process and fairness
10 when it viewed the evidence "**as a whole**" ¹⁵ and not in a separate and discrete manner as
11 was its legal responsibility. As to count 4 and 5, both class A felonies, there was no sexually
12 oriented conversation between H.H. and Petitioner. The physical contact with her thigh and
13 the side of chest was stunningly incidental. H.H. did not remember that she told the
14 Detective in her interview with police that Coach Will never touched her chest.¹⁶ H.H.
15 testified that in one sweeping motion Petitioner touched her middle thigh and the side of her
16 rib cage during an otherwise innocent hug.¹⁷ She described this offense as a brush up and
17 she did not report it as an inappropriate touching until speaking with the other two
18 complainants.¹⁸
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23 ¹³ Id.

24 ¹⁴ PHT Vol. II at pp. 92-93. (emphasis supplied)

25 ¹⁵ Id.

26 ¹⁶ PHT I at p.35.

27 ¹⁷ PHT I at pp.38-40.

28 ¹⁸ PHT I at p.31. This conferencing produced incredibly disparate stories including a report to police of a conversation between H.H. and J.L. where H.H. described the inappropriate touching by Petitioner as occurring at a bowling alley. TR2 at p.54. This is untrue and shockingly inapposite to H.H.'s testimony that the incident happened at the Club. Petitioner has never been with H.H. at any bowling alley. TR1 at p.46. This is just part of a mosaic of truly inconceivable facts presented to the magistrate including the entirety of A.W.'s contradicted testimony. Third party witness Alejandra Guerrero testified that A.W. never got close enough to

1 H.H. admitted at a hearing on this matter that she wrote, "My mom is pressing charges
2 against Willis. I am most likely to get paid a lot of money for it, but it will go for my
3 college."¹⁹ This further brings into doubt the sufficiency of counts 4 and 5. The simple fact
4 that the justice Court resorted to borrowing evidence from Count 3 further undermines the
5 reliability of its probable cause determination as to counts 4 and 5.
6

7 **B. The Commission of Count 3 was Physically Impossible When the Justice**
8 **Court Borrowed Evidence from Count 3 it Undermined Petitioner's Due**
9 **Process Right to a Reliable Determination of the Probable Cause**
10 **Assessment as to Counts 4 and 5.**
11

12 If the Justice Court was looking to bootstrap the State's proof with borrowing or
13 transferring evidence from other counts or complainants, count 3 was a poor place to visit.
14 While A.W. testified that she was sexually abused in a public space behind the reception
15 desk of the Boys and Girls club between the hours of 7:02 a.m. and 7:14 a.m. transpired in
16 her twelve minute stay behind the Club's administrative desk, a dispassionate percipient
17 witness testified that this never happened. While A.W. testified that inappropriate
18 conversation took place immediately after this inappropriate touching at the Club's
19 administrative desk, a dispassionate percipient witness testified that A.W. did not even enter
20 Petitioner's office that morning. Alejandra Guerrero, a counselor and employee at the Club,
21 has no connection to either the Petitioner or A.W. She was working near the front desk the
22 day that A.W. was allegedly sexually molested while sitting behind the administrative desk
23
24
25

26 Petitioner to be touched and that A.W. never entered Petitioner's office where H.H. testified to inappropriate
27 conversation with Petitioner. Ms. Guerrero discredited the possibility of either the touching behind the desk or
28 conversation in the office yet, the Justice Court used this unreliable evidence to bolster a probable cause
finding as to counts 4 and 5.

1 of the Club. She testified to a certainty that she never saw A.W. get close enough to the
2 Petitioner for this leg touching to have occurred.²⁰

3 Ms. Guerrero was specifically asked, “so from your vantage point, from what you saw
4 that day, what you observed of Coach Will and (A.W.), would you say it was physically
5 impossible for Coach Will to touch that girl?” Ms. Guerrero answered “unless he got up and
6 walked to her there is no way you reach from one computer station to the other.” She was
7 asked “Did you ever see him do that?” and she emphatically stated “no.”²¹ This incident is
8 resounding proof of why evidence from one count should not be borrowed or transferred to
9 establish guilt in another.
10

11 The Justice Court made a specific point of using alleged untoward conversation from
12 this incident that according to an independent witness never happened and never could have
13 happened. In its Return, the State directs this Court to conversation that allegedly took place
14 between A.W. and Petitioner immediately after the alleged sexual abuse occurred at the
15 administrative desk in the Petitioner’s office behind the administrative desk.²² Specifically,
16 the State recounted the testimony presented by A.W., and subsequently used by the Justice
17 Court to sustain counts 4 and 5 as follows: “When the (front desk) lady arrived for work,
18 A.W. went into the Defendant’s office where they continue (sic) to catch up. The Defendant
19 inquired about a boy friend A.W. had at that time and if she had done sexual things with
20 him. The Defendant asked A.W. what her favorite position was. A.W. just chuckled when
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26 ¹⁹ PHT I at p.43.

27 ²⁰ PHT II at p.76.

28 ²¹ PHT II at p.78.

²² Return at p. 5 /11.3-12.

1 the Defendant asked her the questions and told him those were personal questions.”²³ This
2 testimony is directly refuted by both A.W., in her sworn description of leaving the desk area
3 with her friend Tyler Alvarez, and by this testimony of independent witness Alejandra
4 Guerrero. Ms. Guerrero testified as follows, as to whether Petitioner and A.W. retreated to
5 his office: “Did you ever see (A.W.) after Coach Will got up from working behind the desk
6 leave with Coach Will, and got to his office? A. **Never.** Q. Did that ever happen? A. Not that
7 I saw. Q. And you would have seen that if that happened? A. **Yes.**”²⁴

9
10 At the preliminary hearing, A.W. gave implausible testimony about this alleged meeting
11 with Petitioner in his office. To begin with, A.W. readily admitted to having been
12 disciplined about wanting to leave the Club premises with a boy named Tyler Alvarez eight
13 days before these allegations surfaced.²⁵ A.W.’s Mother had specifically demanded that her
14 daughter not leave the premises of the Club during the day with anyone but yet she asked
15 Petitioner on several occasions to leave the club with Tyler Alvarez just immediately prior
16 to this alleged sexual abuse.²⁶ Tyler Alvarez arrived at the Club at exactly 7:14 a.m. and
17 A.W. testified that when he arrived she left to go speak with Tyler Alvarez.²⁷ This testimony
18 translates into A.W. swearing under oath that Petitioner brought her into his office to engage
19 her in inappropriate conversation during this twelve minute period of when she arrived at
20 7:02 a.m. and when Tyler Alvarez arrived at 7:14 a.m. This simply did not happen. Ms.
21 Guerrero said it did not happen and the attendance logs with all of their multiple entries
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26 ²³ Return at p. 5/II. 3-7. (Citations to the preliminary hearing transcript omitted but contained in the Return.)

27 ²⁴ PHT II at p. 77. (emphasis supplied)

28 ²⁵ PHT at p.18.

²⁶ Id.

²⁷ PHT at p. 19.

1 during this time period prove it did not happen. The Justice Court should not have relied on
2 this implausible testimony to support its probable cause find in as to counts 4 and 5.

3
4 C. The State failed to prove that probable cause was presented to sustain
count 1.

5 Again, the failure to consider each count separately has poisoned the decision to hold
6 Petitioner responsible for all five counts. T.L. testified that she initially thought that the
7 conduct that comprised count 1 was an “unintentional” accident. J.L. stated that she told
8 police she first thought the touch described in count 1 was an accident, “because he never
9 did anything before.” Accordingly, the second count and the alleged inappropriate
10 conversation here and in count 3 were borrowed or transferred to establish guilt not only in
11 count 1 but also in counts 4 and 5. Again, the Justice Court relied upon a previously
12 perceived accident in count 1 and a physical impossibility in count 3 to find probable cause
13 in counts 4 and 5. This avalanche effect is illegal, suspect, and unreliable. It denied
14 Petitioner due process and should be reversed.

15
16
17 CONCLUSION

18 It is respectfully prayed that the Petition be granted and that the arguments of
19 Petitioner be adopted particularly as to Counts 4 and 5.

20 DATED this 14th day of March, 2017.

21
22
23
24 By: /s/ Gary A. Modafferi
25 Gary A. Modafferi, Esq.
26 Nevada Bar No. 12450
27 Attorney for Defendant/Petitioner
28

1 **CERT**

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9 **DISTRICT COURT**
10 **CLARK COUNTY, STATE OF NEVADA**

11 In the Matter of the Application of

Case No. C-16-319125-1

12 WILLIS BROWN

Dept No. XIX

13 For a Writ of Habeas Corpus.

14 **CERTIFICATE OF SERVICE**

15 I, the undersigned, hereby certify that on the 14th day of March, 2017, I served a true
16 copy of **TRAVERSE** upon the following:

17 Jennifer Clemons, Esq.
18 Chief Deputy District Attorney
19 jennifer.clemons@clarkcountyda.com

/s/ Erika W. Magana

20 Erika W. Magana,
21 Assistant to Gary A. Modafferi, Esq.
22
23
24
25
26
27
28

EXHIBIT “A”

1 INST

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DEC 14 2016

BY

KEITH REED, DEPUTY

5:11 PM

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 NORMAN BELCHER, #1076336

12 Defendant.

CASE NO: C-11-270562-1

DEPT NO: VI

14 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

15 MEMBERS OF THE JURY:

16 It is now my duty as judge to instruct you in the law that applies to this case. It is
17 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
18 you find them from the evidence.

19 You must not be concerned with the wisdom of any rule of law stated in these
20 instructions. Regardless of any opinion you may have as to what the law ought to be, it
21 would be a violation of your oath to base a verdict upon any other view of the law than that
22 given in the instructions of the Court.

23 C-11-270562-1
24 INST
25 Instructions to the Jury
26 4607256



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INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. 3

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Information that on or about the 6th day of December, 2010, the Defendant, committed the offenses of Burglary While in Possession of a Firearm, Robbery with Use of a Deadly Weapon, Murder with Use of a Deadly Weapon, Attempt Murder with Use of a Deadly Weapon, Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm, and Third Degree Arson. It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of one or more of the offenses charged.

COUNT 1 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit larceny and/or assault and/or battery and/or a felony, to-wit: robbery and/or murder, that certain building occupied by NICHOLAS BRABHAM and/or WILLIAM POSTORINO, located at 9752 Villa Lorena, Las Vegas, Clark County, Nevada, the Defendant having in his possession or gaining possession of a firearm during the commission of the crime, the Defendant being responsible under one or more of the following principles of criminal liability, to-wit: by said Defendant (1) directly committing the the acts constituting the offense; and/or (2) acting pursuant to a conspiracy, with the specific intent to commit the crime, with one or more unknown confederates whereby each individual is vicariously liable for the foreseeable acts of the other made in furtherance of the conspiracy; and/or (3) by aiding or abetting one or more uncharged confederates in the commission of this crime with the intent to commit this crime by providing counsel and/or encouragement, the Defendant and his confederates acting in concert throughout;

///

///

///

///

1 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

2 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
3 a television set, a laptop computer, a safe, jewelry and/or other personal property, from the
4 person of NICHOLAS BRABHAM, or in his presence, by means of force or violence or fear
5 of injury to, and without the consent and against the will of the said NICHOLAS
6 BRABHAM, said Defendant and/or one of his uncharged confederates using a deadly
7 weapon during the commission of the crime, to-wit: a firearm, said Defendant being
8 responsible under one or more of the following principles of criminal liability, to-wit: by
9 said Defendant (1) directly committing the acts constituting the offense; and/or (2) acting
10 pursuant to a conspiracy with one or more unknown confederates whereby each individual is
11 vicariously liable for the foreseeable acts of the other made in furtherance of the conspiracy;
12 and/or (3) by aiding or abetting one or more uncharged confederates in the commission of
13 this crime by providing counsel and/or encouragement, the Defendant and his confederates
14 acting in concert throughout;

15 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

16 did then and there wilfully, unlawfully, and feloniously take personal property, to-
17 wit: a television set, a laptop computer, a safe, jewelry and/or other personal property, from
18 the person of ALEXUS POSTORINO, or in her presence, by means of force or violence or
19 fear of injury to, and without the consent and against the will of the said ALEXUS
20 POSTORINO, said Defendant and/or one of his uncharged confederates using a deadly
21 weapon during the commission of the crime, to-wit: a firearm, said Defendant being
22 responsible under one or more of the following principles of criminal liability, to-wit: by
23 said Defendant (1) directly committing the acts constituting the offense; and/or (2) acting
24 pursuant to a conspiracy with one or more unknown confederates whereby each individual is
25 vicariously liable for the foreseeable acts of the other made in furtherance of the conspiracy;
26 and/or (3) by aiding or abetting one or more uncharged confederates in the commission of
27 this crime by providing counsel and/or encouragement, the Defendant and his confederates
28 acting in concert throughout;

1 COUNT 4 - MURDER WITH USE OF A DEADLY WEAPON

2 did then and there willfully, unlawfully, feloniously, without authority of law, and
3 with malice aforethought, kill ALEXUS POSTORINO, a human being, by shooting at and
4 into the body of the said ALEXUS POSTORINO, said Defendant and/or one of his
5 uncharged confederates using a deadly weapon during the commission of the crime, to-wit:
6 a firearm, said killing having been (1) willful, deliberate and premeditated and/or (2)
7 perpetrated during the commission or attempted commission of a robbery and/or (3)
8 perpetrated during the commission or attempted commission of child abuse, said Defendant
9 being responsible under one or more of the following principles of criminal liability, to-wit:
10 by said Defendant (1) directly committing the acts constituting the offense; and/or (2) acting
11 pursuant to a conspiracy, with the specific intent to commit the crime, with one or more
12 unknown confederates whereby each individual is vicariously liable for the foreseeable acts
13 of the other made in furtherance of the conspiracy; and/or (3) by aiding or abetting one or
14 more uncharged confederates in the commission of this crime with the intent to commit this
15 crime by providing counsel and/or encouragement, the Defendant and his confederates
16 acting in concert throughout;

17 COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

18 did then and there, without authority of law, and malice aforethought, willfully and
19 feloniously attempt to kill NICHOLAS BRABHAM, a human being, by shooting at and into
20 the body of the said NICHOLAS BRABHAM, said Defendant and/or one of his uncharged
21 confederates using a deadly weapon during the commission of the crime, to-wit: a firearm,
22 said Defendant being responsible under one or more of the following principles of criminal
23 liability, to-wit: by said Defendant (1) directly committing the acts constituting the offense;
24 and/or (2) acting pursuant to a conspiracy, with the specific intent to commit the crime, with
25 one or more unknown confederates whereby each individual is vicariously liable for the
26 foreseeable acts of the other made in furtherance of the conspiracy; and/or (3) by aiding or
27 abetting one or more uncharged confederates in the commission of this crime with the intent

28

1 to commit this crime by providing counsel and/or encouragement, the Defendant and his
2 confederates acting in concert throughout;

3 COUNT 6 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN
4 SUBSTANTIAL BODILY HARM

5 did then and there wilfully, unlawfully and feloniously use force or violence upon the
6 person of another, to-wit: NICHOLAS BRABHAM, said Defendant and/or one of his
7 uncharged confederates using a deadly weapon during the commission of the crime, to-wit:
8 a firearm, by shooting at and into the body of the said NICHOLAS BRABHAM, resulting in
9 substantial bodily harm to the said NICHOLAS BRABHAM, said Defendant being
10 responsible under one or more of the following principles of criminal liability, to-wit: by
11 said Defendant (1) directly committing the acts constituting the offense; and/or (2) acting
12 pursuant to a conspiracy with one or more unknown confederates whereby each individual is
13 vicariously liable for the foreseeable acts of the other made in furtherance of the conspiracy;
14 and/or (3) by aiding or abetting one or more uncharged confederates in the commission of
15 this crime by providing counsel and/or encouragement, the Defendant and his confederates
16 acting in concert throughout;

17 COUNT 7 - THIRD DEGREE ARSON

18 did then and there wilfully, unlawfully, maliciously, and feloniously set fire to, and
19 thereby cause to be burned, the unoccupied personal property of another, to-wit: a 2009
20 Nissan Versa, the property of United Nissan, by use of open flames and/or combustible
21 materials, and/or by manner and means unknown, said Defendant being responsible under
22 one or more of the following principles of criminal liability, to-wit: by said Defendant (1)
23 directly committing the the acts constituting the offense; and/or (2) acting pursuant to a
24 conspiracy, with the specific intent to commit the crime, with one or more unknown
25 confederates whereby each individual is vicariously liable for the foreseeable acts of the
26 other made in furtherance of the conspiracy; and/or (3) by aiding or abetting one or more
27 uncharged confederates in the commission of this crime with the intent to commit this crime
28

1 by providing counsel and/or encouragement, the Defendant and his confederates acting in
2 concert throughout.

3 It is the duty of the jury to apply the rules of law contained in these instructions to the
4 facts of the case and determine whether or not the Defendant is guilty of one or more of the
5 offenses charged.

6 Each charge and the evidence pertaining to it should be considered separately. The
7 fact that you may find the defendant guilty or not guilty as to one of the offenses charged
8 should not control your verdict as to any other offense charged.

1 sat in?

2 A. Yes.

3 Q. Behind the counter?

4 A. Yes.

5 Q. Is that how it looked like the day you sat
6 in it?

7 A. Not that I remember. I don't know.

8 Q. Is that how the counter was set up?

9 A. I think so.

10 MR. MODAFFERI: I ask that D be admitted.

11 MS. CLEMONS: No objection.

12 THE COURT: D is admitted.

13 Q. There is 2 chairs on D, is that correct?

14 A. Yes.

15 Q. And one chair is on one side of the counter,
16 and one is on the other side of the counter, is that
17 correct?

18 A. Yes.

19 Q. And is that how it was that day?

20 A. No.

21 Q. It wasn't?

22 A. No.

23 Q. The computers were closer than they are now?

24 A. The chair was over here.

25 Q. Over where?

1 A. This chair was here, and this chair was
2 here. They were close.

3 Q. And during that time, how close were you to
4 my client, to Mr. Coach Will?

5 A. Maybe a little bit farther than you 2 are
6 sitting next to each other.

7 Q. 4 feet?

8 A. A little closer.

9 Q. Like if you are sitting down?

10 A. This close, yes.

11 Q. 2 feet?

12 A. Yes.

13 Q. Is that a fair approximation?

14 A. Yes.

15 Q. Is that when he touched your thigh from your
16 ankle to your inner thigh?

17 A. Yes.

18 Q. While you were seated?

19 A. Yes.

20 Q. During the time that you were seated next to
21 Coach Will were parents coming in?

22 A. No, not when he touched my leg.

23 Q. You arrived there at 7:02 that day, right?

24 A. Yes.

25 Q. Okay.

1 And do you recall other people coming in;
2 how long after you got there did he touch your leg?

3 A. I don't recall.

4 Q. Was it 5 minutes, 10 minutes, 15 minutes?

5 A. I don't recall. Maybe around 15, 20
6 minutes.

7 Q. So you were seated next to him for
8 approximately 15, 20 minutes.

9 He touched your leg, and then he went back
10 into the office with you?

11 A. No, sir. I was there, and after he touched
12 my leg, I continued to sit there, because there were
13 other people coming in.

14 I froze, and then the lady who was normally
15 doing them, she came in and he said to come into his
16 office.

17 Q. Who is the lady that normally comes in?

18 A. I don't know. She had purple hair.

19 Q. When the people were coming in what were
20 they doing?

21 A. Dropping off their kids.

22 Q. Do you recall the Liana Hamilton, Michele
23 Hamilton and Selinalei Hamilton coming in at 7:07?

24 A. I don't know who they are, sir.

25 Q. You were there sitting right in front of the

1 counter, and you didn't notice parents coming in,
2 and bringing their children in and having them
3 registered, and pay for their lunch and pay for the
4 week?

5 A. I know there were people. I wasn't paying
6 attention.

7 Q. Who were you paying attention to?

8 A. I was paying attention to mostly my phone.

9 Q. You weren't noticing the people coming in
10 and out?

11 A. I know there were people coming in and out.
12 I don't know who they were.

13 Q. Did you notice Alejandra Guerreiro on the
14 side?

15 A. No.

16 Q. A staff member?

17 A. No.

18 Q. Had you gotten into trouble with Coach Will
19 before this happened?

20 A. No.

21 Q. Was Coach Will considered the person that
22 you would go to if you had gotten into trouble?

23 A. Yes, sir.

24 Q. Had you ever been suspended from the club?

25 A. Not that I recall.

1 Q. Have you ever been disciplined for wearing
2 inappropriate clothing or saying inappropriate the
3 language?

4 A. No, sir.

5 Q. Do you recall making requests from Coach
6 Will that you be allowed to leave with a person by
7 the name of Tyler Alvarez?

8 A. Yes.

9 Q. Your mom specifically stated that she did
10 not want you to leave the Boys and Girls Club during
11 the day with anyone?

12 A. Yes.

13 Q. Yet you asked him on several occasions to
14 leave with Tyler Alvarez?

15 A. Yes.

16 Q. When he said no, that angered you?

17 A. Not really. I just knew that I shouldn't
18 have been gone, so it was fine.

19 Q. Do you remember when all of this occurred
20 that the report was made 8 days after you said this
21 happened?

22 A. Yes.

23 Q. This happened on August 1, right?

24 A. Yes.

25 Q. It was a Monday?

1 A. Yes.

2 Q. You had been back at the club for how long
3 before this happened?

4 A. That was my first day. I spent a week before
5 at home.

6 Q. The week that you spent before was in
7 California, right?

8 A. No, sir. I came back, I think on July 25.
9 Then I think for a week after I was with Crystal
10 Marshall, a family friend, and then the day I came
11 back was that Monday.

12 Q. Had you gotten into trouble in California;
13 is that the reason why you were returning to Las
14 Vegas?

15 A. No.

16 Q. You had not gotten into trouble?

17 A. No.

18 Q. What time did Tyler Alvarez get there?

19 A. I don't know.

20 Q. Tyler Alvarez was the only other teenager in
21 the club at the time, right?

22 A. Yes.

23 Q. And when he came in, isn't it true that you
24 went with him to go talk with him?

25 A. Yes.

1 Q. So, if the records reflect that he got there
2 7:14, and you went with Tyler Alvarez into the teen
3 room to talk to him, then this must have occurred
4 between 7:02 and 7:14?

5 A. That's fair to say.

6 Q. How long did you actually spend in the
7 office with the Defendant?

8 A. Not long.

9 Q. What was the purpose for him going back
10 there?

11 A. Into the office?

12 Q. Yes. Why did he tell you he wanted to talk
13 to you in the office?

14 A. He just told me to come into his office.

15 Q. If he told you to come into his office
16 before Tyler Alvarez arrived, that would be within
17 that 12 minute period, correct?

18 A. Yes, sir.

19 Q. And during that 12 minute period, is it your
20 testimony that the person who was normally supposed
21 to be checking in the families, the children, taking
22 the lunch money, taking registration fees, swiping
23 the cards, she came because she would have had to
24 have taken over his position, right?

25 A. That's fair to say.

1 Q. Do you recall getting into trouble with a
2 person by the name of Malik?

3 A. Yes.

4 Q. When you told me before that you had not
5 gotten into trouble, that wasn't exactly truly, was
6 it?

7 A. It wasn't that I had gotten into trouble, he
8 had gotten in trouble.

9 Q. You had accused Malik of trying to grab you
10 and kiss you?

11 A. Yes.

12 MS. CLEMONS: I object as to relevance.

13 THE COURT: I will let you go a little ways.

14 MR. MODAFFERI: I will tie it up.

15 Q. This happened 2 days before you made the
16 acquisition against my client, was it?

17 A. I don't know.

18 Q. It was August 8 that you and Malik, and was
19 it Jade that got called into the office about this
20 kissing incident?

21 A. Yes, sir.

22 Q. And when you left that room with Jade and
23 Malik, you had already talked to Coach Will and to
24 who else, Angela?

25 A. Jade went in after me. It wasn't Angela.

1 It was another staff member.

2 Q. It was Elana, the track director?

3 A. Right.

4 Q. She had spoken to you, and told you that you
5 need to get your act together, you can't be acting
6 like this?

7 A. No, she said because he tried to do this
8 with another, I think they said 3 other girls
9 already, and not to let -- they said that they knew
10 that I wasn't at fault, but just not to let other
11 guys get me in trouble.

12 Q. Did you at that time become concerned that
13 you were going to get suspended; were you told you
14 were going to get suspended?

15 A. No.

16 Q. That's something that Coach Will never told
17 you?

18 A. No.

19 Q. That's not something that Elana ever told
20 you, is that correct; is that your testimony today?

21 A. That's correct.

22 Q. 2 days later, on the 10 is when these
23 accusations were formally reported?

24 A. Yes.

25 Q. How did you do that?

1 A. I was at a counseling appointment. I was
2 with my counselor, Merlin Harris, and I was in the
3 office with her, and she just asked me about what
4 had it been like being home, and I told her there
5 was like this creepy things that happened.

6 I told her, and she said I need to report,
7 so she called child services.

8 Q. Okay.

9 And that day did you, or close to that day,
10 did you get upset because you weren't allowed to
11 return back to the Boys and Girls Club?

12 A. That day, yes.

13 Q. You said to the police why do I have to miss
14 out and that creep gets to stay there, right?

15 A. Yes.

16 Q. The person you were referring to as the
17 creep is my client?

18 A. Yes, sir.

19 Q. You didn't like him to begin with, did you?

20 A. No, I did. He was actually a real good
21 friend. I was actually more upset, because I had
22 known him for years, and I found out it was other
23 girls, too.

24 Q. The other girls you found out were Holiday?

25 A. Holiday, Jade, and whoever else he was

1 referring to when he told me about the girls.

2 Q. So you all got together and you talked about
3 what was going on?

4 A. No.

5 Q. That same morning, you called Jade, and you
6 discussed what was going on, isn't that what you
7 told the police?

8 A. Yes.

9 Q. And when you called her, Jade, you talked
10 about Coach Will and things that he may have done;
11 is that correct?

12 A. Yes.

13 Q. And that thing about the inner thigh, is
14 that something that you said happened to you to her?

15 A. Can you restate the question?

16 Q. The touching of the leg from the ankle to
17 the thigh, is that what you said Coach Will did to
18 you, right?

19 A. Yes.

20 Q. Couch Willis never touched you on your
21 breasts?

22 A. No.

23 Q. He never touched you on your butt?

24 A. No.

25 Q. Couch Willis touched you from this portion

1 of your leg by where your ankle bone is reached; do
2 you understand, while you were seated like this?

3 A. He reached over and went like that.

4 (Indicating.)

5 Q. If he is sitting like this to you, did he
6 touch your outer leg or inner?

7 A. Inner.

8 Q. He reached to this leg and touched up?

9 A. It was this leg.

10 Q. It would be my left leg if you are looking
11 at me, right?

12 A. No.

13 Q. He the touched the leg that was closest
14 to him?

15 A. He touched this one, so if he was sitting
16 here, and I was sitting here, he reached over and
17 touched this one. (Indicating.)

18 Q. He reached across your body and touched the
19 leg that was farthest from you?

20 A. Yes, it was crossed like this. He reached
21 here. (Indicating.)

22 Q. So if his leg was crossed --

23 A. My leg was crossed.

24 Q. So you crossed your legs at the knee, like a
25 lady, or like a man, like I do?

1 MS. CLEMONS: Objection to that
2 characterization.

3 MR. MODAFFERI: I will withdraw it.

4 Q. Was it crossed like this across the knee, or
5 was it crossed at the knee?

6 A. In the middle.

7 Q. In the middle, okay.

8 So he reached across, and he touched the
9 outer portion of your ankle -- I should say inner
10 portion.

11 THE COURT: Counsel, the way she described
12 it is just the opposite of how you are describing
13 it.

14 She said he reached across and put his hands
15 initially on the inner part of the middle thigh, and
16 then reached down to her ankle.

17 Is that right?

18 THE WITNESS: Yes.

19 Q. So just so I am getting this straight, the
20 leg is crossed; which leg is he touching?

21 A. My leg is crossed this way. He is touching
22 the one on the top.

23 THE COURT: For the record, the witness is
24 taking her right leg and crossing it over her left
25 knee, so when she says this leg like this, that's

1 what she's demonstrating.

2 Go ahead.

3 Q. So he touched the inner part of your thigh
4 first?

5 A. Yes, right here. (Indicating.)

6 Q. And he went up to your knee?

7 A. He went up, and then it was one continuous
8 motion.

9 Q. Did he say anything at that time?

10 A. He just felt my leg, and he said your legs,
11 they are soft, and he said cool, and he turned back
12 away.

13 Q. And at that time were their parents or
14 children in front of them?

15 A. Not at that time.

16 MR. MODAFFERI: Court's indulgence.

17 Thank you, Judge.

18 THE COURT: Sure.

19 Q. So that day that you weren't allowed to go
20 back to the Boys and Girls Club, and you were upset?

21 A. Yes.

22 Q. And was it at that time that you called
23 Metro to see where the case was?

24 A. I called the day after.

25 Q. In your testimony it stated that you called

1 Jade that day, right?

2 A. Yes.

3 Q. Okay.

4 And then you said; I called my friend Jade,
5 and I just told her what was happening; is that
6 correct?

7 A. Yes.

8 Q. Yes?

9 A. Sorry.

10 Q. And I told her I am not going to be there,
11 and that really sucked, because it was her last day,
12 that's what you told the police?

13 A. Yes.

14 Q. And then you testified --

15 MS. CLEMONS: I object. He is reading a
16 transcript into evidence, and not refreshing her
17 recollection.

18 She is not stating she doesn't remember
19 saying those things.

20 MR. MODAFFERI: I will let her read it.

21 May I approach?

22 THE COURT: Sure.

23 MR. MODAFFERI: It is page 7 of her
24 voluntary statement, Judge.

25 MS. CLEMONS: Your Honor, I don't understand

1 what he is doing, because she hasn't said she
2 doesn't recall any of these things, so as to her
3 statement, she would have to say; I don't recall
4 saying those things.

5 She said yes, I called these people, I
6 called these people.

7 THE COURT: For impeachment you need to ask
8 her a question, and if she gives you an answer that
9 is inconsistent, then you can --

10 MR. MODAFFERI: If I can have it marked as
11 substantive evidence that she's contradicting
12 herself under oath?

13 THE COURT: Do it correctly; did you read it?

14 THE WITNESS: Yes.

15 THE COURT: Did you read the portion of your
16 statement that counsel is asking you about?

17 THE WITNESS: Read it out loud?

18 THE COURT: To yourself.

19 MR. MODAFFERI: To yourself starting here.

20 THE WITNESS: Yes, that's what I said.

21 THE COURT: Is your testimony any different
22 than that statement?

23 THE WITNESS: No.

24 Q. So is the statement wrong?

25 A. The statement is correct. That's what I

1 said.

2 Q. You said that you had called Jade and Metro
3 on the same day?

4 A. Yes.

5 Q. And is your testimony different today that
6 you didn't do that?

7 A. That I didn't call them?

8 Q. Jade and Metro on the same day?

9 A. No. I call them both on the same day.

10 Q. So when you called Metro, what happened?

11 A. They had said they don't handle that case,
12 and said if I wanted to be connected with CPS, I
13 could.

14 It was something along those lines.

15 Q. And did they connect you at that time with
16 Child Protective Services?

17 A. They gave me a number.

18 Q. And did you get really mad at that point as
19 you indicated in your statement?

20 A. I wasn't like screaming mad, but, yes, I was
21 upset.

22 Q. Okay.

23 You were mad because you couldn't get to go
24 to the club that day?

25 A. That was part of it. I was mad because he

1 was still there.

2 Q. In your statement you indicated that why you
3 were calling, you were saying why is he there; who
4 were you directing that to?

5 A. I am just asking whoever. I was just
6 saying; why is he still there.

7 Q. How are you talking to?

8 A. Whoever was on the phone with me. Whoever
9 was head of that case.

10 Q. So you did call, and you got in touch with
11 Metro and whoever was in charge of the case?

12 A. Yes.

13 Q. And you spoke with them?

14 A. I believe so. I don't really recall.

15 Q. You indicated in your statement; well, we
16 sent it down to Metro, and they said it would take a
17 couple of business days for you to get connected
18 with the detective.

19 A. Yes.

20 Q. Is that correct?

21 Is that what they told you?

22 A. I believe so.

23 Q. Why did you make that call that day?

24 A. Because I was upset that he was still there.

25 Q. If you were upset that he was still there,

1 why did you wait 7 days to make the call?

2 MS. CLEMONS: Objection, misstates the
3 testimony.

4 She didn't report this to the police.

5 THE COURT: According to counsel it says;
6 then they called the police.

7 Rephrase your question.

8 Q. If you were so upset that he was still
9 there, why didn't you call the police like you did
10 that day on the 8 on the 1?

11 A. I was already uncomfortable with previous
12 things on top of that, it was hard for me to talk
13 about.

14 Q. Is it true that you called the police that
15 day because you had collaborated with Jade and
16 Holiday?

17 A. Not with Holiday.

18 What do you mean by collaborated?

19 Q. Talked about how you could get back Coach
20 Will?

21 A. No, that's not what way talked about.

22 Q. Did you know or did Holiday indicate to you
23 that she was going to get paid for this?

24 A. No. I didn't even know about Holiday until I
25 was talking to Jade about it, when they had

1 scheduled the Court date, and she told me Holiday
2 was one of them.

3 Q. What eventually came of the incident with
4 Malik?

5 A. I just stopped talking to Malik, and they
6 said I was free to go. We laughed about it, because
7 Malik was doing this to other girls.

8 I don't know what happened to Malik. I
9 think they called his parents.

10 Q. Did you ever get suspended?

11 A. No.

12 Q. That occurred on the 8, the same day that
13 you are called Metro?

14 A. I am not sure. It could have been.

15 Q. When Tyler came into the building, where
16 exactly did you go with him?

17 A. The teen room wasn't open yet. We sat in
18 front of the doors.

19 Q. Where the parents were bringing in their
20 children?

21 A. When you come in, there's a wall, and it
22 goes in. Then there is a door. So they weren't
23 able to see us from when you walk in.

24 If you were to go around, you could see us.

25 Q. When you saw Tyler, you said you immediately

1 went with him to go talk with him, and have someone
2 to talk to; is that correct?

3 A. Not immediately. I saw him. When I was
4 done talking to him, I got up and went to him.

5 Q. How long did you hang out with Tyler?

6 A. I think until either Katlyn or somebody else
7 got there, but I stayed hanging out with him.

8 And then I think he got up and went into the
9 gym.

10 Q. The teen room doesn't open until 10 o'clock
11 or 11:00 o'clock?

12 A. I believe so.

13 Q. So during the time that after you met up
14 with Tyler Alvarez, you had no further communication
15 with Coach Will; is that correct?

16 A. I avoided him.

17 Q. Besides the Hamiltons that I mentioned
18 coming in, I think it was 7:08, did you see the
19 Brandenburgs come in at 6:58?

20 A. I also don't know who those are.

21 Q. Do you remember the Buchanans, Moriah and
22 Samantha -- this is the fifth page -- coming in at
23 7:11?

24 A. They sound familiar, but I also don't know.
25 I wasn't really paying attention to who was coming

1 in.

2 Q. Do you recall Douglas Cohen coming in at
3 7:17, page 6 of the attendance log?

4 A. I don't know who that is.

5 Q. You don't recall him coming in?

6 A. I don't know who he is, so I don't know.

7 Q. Do you recall Edward Darrell coming in at
8 7:20?

9 A. I don't know who that is.

10 Q. Do you remember, I went through the
11 Hamiltons, you don't know any of the Hamiltons, is
12 that correct, Liaina, Michelle or Selinalei?

13 A. I would have to see their faces.

14 Q. Did you see 3 children and the parents
15 coming in at 7:07?

16 A. There were a lot people coming in. I don't
17 recall.

18 Q. And each time a kid came in, would it be
19 Couch Will's duty to take their cards, take the
20 money, and check them in?

21 A. He was writing them down or typing them in,
22 one of the 2.

23 Q. Do you remember Wyatt Hardy coming in at
24 7:17; that would be page 12.

25 A. I don't know who that is.

1 Q. Do you remember Gisele Kurtz coming in at
2 7:20 7?

3 A. I don't know who that is.

4 Q. Do you remember Chase Lawson coming in at
5 7:15, page 16?

6 A. I think so.

7 Q. And do you remember Caleb Little and
8 Hailey Little coming in at 7:08?

9 A. I don't recall.

10 Q. Do you remember Alvaro Lopez coming in at
11 7:12 with his sister Sofia Lopez at 7:12?

12 A. I don't recall.

13 Q. Do you remember Charlie McMains, page 18 of
14 28 coming in at 7:16?

15 A. I don't recall.

16 Q. Do you remember Hazel Jennel Molano and
17 Sienna Molano coming in at 7:13?

18 A. I don't know who that is.

19 I don't know who most of these people are.

20 Q. Do you remember Jacob Ortega coming in at
21 7:04, and that would have been just 2 minutes after
22 you came in?

23 A. I don't know.

24 Q. Do you remember Cameron Pipes coming in at
25 7:21, or you had already left with Tyler Alvarez?

1 A. I am not sure.

2 I don't recall.

3 Q. Do you remember Emma Sharp coming in at
4 7:09?

5 A. I don't recall.

6 Q. That would be page 24.

7 Do you remember Isabel Thomas coming
8 in at 7:18?

9 A. I don't recall.

10 Q. You left that day at 5:55 p.m., right?

11 A. Yes.

12 Q. And that was exact same time that Tyler
13 Alvarez left.

14 Did you leave with Tyler that day?

15 A No. My dad picked me up.

16 MR. MODAFFERI: Thank you.

17 Nothing further?

18 THE COURT: Any redirect?

19 MS. CLEMONS: Nothing from the State.

20 THE COURT: Thank you for testimony.

21 I appreciate it.

22 Go ahead and step down.

23 You will be excused.

24 While you are outside in the hallway, I
25 caution you not to discuss anything about your

1 testimony.

2 THE WITNESS: Yes.

3 THE COURT: State, call your next witness.

4 MS. CLEMONS: Jade Lefcourt.

5

6 JADE LEFCOURT,

7

8 who, being first duly sworn to tell the
9 truth, the whole truth, and nothing but the
10 truth, was examined and testified as follows:

11

12 THE COURT: I need to explain to you
13 that you need to speak slow and clear and
14 loud, so that he can report everything that
15 you say into the record, okay?

16 THE WITNESS: Okay.

17 THE COURT: The first thing we are
18 going to is to have you state your full name
19 and spell your first and your last name,
20 okay?

21 THE WITNESS: Jade Lefcourt, J-a-d-e
22 L-e-f-c-o-u-r-t.

23 THE COURT: Okay.

24 MS. CLEMONS: Thank you, Your Honor.

25

1 DIRECT EXAMINATION

2
3 BY MS. CLEMONS:4 Q. So, Jade, you are pretty soft spoken, so it
5 is really important that you speak up so that the
6 man in front of you can write stuff down, and so
7 that we can hear what is going on, so we don't have
8 to ask you the same question over and over.

9 Okay?

10 A. Okay.

11 Q. A little louder than that.

12 A. Okay.

13 Q. When is your birthday?

14 A. February 12, 2001.

15 Q. How old are you?

16 A. 15.

17 Q. What grade are you in?

18 A. 10.

19 Q. What kind of stuff do you like about school?

20 A. I like seeing my friends and learning about
21 new things every day.

22 Q. Okay.

23 Do you know the difference between the truth
24 and a lie?

25 A. Yes.

1 Q. What is the truth?

2 A. The truth is something that actually
3 happened and is really not fake.

4 Q. What is a lie?

5 A. A lie is something that you made up in your
6 mind or that is just fake.

7 Q. Okay.

8 So when you raised your hand today you
9 promise to tell the truth; are you going to do that
10 today?

11 A. Yes.

12 Q. I am going to direct your attention -- first
13 of all, have you ever been to the Boys and Girls
14 Club in Southern Highlands in Clark County?

15 A. Yes.

16 Q. When would you go there?

17 A. I would go there almost everyday after
18 school.

19 Q. What kinds of stuff would you do there?

20 A. Well, I started out as just being a member,
21 and then I started helping out with the kids.

22 Q. Do you remember how old you were when you
23 first went there?

24 A. It was last year. I was 14.

25 Q. Okay.

1 And what were the ages of the kids you
2 helped out with?

3 A. All ages.

4 Q. All ages.

5 What kind of stuff would you do with the
6 kids?

7 A. It depended. I would go to the park with
8 them, sometimes, or I would just stay in a room, the
9 art room, the community room, do whatever they were
10 doing.

11 Q. Okay.

12 Do you remember when you started your like
13 volunteering?

14 A. It was the week of my birthday, I believe.

15 Q. And did you know a Coach Will while you went
16 there?

17 A. Yes.

18 Q. Do you see him in Court today?

19 A. Yes.

20 Q. Can you point to him and tell me something
21 he is wearing right now?

22 A He is right there wearing a suit.

23 Q. What color?

24 A. Brown.

25 Q. Brown, okay.

1 A. I don't know what color exactly.

2 MS. CLEMONS: May the record reflect the
3 identification of the Defendant?

4 THE COURT: Yes, it will so show.

5 MR. MODAFFERI: No objection.

6 Q. So did you work there, volunteer there this
7 summer?

8 A. Yes, I did.

9 Q. The entire summer, or part?

10 A. Just part.

11 Q. Where did you go for part of the summer?

12 A. I went to Hawaii to visit my family.

13 Q. Do you remember when you came back from
14 Hawaii?

15 A. I came back like at the end of July.

16 Q. Okay.

17 When you came back at the end of July, did
18 anything happen at the Boys and Girls Club that made
19 you uncomfortable?

20 A. Well, not at first. Then Coach Will started
21 acting a little different.

22 Q. What do you mean by that?

23 A. I don't know how to explain it. He would --
24 like he would ask me really inappropriate questions.

25 Q. So what does an inappropriate question mean?

1 A. If I was a virgin or not.

2 Q. Did he ask you anything else like that?

3 A. He asked me when I lost it, and if I liked
4 it.

5 Q. Where would these conversations happen?

6 A. In his office.

7 Q. Do you remember if the door was open or
8 closed?

9 A. Closed. It was always closed when I was in
10 there.

11 Q. And would these conversations when you are
12 in Coach Will's office with the doors closed, would
13 you always talk about this or was it just sometimes?

14 A. It was just that first time.

15 Q. Okay.

16 What did you say when he was asking you
17 those questions?

18 A. I told him the truth.

19 Q. And did anything else happen when you were
20 in the office that first time?

21 A. He asked for a hug. I gave him a hug.

22 Q. Had you hugged Coach Will before?

23 A. Yes, I have.

24 MR. MODAFFERI: I didn't hear that.

25 MS. CLEMONS: She said yes.

1 MR. MODAFFERI: Thank you.

2 Q. Was there anything different about this
3 about hug compared to the others?

4 A. Yes.

5 Q. And what happened with this one?

6 A. This one he kind of touched me
7 inappropriately.

8 Q. What do you mean by that?

9 A. He touched my butt.

10 Q. What part of his body touched your butt?

11 A His hands.

12 Q. So when you guys hugged, how were you
13 positioned?

14 Like was it from the side, or face-to-face?

15 A. Face-to-face.

16 Q. Face-to-face?

17 A. Yes.

18 Q. And so his hands touched your butt, was it
19 one hand or both?

20 A. The first time it was one.

21 Q. One hand?

22 A. Yes.

23 Q. What part of your butt did he touch?

24 Was it the top, the bottom, the middle?

25 A. The middle.

1 Q. How long was his hand there for, do you
2 know?

3 A. A couple of seconds. It wasn't there for
4 long.

5 Q. Did that hug happen before he asked you the
6 inappropriate questions, or after?

7 A. The day of. It was before he asked those
8 questions.

9 Q. The hug first, then the questions?

10 A. Yes.

11 Q. Did you say anything when he hugged you like
12 that?

13 A. No.

14 Q. Did he say anything?

15 A. No.

16 Q. Then how do you end up leaving the office;
17 like what happens to make you leave?

18 A. He excused me. We finished talking by then.

19 Q. Did this ever happen any other times when he
20 touched you?

21 A. Yes.

22 Q. When was another time this happened?

23 A. A couple of days after.

24 Q. Where were you this time?

25 A. This time we were in the kitchen.

1 Q. Do you remember what you were doing in the
2 kitchen before this happened?

3 A. I went in to go get something for one of the
4 leaders, and he was coming in to go get something in
5 the kitchen.

6 He asked me to hold the door open for him.
7 I did.

8 Q. So were you in the kitchen or out of the
9 kitchen?

10 A. In the kitchen.

11 Q. And when you guys were in the kitchen, did
12 he say anything?

13 A He asked me for a hug, and that was about
14 it.

15 Q. What happened when he gave you a hug?

16 A. He touched more, both of his hands went down
17 to my butt this time.

18 Q. Okay.

19 Were you hugging the same as before, front
20 to front, or was it different?

21 A. Yes.

22 Q. It was front to front?

23 A. Yes.

24 Q. Yes?

25 A. Yes.

1 Q. And what part of your butt was his hands
2 touching?

3 A. The middle.

4 Q. The middle?

5 A. Yes.

6 Q. Did his hand move at all, or did they just
7 stay still?

8 A They would go down. Like they would move
9 there way down from my back to my butt.

10 Q. Do you remember how long his hands were on
11 your butt for?

12 A. It was a couple of seconds.

13 Q. And did you say anything?

14 A. No.

15 Q. Did he say anything when that happened?

16 A. No.

17 Q. Were there any other times, or is that it?

18 A. That was it.

19 Q. When he would do that, how did it make you
20 feel?

21 A. It made me feel really uncomfortable.

22 Q. Did you tell anybody about it?

23 A. I told my boyfriend at the time.

24 Q. Was that after it happened, or how close in
25 time to when this happened?

1 A. It was a little bit after it happened.

2 MS. CLEMONS: Nothing further from the
3 State.

4 THE COURT: Cross.

5
6 CROSS-EXAMINATION

7
8 BY MR. MODAFFERI:

9 Q. How long had you known Coach Will before of
10 all the inappropriate touching occurred?

11 A. For a while, I guess. I mean we would have
12 interactions. We would talk in his office a few
13 times.

14 He asked me how it was working with the
15 kids.

16 Q. Did you actually go to the Boys and Girls
17 Club before you assisted with the kids?

18 A. For a couple of days, yes.

19 Q. When did you first start going there?

20 A. I first started going there in February.

21 Q. And so you would go there after school?

22 A. Yes.

23 Q. And all the way from the time in February up
24 until the time that you came back from Hawaii,
25 February to the time you came back from Hawaii in

1 the middle of July, there was nothing inappropriate
2 or off-color with Coach Will, right?

3 A. No.

4 Q. So when you come back from Hawaii, did you
5 go to the club right away or did you take a little
6 break?

7 A. I waited like a day or 2.

8 Q. A day or 2, and you get back to the club and
9 is it late July?

10 A Late July.

11 Q. Okay.

12 And after you get back to the club, you say
13 that there were 2 times, 2 incidents where he
14 touched you inappropriately, both involving
15 touches to your butt?

16 A. Yes.

17 Q. Now, the first one you told police you
18 weren't sure if it was an accident, right?

19 A. Yes, because it was first time it happened.

20 Q. And the first time that it happened, where
21 did it happen exactly?

22 A. In his office.

23 Q. In his office.

24 And so Coach Will, if you can stand up is a
25 bit taller than you; how tall are you?

1 A. I am about 5-2 and 3 quarters.

2 Q. So when he touched your butt, he had to
3 reach around you to touch it?

4 A. No.

5 Q. Did he touch it from this way?

6 A. No.

7 Q. He would go --

8 A. We were facing front, and he would go under
9 my arms.

10 Q. So he went under like that, and then down;
11 were you this close to him?

12 A. Well, I put my arms around his shoulders
13 like I usually do with everybody else.

14 Q. Were you standing on your toes?

15 A. Yes, I was.

16 Q. And he reached down and touched the middle
17 part of your butt?

18 A. Yes.

19 Q. That was the first time?

20 A. Yes.

21 Q. And how long did that last?

22 A. A couple of seconds.

23 Q. Did he ever touch your chest?

24 A. No, he did not.

25 Q. Did he ever like try make out with you, kiss

1 you, anything like that?

2 A. No.

3 Q. And during that first hug, who else was
4 around the area?

5 A. I am not sure. I was not looking outside
6 the door.

7 Q. The door itself, I am showing that.

8 MR. MODAFFERI: Approach the witness, Judge?

9 THE COURT: Yes.

10 Q. I am showing you Defendant's Exhibit E; is
11 that Coach Will's office?

12 A. This one or that one.

13 Q. This area right here?

14 A. Yes.

15 Q. Yes.

16 Where did he hug you?

17 A. It was past this desk.

18 Q. So you were called into the office; why were
19 you in his office?

20 A. I do not know.

21 He was Asking me questions about my trip.

22 Q. And so did you go from where the chair was?

23 A. He was in the middle of the desk area. He
24 was further into the room.

25 He was further in, about to walk to his

1 chair, and right there, there is a little area
2 between his desk and the wall.

3 Q. And so you went towards him to hug him?

4 A. Yes.

5 Q. And you had done that on other occasions
6 before, and not thought anything of it, is that
7 correct?

8 A. Yes.

9 Q. But this time you thought that was
10 inappropriate, because his hand touched your butt?

11 A. Yes.

12 Q. And it was your testimony to police that at
13 first you thought it was an accident?

14 A At first I did, because he never did
15 anything before.

16 Q. Now, since this case with Coach Will has
17 been started, or ongoing, how many times have you
18 talked to Aricha Willis about this?

19 A. I have not talked to her since the day she
20 left the Boys and Girls Club.

21 Q. So the day that she left the Boys and Girls
22 Club was about a week or 8 days after this happened,
23 right?

24 A. I believe so.

25 Q. And you talked to her the day that the

1 police came to talk to you?

2 A. Yes.

3 Q. And in fact, between the time that the
4 police talked to Aricha, she called you and told you
5 what she told the police?

6 A. She only told me everything that I had
7 already known.

8 Q. That wasn't my question.

9 Between the time that she talked to the
10 police at her house, or wherever she talked to the
11 police, to the time that the police came over to
12 talk to you about the incident, Aricha was on the
13 phone talking to you about what she told the police;
14 is that true?

15 A. Yes.

16 Q. And when the police came over to talk to you
17 about the incident, the facts of what she had just
18 told you were fresh in your mind, because it just
19 happened a couple of minutes before, right?

20 A. I don't understand what you are asking me.

21 Q. Well, she made certain descriptions about
22 what happened to her?

23 A. She only told me where Coach Will touched
24 her.

25 Q. Did you ever have conversations with Holiday

1 about the incident?

2 A. I told her what happened with me, and then
3 she also told me that Coach Will has touched her
4 inappropriately as well.

5 Q. And did Holiday you that there was
6 inappropriate touching occurring at the bowling
7 alley?

8 A That's the only one she told me about, Yes.

9 Q. And did she also tell you that the
10 inappropriate touching at the bowling alley --

11 MS. CLEMONS: I object, hearsay.

12 THE COURT: Well, no, I will give him some
13 leeway.

14 If that happened, did she ever tell you
15 about something --

16 THE WITNESS: She told me he touched her
17 boobs in a bowling alley, yes.

18 Q. And do you know if that's the same thing
19 that she told Aricha?

20 A. I am not sure about that.

21 Q. Did Aricha tell you that that's what she
22 told her?

23 A. We never talked about Holiday.

24 Q. Can you tell me on the day that the police
25 came to speak with you, is that the day that you got

1 into trouble with the incident of Malik?

2 A. Yes.

3 Q. And on that day that you got into trouble
4 with the incident with Malik, it was for
5 inappropriate touching with him; correct?

6 A. I did not inappropriately touch him. He was
7 inappropriately texting me.

8 Q. Did you get called into the office because
9 you had made the allegation that he was trying to
10 kiss you?

11 A. Yes, he was trying to kiss me.

12 Q. He was trying to kiss you?

13 A. Yes.

14 Q. And was he also trying to kiss Aricha?

15 A. Yes.

16 Q. And Malik denied that, right?

17 A. Yes, he did.

18 Q. All 3 of you got into trouble?

19 A. Just me and Aricha. Holiday had nothing do
20 with Malik.

21 Q. Just you and Aricha, and Malik got in
22 trouble, too?

23 A. Yes.

24 Q. All 3 of you?

25 A. Yes.

1 Q. Did you get suspended?

2 A. No.

3 Q. Just in trouble?

4 A. Yes.

5 Q. What was your punishment?

6 A. We did not get a punishment. I don't recall
7 getting punishment.

8 Q. Were you told by -- was Coach Will there at
9 that time when you are talking about the Malik
10 incident?

11 A. I believe we were in his office, Yes.

12 Q. And was the track director there, Ms. Elana
13 there?

14 A. Yes.

15 Q. And what did she tell you that day about
16 what was going on?

17 What did she tell you about your
18 responsibility as being more of teenagers at the
19 Boys and Girls Club?

20 MS. CLEMONS: I object to hearsay.

21 MR. MODAFFERI: Judge, it is not being
22 offered for the truth, just as to her state of mind.

23 THE COURT: Whose state of mind?

24 MR. MODAFFERI: The witness.

25 THE COURT: Do you recall what she said?

1 THE WITNESS: No, I do not.

2 Q. Did you leave that office knowing that you
3 had done something wrong, or feeling that you had
4 done something wrong?

5 A. Yes.

6 Q. What did you feel that you had done wrong?

7 A. Ever communicating with him, or, yes, just
8 talking to him.

9 Q. Were you upset with Coach Will by what had
10 occurred?

11 A. No, I was not. He was doing his job.

12 Q. Did Aricha feel the same way?

13 MS. CLEMONS: Objection.

14 MR. MODAFFERI: Let me rephrase it.

15 Q. When you left the meeting, isn't it true
16 that Aricha was upset with Couch Will because she
17 felt like she had not done anything?

18 A. She was upset because she felt like Couch
19 Will was blaming her for the incident.

20 That's what she was upset about. She was not
21 upset with him. She was upset with that.

22 Q. Did you consider Allie one of your best
23 friends?

24 Do you know her?

25 A. Yes.

1 Q. And did you consider her one of your best
2 friends?

3 A. Yes, I did.

4 Q. Did you tell her about this incident with
5 Coach Will?

6 A. I did not tell her about the incident until
7 later. I did not tell anybody about this incident
8 until later.

9 Q. Had you be in trouble before with Couch Will
10 for incidents at the club, where you were alleged to
11 have been kissing boys?

12 A. Yes.

13 Q. And the incident with Malik was just one of
14 the several incidents in which you were
15 reprimanded -- or excuse me -- which you were warned
16 against your behavior?

17 A. The second, yes.

18 Q. Do you know Alejandra?

19 A. Who?

20 Q. Alejandra, she works there at the Boys and
21 Girls Club.

22 Do you know her?

23 A. I believe so. I don't remember a lot of
24 people by their names.

25 Q. She worked in the teen center.

1 A. The only one I do remember is Mr. Christian.
2 Sometimes Mr. Peter, and this girl that I do not
3 remember her name.

4 Q. The one you don't remember the name of, do
5 you remember her reprimanding you about
6 inappropriate conduct with boys?

7 A. I remember her just saying to me and my
8 boyfriend that we do not need to always be over each
9 other.

10 Q. So you said there was a second incident of
11 inappropriate touching that occurred near the
12 cafeteria, right?

13 A. Yes.

14 Q. It was absolutely in the pantry?

15 A. Yes, in the cafeteria.

16 Q. Now, in that particular incident when you
17 described it to the police, you said that Coach Will
18 crossed his hands; is that correct?

19 A. Yes.

20 Q. And when you said he crossed his hands,
21 maybe you can show me how he did that; were they
22 like this or like that?

23 A. I don't know. They were on both sides of my
24 butt, each hand. They were crossed, and one hand
25 was on each side of my butt.

1 Q. So while he was touching your butt, he had
2 his wrists crossed during the time?

3 A. Yes.

4 Q. That's how it happened?

5 A. Yes.

6 Q. And while he had his wrists touching your
7 butt were inside of his arms?

8 A. Yes.

9 Q. And so he was reaching down with both of his
10 hands crossed at the wrists and he was touching your
11 butt for approximately how long?

12 A. A couple of seconds. Not that long.

13 Q. And then what happened next?

14 A. I just went back to door, and held it for
15 him, waited for him to leave, and I left.

16 Q. During the time that you were locked in
17 that -- if you can stand up -- with his hands
18 crossed like that?

19 A. Yes, a but a little more.

20 Q. More?

21 A. He is kind of a little tensed up, because he
22 is in a suit.

23 Q. He is tensed up?

24 A. He is bunched up, he can't reach correctly
25 because he is in a suit.

1 Q. I see.

2 Did you struggle to get away from him since
3 he was in such tight quarters with you, since he was
4 holding you so tightly; were you able to wiggle away
5 from him?

6 A. No, I did not.

7 Q. You described it as at the time that he put
8 his butt out, when he was squeezing you with his
9 wrists crossed, is that correct, or do you need to
10 look at your statement again?

11 A. I don't need to look at my statement.

12 Q. You know that when you described this to the
13 police right after it allegedly occurred, you
14 described him as sticking his butt out, right?

15 A. Yes.

16 Q. If you can stand up again; is that how it
17 was?

18 A. It was a little more closer in.

19 Q. He wasn't trying to rub his genitals against
20 you or anything like that?

21 A. No. No, he was not.

22 Q. So you said a couple of seconds; is that one
23 or 2, or 3 or 4?

24 A. I am not sure. I was not counting the
25 seconds that his hands were on my butt.

1 Q. Were there times when Coach Will -- was
2 there a time when you saw Couch Will outside of the
3 Boys and Girls Club with his family, and you walked
4 past him, and you were just wearing a bikini or
5 something, and he admonished to go put some clothes
6 on?

7 A. Yes. It was Memorial Day. It had wet
8 slides and I was riding on them.

9 Q. And when he said that in front of his
10 family, and whoever you were with, were you
11 embarrassed or upset?

12 A. No, I was not.

13 Q. What did you tell him?

14 A. I said; no, I will not.

15 Q. That you wouldn't?

16 A. I told him, no, I wouldn't put on any other
17 clothes.

18 Q. So you were pretty strong in your reaction
19 that you weren't going to do what he told you to do?

20 A. Yes, because he did not control me out of
21 the Boys and Girls Club.

22 Q. Okay.

23 After you finally did speak to the best
24 friends Allie about the matter, what did you talk
25 about?

1 A. Nothing. She just told me that he used to
2 glance at her boobs. That was about it.

3 MR. MODAFFERI: Nothing further.

4 Thank you, Judge.

5 THE COURT: Redirect.

6 MS. CLEMONS: Real quick.

7
8 REDIRECT EXAMINATION

9
10 BY MS. CLEMONS:

11 Q. You testified that initially you thought the
12 first incident was an accident, is that right?

13 A. Yes.

14 Q. And did your opinion ever change?

15 A. Yes, it did.

16 Q. When did it change?

17 A. The second time.

18 MS. CLEMONS: Okay.

19 Nothing further.

20 MR. MODAFFERI: Nothing further.

21 Thank you, Judge.

22 THE COURT: Thank you for your testimony. I
23 appreciate it.

24 While you are out in the hallway, you can't
25 talk about your testimony while you are outside.

1 THE WITNESS: Yes.

2 MS. CLEMONS: I need to rest.

3 THE COURT: The State needs to rest first.

4 MS. CLEMONS: So on Count 1, page one, line
5 16, I want to delete and/or fondling, and insert
6 lower back and/or buttocks.

7 THE COURT: Right after it says and/or
8 rubbing, delete and/or fondling, delete that and
9 substitute what?

10 MS. CLEMONS: The lower back and/or
11 buttocks.

12 THE COURT: The lower back and/or buttocks?

13 MS. CLEMONS: Yes.

14 MR. MODAFFERI: Can I just address these, or
15 do you want to do them all at the same time?

16 THE COURT: She wants to delete in the middle
17 of the sentence on line 16, delete and/or fondling
18 to be replaced by the lower back and/or, it goes on,
19 buttocks?

20 MS. CLEMONS: Correct.

21 THE COURT: So the way the whole sentence,
22 the whole line would read, if we go back, it would
23 say a child under the age of 16 years, by touching
24 and/or rubbing the lower back and/or the buttocks of
25 the said JL?

1 MS. CLEMONS: Correct.

2 THE COURT: Do it however you want to.

3 MR. MODAFFERI: I will just let her finish.

4 THE COURT: Okay.

5 MS. CLEMONS: So, Count 2, line 22, it would
6 be the exact same change.

7 THE COURT: Delete and/or fondling and
8 replace it with the exact same language, lower back
9 and/or --

10 MS. CLEMONS: Currently counts 4, 5 and 6 are
11 charged as lewdness with a child under 16. That
12 victim is Holiday.

13 She testified that she was 12 years old, so
14 that should be charged under lewdness with a child
15 under 14, which is NRS 201.230.

16 THE COURT: That changes -- that's going
17 back to the text earlier before you start doing the
18 counts, you are going to add in lewdness with a
19 child under the age 14, which is a Category A
20 felony.

21 MS. CLEMONS: Yes.

22 THE COURT: Okay. Under 14.

23 What else?

24 MS. CLEMONS: Actually while we are on page
25 one, I going for move to amend the dates to January

1 1 of 2016 to August 1, which is what it should be
2 charged.

3 THE COURT: So, change from July 1 to what?

4 MS. CLEMONS: To January 1.

5 THE COURT: So it is going to read on or
6 between January 1, 2016 and August 1, 2016?

7 MS. CLEMONS: Then back to Count 4, on line 7
8 I want to delete lower back, and just leave it at
9 that, so it should basically be thighs and/or upper
10 leg of said HH.

11 THE COURT: And/or upper leg of --

12 MS. CLEMONS: We can delete and/or.

13 THE COURT: Okay.

14 Anything else?

15 MS. CLEMONS: Count 5 would be the same
16 changes on lines 12 and 13.

17 THE COURT: Line 12, where it says and/or
18 fondling, that is that what you are talking about?

19 MS. CLEMONS: Delete the and/or lower back.

20 THE COURT: Delete and/or lower back, okay.

21 MS. CLEMONS: Count 6, line 18, we can delete
22 the and/or fondling the thigh and upper leg and
23 lower back and buttocks, delete that whole thing,
24 and replace it with and/or rubbing side of stomach,
25 breast and/or chest of said HH.

1 THE COURT: And/or fondling the thigh and/or
2 upper leg, and/or lower back, and/or buttocks, and
3 replace that with what?

4 MS. CLEMONS: Side of stomach, breast and/or
5 chest.

6 THE COURT: Breast and/or chest.

7 MS. CLEMONS: Stomach, breast, and/or chest.

8 MS. CLEMONS: And the last change is to add a
9 Count 7, lewdness with a minor under 14, the
10 language would be the exact same as Count 6.

11 That's it.

12 THE COURT: Counsel.

13 MR. MODAFFERI: First off, I am not sure
14 what incident the Count 7 is for, because none of
15 the incidents were specifically enumerated.

16 I think it is incumbent before the State
17 piles on another B felony that they say; oh, it was
18 for this testimony.

19 I mean, we are left in the lurch about not
20 only the dates in this case, but the actions.

21 So now we have 4 of 4 counts involving
22 Holiday, who specifically testified that her breasts
23 weren't touched, and yet they are adding breasts
24 into the count, and they are adding another count
25 for which we don't know happened.

1 When did this happened? There is not a
2 single date attributed to a single one of these
3 counts.

4 That's also why I would be objecting to
5 expanding the time frame to January 1, because there
6 was not any testimony by any victim in this case
7 about anything that preceded the spring.

8 And I am not sure there is any testimony by
9 any of these alleged victims that preceded July.

10 THE COURT: Well, explain how you are
11 requiring Holiday -- first of all Holiday is 12.

12 MS. CLEMONS: Correct.

13 THE COURT: She's the named victim in counts
14 4, 5 and, 6 and 7?

15 MS. CLEMONS: Correct.

16 THE COURT: And you are going to go under 16
17 on each of those -- on under 14 on each of those
18 counts, right?

19 MS. CLEMONS: Yes.

20 THE COURT: Now, how do you get 4 counts out
21 of her testimony?

22 MS. CLEMONS: Okay.

23 She had testified in regards to --
24 specifically with regards to 2 incidents.

25 The law requires us to differentiate and

1 have some factual differences then there is ongoing
2 sexual abuse.

3 So she testified too one incident she got in
4 trouble for stealing food, and she went into Coach
5 Will's office, and that was his pattern of what he
6 would do is he would touch her thigh, and he would
7 leave his hand on her thigh before then rubbing his
8 hand up and touching the side of her breast.

9 Because there is pause in that action, that
10 in the State's opinion makes it 2 separate counts.

11 He is not doing one continuous action. He
12 is doing one touch, and he is waiting, and then he
13 is doing another touch when she is trying to pull
14 away from him.

15 So that's why the 2 incidents that are
16 charged with 2 different body types. The second
17 incident she talked about is she 3 got in trouble
18 for talking back, when she went to Coach Will's
19 office, so those are the 2 incidents that the State
20 is charging.

21 She also testified she couldn't recall
22 exactly when this occurred, but she knew it was
23 after Christmas and before her birthday, so that is
24 why the date change occurred.

25 THE COURT: Okay.

1 MR. MODAFFERI: So, Judge, her testimony to
2 me was pretty clear that it was the side of her
3 body.

4 I don't recall anything close to her breast.
5 I can't even imagine how this can be morphed into
6 sexual contact.

7 Unless you are going to borrow what was said
8 by the other 2 girls, and kind of pull that into
9 Holiday's testimony, there is nothing to prove that
10 this was done with any intent other than innocent
11 intent.

12 I mean, there was nothing in her testimony
13 that showed that this was sexual. And now it is
14 being turned into 4 counts of a Class A felony.

15 I just can't see how that testimony yields 4
16 counts of a Class A felony. That is as innocent as
17 to people bumping into each other on a subway.

18 And the only way that I think that this
19 Court can get to 4 counts of an A felony is; well,
20 Jade said there was some talk that was
21 inappropriate.

22 And Aricha said there was touching that was
23 inappropriate. But as the Court knows, just like
24 with a jury, you can't borrow from one count to
25 infer guilt on another.

1 So I would argue that none of these should
2 be granted. It shouldn't be upgraded to an A
3 felony. There was nothing to suggest that a breast
4 was touched.

5 There wasn't even slight or marginal
6 evidence to prove that there was sexual
7 gratification or the intent to arouse.

8 And counts with Holiday should be dismissed.
9 That to me is the type of incidental every day
10 contact that people have, that if that happens on an
11 elevator, and I got charged for an A felony, I would
12 be like whoa, is this what this world come to, and
13 that's the way the Court has to look at this.

14 You can't legally borrow Lefcourt and
15 Willis' testimony, however skewed it may be in my
16 mind to supplant the evidence for sexual
17 gratification, arousal intent, showing that this is
18 anything other than incidental conduct.

19 These counts should be thrown out.

20 THE COURT: Any other comments?

21 MR. MODAFFERI: No, Judge.

22 THE COURT: Let me hear your testimony, ,and
23 then we will wrap up the argument.

24 Pending your amendments, the State rests?

25 MS. CLEMONS: That is correct.

1

2

ALEJANDRA GUERRERO,

3

4 who, being first duly sworn to tell the
5 truth, the whole truth, and nothing but the
6 truth, was examined and testified as follows:

7

8

THE CLERK: Please be seated.

9

THE COURT: Spike nice, slow and
10 clear right towards that microphone.

11 I want you start off with giving us
12 your full name and spelling both your first
13 and last name.

14

THE WITNESS: Alejandra Guerrero,
15 A-l-e-j-a-n-d-r-a G-u-e-r-r-e-r-o.

16

THE COURT: You may proceed.

17

18

DIRECT EXAMINATION

19

20

BY MR. MODAFFERI:

21

Q. Good afternoon. Thank you for waiting
22 to testify. I appreciate it.

23

Do you know the person sitting here
24 at counsel table?

25

A. Yes.

1 Q. Who do you know him to be?

2 A. My supervisor.

3 Q. Is he any longer your supervisor?

4 A. Not for 4 months.

5 Q. He has been terminated since this incident
6 occurred; is that correct?

7 A. Yes.

8 Q. And do you still work there at the Boys and
9 Girls Club?

10 A. Only during the summer. I have been there
11 for 3 months, only for the summers.

12 Q. I want to direct your attention specifically
13 to August 1, 2016, were you working there at the
14 club that day?

15 A. Yes.

16 Q. And What were you doing there, what were
17 your responsibilities?

18 A. Well, I was one of the first persons to come
19 in in the morning, myself and whoever opens that
20 day.

21 And I am responsibility is to be in the game
22 room the whole time, which is right next to the
23 front desk.

24 Q. I want to show you a picture that has been
25 received in evidence as Defendant's C; do you

1 recognize that photograph?

2 A. Yes.

3 Q. And what is it a photograph of?

4 A The front desk area.

5 Q. And so this portion is, looking at
6 Defendant's B is also of the front desk area?

7 A. Yes.

8 Q. So this portion off to this side on left of
9 B is on the right hand of C; is that correct?

10 A. Yes.

11 Q. And so you would have been standing on the
12 right hand of C?

13 A. In the game room, right next to that the
14 whole time, right next to the front office.

15 Q. So when you got there, did you open up the
16 club, or were you there before the kids started
17 arriving at 7:00?

18 A. There were kids there the same time as I
19 arrived, and I don't actually open the club. I walk
20 in with the person whoever is responsible for
21 opening the club.

22 Q. Do you recall the Defendant Mr. Brown being
23 present?

24 A. Yes.

25 Q. Was he seated behind the counter at some

1 point?

2 A. He was in the -- whoever is in that area has
3 to be there the whole time, because you have parents
4 walking in the whole time.

5 Q. I want to show you what's been marked and
6 received as Defendant's D, does that show back
7 portion of that same desk?

8 A. Yes.

9 Q. If you were looking out from the back
10 portion of this desk, was Coach Will seated at one
11 of those seats?

12 A. He would be at this side looking towards the
13 main entrance.

14 Q. So you are pointing to the right-hand side
15 of Defendant's D?

16 A. Yes.

17 Q. Okay.

18 Did he remain there during the time that he
19 was seated behind the counter?

20 A. Yes.

21 Q. At some point did you see Aricha Willis come
22 and sit behind the counter as well?

23 A. She was on the other side.

24 Q. And when you say the other side, did you
25 mean exactly where that chair was?

1 A That's where the other computer station is.

2 Q. That day when you saw Aricha Willis seated
3 behind that counter, was she the distance between
4 these 2 chairs are in the picture?

5 A. Yes.

6 Q. Did she move within 2 feet of the Coach
7 Brown during the time that she was there?

8 A. I never saw it.

9 Q. Did you have the opportunity to view such
10 movement?

11 A. Yes.

12 Q. And you never saw that?

13 A. No.

14 Q. You never saw her come within 2 feet of
15 Coach Brown the entire time that she was behind that
16 desk?

17 A. No.

18 Q. How far were you from that that
19 particular -- from Coach Will to make that
20 observation, was it 10 feet, 15?

21 A. Probably where you are standing at.

22 Q. So probably about 10 feet?

23 A. Yes.

24 MS. CLEMONS: I object. That's not 10 feet.

25 THE COURT: You are talking about the

1 distance between you and Coach Brown?

2 MR. MODAFFERI: The Defendant.

3 Q. So 10 feet?

4 A. From where I am to where you are standing.

5 Q. 20 feet?

6 A. Yes.

7 Q. And your eye sight is good?

8 A. Definitely.

9 Q. Did you ever see Aricha after Coach Will got
10 up from working behind the desk leave with Couch
11 Will, and go to his office?

12 A. Never.

13 Q. Did that ever happen?

14 A. Not that I saw, no.

15 Q. And you would have seen that if that
16 happened?

17 A. Yes.

18 Q. Okay.

19 While Coach Will was at the front desk, what
20 was he doing?

21 A. Receiving, taking care of the parents
22 walking in, signing in their kids in, trying to make
23 payments, whatever it is. He is in charge of that.

24 Whatever administrator is there, that's what
25 they do.

1 Q. Do you have any sort of special relationship
2 with Coach Will; do you know him personally?

3 A. No. I just met him during those 3 months
4 that I was employed by the Boys and Girls Club.

5 That was the very first time I got to meet
6 him.

7 Q. So from your vantage point, from what you
8 saw that day, what you observed of Coach Will and
9 Aricha Willis, would you say that it was physically
10 impossible for Coach Will to touch that girl?

11 A. Unless he got up and walked to her. There
12 is no way you reach from one computer station to the
13 other.

14 Q. Did you ever see him do that?

15 A. No.

16 MR. MODAFFERI: I have nothing further.

17 THE COURT: Cross.
18

19 CROSS-EXAMINATION
20

21 BY MS. CLEMONS:

22 Q. When you get to Boys and Girls Club and you
23 in the game room, what are your duties there?

24 A. I just supervise the children who are
25 supposed to stay there within that how hour, from 7

1 to 8, until I move them to next room, I am there the
2 whole time.

3 Q. The game room is really -- if you are
4 looking into the game room, you are facing away from
5 the front desk, right?

6 A. Not really. I am looking everywhere
7 in the whole room, just observing everybody.

8 MS. CLEMONS: May I approach with Exhibit C?

9 THE COURT: Yes.

10 Q. So my understanding is this is the front
11 desk, right, and the game room is off to the side?

12 A. Yes.

13 Q. You are saying you are not looking towards
14 the game room, you are looking this way?

15 A. I can be standing on this side and I can see
16 everybody from where I am standing.

17 Q. And the people at the desk are back here?

18 A. Yes.

19 Q. Is it fair do say you are not next to the
20 people from the desk, you are over there?

21 A. I am not right next to them, but I can see
22 them.

23 Q. And it is your responsibility to watch the
24 people in this room, but not the front desk?

25 A. Yes.

1 Q. Do you remember giving a statement to the
2 police?

3 A. Yep.

4 Q. And that was August 12, so that was fairly
5 close to after this occurred?

6 A. Um-hum.

7 Q. Is that yes?

8 A. Yes.

9 Q. Do you remember telling the police you
10 couldn't really recall the day that Coach Will was
11 up at the front desk?

12 A. I told them, when I got interviewed by the
13 police, I told them it happened sometime the week
14 prior to that.

15 I couldn't remember the exact date.

16 Q. Okay.

17 A. I did remember the day that Coach Will was
18 there that morning, because the administrator was
19 running late, and the other person was there, too.

20 Q. Who is the administrator?

21 A. Tiffany.

22 Q. And did you specifically remember Aricha
23 there?

24 A. Yes.

25 Q. And how do you know Aricha?

1 A. Because I work in the teen room. I was in
2 charge of them.

3 Q. Were you surprised to see her there, behind
4 the desk?

5 A. No. We have kids all time there, no.

6 Q. Do you recall telling the police that you
7 were a little bit surprised she was there, that kids
8 aren't supposed to be behind the back counter?

9 A. The kids are not allowed to be behind the
10 back counter. She was there and Mr. Brown was
11 there, so I was assuming it was okay for her to be
12 there.

13 Q. Because he is your boss, right?

14 A. Yes.

15 Q. So if he is letting it go, it is probably
16 fine?

17 A. Yes. It was in the computer station, so I
18 didn't say anything.

19 Q. Did you see them talk to each other?

20 A. They talked.

21 Q. And do you recall telling the police that
22 you weren't really paying a lot attention to what
23 was going on at the front desk because it is very
24 loud, you are very busy with the kids?

25 A. I did say that I couldn't really hear what

1 they are saying at the front desk, because it is
2 loud, but I am always observing around me.

3 Q. You didn't tell the police that part, that's
4 new today, correct?

5 A. I believe so.

6 Q. That you did tell the police that?

7 A. No, I did tell them. He asked me about if I
8 could hear the conversation, and I said; no, I could
9 not hear.

10 It gets pretty loud I can see the front desk
11 the whole time.

12 Q. Do you recall telling the police that you
13 are very busy with the kids?

14 A. Yes.

15 Q. And that they have you running around,
16 playing with them?

17 A. Yes.

18 Q. You didn't recall what she was wearing,
19 correct?

20 A. No, I didn't pay attention.

21 Q. And initially you couldn't remember who the
22 girl was that was sitting there, is that correct?

23 A. I recall it was her.

24 Q. You don't remember telling the police; I
25 just remember somebody there, and you couldn't

1 really describe what she looked like?

2 A. I don't know if I mentioned that. I didn't
3 really know her by name.

4 I mean if he would have showed her to me, I
5 would say; yes, it is her.

6 Q. Okay.

7 You said that you just remember girl with
8 dark hair?

9 A. Yes.

10 Q. Possibly Hispanic?

11 A. Yes.

12 MS. CLEMONS: Nothing further, Your Honor.

13 THE COURT: Any additional redirect?

14

15 REDIRECT EXAMINATION

16

17 BY MR. MODAFFERI:

18 Q. You are certain it was Aricha behind the
19 desk, because you had several disciplinary run-ins
20 with both Aricha and Jade, right?

21 A. Yes.

22 Q. So you knew who they were?

23 A. I couldn't remember the name when I was
24 being interrogated, but I told them if you show her
25 to me, I can point her out.

1 Q. And you were asked specifically by the
2 detective, okay, you were at work here last month,
3 and you told them; yes, you were?

4 A. Um-hum.

5 Q. And that's yes?

6 A. Yes.

7 Q. And it was unusual, and this occurred on
8 Monday, August 1, right?

9 A. Yes.

10 Q. And it was unusual for Coach Will to be
11 behind the desk, because that wasn't his normal
12 position?

13 A. No.

14 Q. That's part of the reason you remembered it
15 was that Monday, August 1?

16 A. That's why I remember. He never comes in at
17 7 in the morning. It is usually Ms. Tiffany and
18 myself who opened, and whoever is taking care of the
19 cafeteria.

20 MR. MODAFFERI: All right.

21 Thank you.

22 Nothing further.

23 THE COURT: Anything further?

24 MS. CLEMONS: Nothing from the State.

25 THE COURT: Thank you for your testimony.

1 You may step down.

2 You are excused.

3 And if you are going to be out in the
4 hallway, I would caution you not to discuss any of
5 your testimony while waiting outside.

6 THE WITNESS: Okay.

7 THE COURT: Are you going to call anyone
8 else?

9 MR. MODAFFERI: No, the defense rests.

10 Thank you.

11 THE COURT: Getting back to the State's
12 motion.

13 MS. CLEMONS: Your Honor, can we just
14 canvass the Defendant about his right to testify?

15 THE COURT: Sorry.

16 Mr. Brown, you understand that you have the
17 right to testify and make a statement at the
18 preliminary hearing?

19 THE DEFENDANT: Yes.

20 THE COURT: And did you discuss that with
21 your counsel?

22 THE DEFENDANT: I have.

23 THE COURT: You are going to decline to
24 do that; is that also what you decided?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Okay.

2 So the State has rested.

3 The Court is going to rule on the State's
4 motions.

5 We are going to start with the 4 proposed
6 counts that the State wants as to the victim
7 Holiday.

8 Here is my take on this, and is what is kind
9 of troubling me.

10 Counsel, you are not incorrect. These
11 counts have to be considered separately and
12 independently based on the evidence provided on each
13 of the counts.

14 I got to tell you that the counts involving
15 Holiday Howland are not very strong. They are not
16 very strong at all.

17 When you take the testimony of that little
18 12-year-old girl completely isolated by itself, it
19 wouldn't amount to squat in terms of criminal
20 conduct.

21 It only becomes troublesome in conjunction
22 with the testimony of the 2 other girls, because if
23 the Defendant had engaged in some kind of a pattern
24 of conduct that would be indicated by all of the
25 evidence. That would be supported by all of the

1 evidence the State submitted.

2 I am not quite certain, I don't mean to
3 preview my findings and cutoff your arguments, but I
4 want the State to address that.

5 If you didn't have the 2 other victims, the
6 only thing you had was Holiday Howland's testimony,
7 if her case was all by itself, how would you argue
8 that what happened, his touching her thigh, brushing
9 her on the side as they separate, how would you
10 interpret that as a lewd act?

11 MS. CLEMONS: Okay.

12 THE COURT: I want to hear how you are going
13 to argue that.

14 MS. CLEMONS: Sure.

15 I will do it now.

16 So basically if this had happened one time,
17 there is an isolated incident, then, yeah, I would
18 agree that maybe it was an accident.

19 But Holiday testified that every time she
20 was in Coach Will's office by herself, and there
21 weren't other adults, the same thing would happen.

22 And it is also not one continuous motion
23 where he is hugging her, grabbing her thigh, and
24 maybe he tries to move away, and he accidentally
25 brushes her boob.

1 There was a pause in the action with one
2 touch, trying to see if he is going to get away with
3 this, and now, I am going to touch the side of her
4 breast.

5 The State believes that you can infer sexual
6 intent with regard to Holiday. But I think that the
7 evidence does show that there is a continuing course
8 of conduct of trying to see how far he can push it
9 with the different girls, and some girls were more
10 receptive to it than other girls were.

11 She is only 12 years old. You are not going
12 to ask a 12-year-old girl are you a virgin, and how
13 often are you having sex, and it doesn't look like
14 she's doing those type of things.

15 So it is an experimental situation for him,
16 where he is trying to see how far he can push it,
17 and because it happened repeatedly, more than 2,
18 more than 3, in her interview she testified like 500
19 hundred billion times or something.

20 That's a typical 12-year-old answer, but
21 that goes to show that this isn't an isolated,
22 accidental brushing, like in an elevator.

23 This is a continued pattern of conduct where
24 he is specifically touching areas of her body that
25 are sexual in nature, her inner thigh and the side

1 of her chest.

2 MR. MODAFFERI: Your Honor, this whole case
3 rests on where the touch occurred. She's talking
4 about the middle thigh. It not like it is 2 inches
5 from the pubic region.

6 Then it goes -- and she's quite certain
7 about this -- it goes from there across to her side,
8 her side, and she never testified that it came
9 anywhere close to her breast.

10 She never testified that there was a verbal
11 exchange which would illuminate any sort of sexual
12 intent by the Defendant at the same time.

13 And her testimony about how many times is
14 like completely confused. If she's says it was 3
15 times or 4 or 5 times, that's not in the evidence.

16 I mean, she doesn't even have a clue to
17 how many times she was in the office.

18 THE COURT: It happened, according to her
19 testimony, it happened at least twice.

20 MS. CLEMONS: Yes.

21 THE COURT: It happened at least twice.

22 MR. MODAFFERI: In the same exact manner?

23 THE COURT: Pretty much. That's exactly
24 what she said. It happened 2 times.

25 The way I characterize her testimony is it

1 was like if it had happened just one time, she would
2 have brushed it off as an accident, but it happened
3 almost exactly the same twice.

4 The second time she concluded that it wasn't
5 an accident, it was intentional. That's basically
6 what she testified to.

7 So in regards to the State's motion, here's
8 what I am going to do, I am going to allow the State
9 to amend the counts in regards to Holiday Howland to
10 Category A felonies, inasmuch as she was 12, under
11 the age of 14, should be reflected as a Category A
12 felony.

13 Now, with regards to adding the count, I
14 will deny that, and strike out the one count.

15 In my opinion, according to her testimony,
16 this was basically one continuous act, and so we are
17 going to have 2 counts of Category A felonies that
18 are going to read the identical language, both
19 lewdly, unlawfully and feloniously committing lewd
20 and lascivious acts upon or with the body or any
21 part or member thereof committed to HH, a child
22 under the age of 14, by touching and/or rubbing,
23 and/or fondling the thigh and/or upper leg of said
24 HH.

25 And we are just going to include and/or side

1 of the stomach, breast and/or chest of said HH with
2 the intent of arousing feeling to, or gratifying a
3 lust, passionist or sexual desires of the Defendant
4 or HH.

5 Those are 2 counts with that wording. Those
6 are the 2 Category A counts. The other amendments
7 by the State I am granting Count 1, striking and/or
8 fondling, replaced by the lower back and/or, and
9 then the same thing with Count 2, strike out and/or
10 fondling and will be replaced by the lower back
11 and/or.

12 Count 4 is the count, one of the 2 counts
13 that relates to Holiday, so 4 and 5 will be -- there
14 will be 5 counts, and counts 4 and 5 are the
15 Category A.

16 Counts 1, 2 and 3 are the Category B
17 felonies.

18 MS. CLEMONS: Your Honor, I think the only
19 other thing was the date change.

20 THE COURT: Okay.

21 And the date change at the beginning of line
22 11 will be amended to read that said Defendant on or
23 between July will be replaced by January 1, 2016.

24 You are going to add in Category A felonies
25 for counts 4 and 5.

1 Okay. I ruled on the amendments. I will
2 entertain whatever closing statement or arguments
3 you want.

4 MS. CLEMONS: I will reserve for rebuttal.

5 THE COURT: Counsel.

6 MR. MODAFFERI: Judge, I think I pretty much
7 made my statements regarding the counts involving
8 Holiday.

9 I think I am just going to focus on those
10 counts. At this point you hit the nail on the head,
11 and I think that's the appropriate way to approach
12 it.

13 You have to look at them in isolation, and
14 their argument to say that this is a course of
15 conduct is not an acceptable argument to prove
16 probable cause.

17 If they are trying to say that what happened
18 with Aricha, what happened with Lefcourt should be
19 borrowed to prove guilt on those Class A felonies,
20 that's the wrong way of analyzing this legally, and
21 it shouldn't happen.

22 This man shouldn't have to stand trial for
23 Class A felonies for something that there is not
24 even slight or marginal evidence that has been
25 proven.

1 And I know that that language is drawn from
2 the Supreme Court, but it is still probable cause.
3 I don't care how you paint it, it is still that same
4 quantum of evidence necessary to get into somebody's
5 house, that same amount of evidence necessary to get
6 into your iPhone.

7 The same amount of evidence that is
8 necessary to arrest you. It is probable cause,
9 reasonable -- it is suspicion that a reasonable
10 person would entertain that a crime has been
11 committed, and this person committed it, and that
12 hasn't been proven, not with her testimony, it
13 hasn't.

14 THE COURT: Anything else?

15 MS. CLEMONS: No. I pretty much made my
16 argument earlier, so --

17 THE COURT: Taken as a whole, the Defendant
18 engaged in the conduct of conversations completely
19 and totally inappropriate.

20 It just adds one more, another link as to
21 whether or not these conducts were intentional and
22 sexually oriented conversations.

23 As to everything as a whole, the Court finds
24 that based upon the vastly amended criminal
25 complaint, and the evidence that's been adduced at

1 this preliminary hearing, there is cause to believe
2 that the Defendant committed 5 counts.

3 Counts one and 2 and 3 are Category B
4 felonies of lewdness with a child under the age of
5 16.

6 Counts 4 and 5 are Category A, lewdness with
7 a child under the age of 14.

8 This gives me cause to believe that the
9 Defendant Willis Brown committed those offenses, and
10 he will be held to answer those charges in the
11 Eighth Judicial District Court, State of Nevada, on
12 the following date and time.

13 Count 6 is dismissed, and the Court has
14 declined to add count 7. So 5 counts.

15 THE CLERK: November 3, 10:00 a.m., lower
16 level District Court Arraignment.

17 THE COURT: We will take him off of house
18 arrest put him on intensive supervision. Give him
19 an out of custody date.

20 THE CLERK: November 10.

21 THE COURT: Are you all right with that
22 date?

23 MR. MODAFFERI: Yes.

24 THE CLERK: 10:00 a.m.

25 MS. CLEMONS: Thank you, Your Honor.

(Proceedings concluded.)

1 REPORTER'S CERTIFICATE

2
3 STATE OF NEVADA)

4) ss.

5 CLARK COUNTY)
6
7

8 I, Robert A. Cangemi, a certified court
9 reporter in and for the State of Nevada, hereby
10 certify that pursuant to NRS 239B.030 I have not
11 included the Social Security number of any person
12 within this document.

13 I further certify that I am not a relative
14 or employee of any party involved in said action,
15 nor a person financially interested in said action.
16
17

18 (signed) /s/ Robert A. Cangemi
19

20 _____
21 ROBERT A. CANGEMI, CCR NO. 888
22
23
24
25

1 C E R T I F I C A T E

2 STATE OF NEVADA)

3) ss.

4 CLARK COUNTY)

5

6

7

8

9 I, Robert A. Cangemi, CCR 888, do
10 hereby certify that I reported the foregoing
11 proceedings, and that the same is true and
12 accurate as reflected by my original machine
13 shorthand notes taken at said time and place.

14

15

16 (signed) /s/ Robert A. Cangemi

17

18 Robert A. Cangemi, CCR 888

19 Certified Court Reporter

20 Las Vegas, Nevada

21

22

23

24

25

/s/

attributed

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EXHIBIT “C”

IN THE SUPREME COURT OF THE STATE OF NEVADA

No.

Electronically Filed
May 04 2017 01:49 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

WILLIS BROWN,

Petitioner,

vs.

**THE HONORABLE WILLIAM D. KEPHART, EIGHTH JUDICIAL
DISTRICT COURT JUDGE,**

Respondent,

THE STATE OF NEVADA,

Real Party in Interest.

**APPENDIX TO PETITION FOR WRIT OF CERTIORARI,
MANDAMUS, AND/OR, IN THE ALTERNATIVE, WRIT OF
PROHIBITION
VOLUME I**

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CLERK OF THE COURT

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

In the Matter of the Application of

WILLIS T. BROWN

For a Writ of Habeas Corpus.

Case No. C-16-319125-1

Dept No. XIX

PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)

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

The Petition of WILLIS T. BROWN submitted by GARY A. MODAFFERI, as attorney
for the above-captioned individual, respectfully affirms:

1. That Petitioner is duly qualified, practicing and licensed attorney authorized to practice law in the state and federal courts of Nevada and Hawai'i.
2. That Petitioner makes application for a Writ of Habeas Corpus. That the place where the Petitioner is imprisoned actually or constructively imprisoned and restrained of his liberty is the Clark County Detention Center; that the officer by whom he is imprisoned and restrained is Joseph Lombardo, Sheriff.
3. That the imprisonment and restraint of Petitioner's above captioned client is unlawful for the following reasons: The Defendant is unlawfully and unconstitutionally charged with Lewdness with a Child under the Age of 16 (Counts 1 through 3); and Lewdness with a Child under the Age of 14 (Counts 4 and 5).

1 4. That no other Petition for Habeas Corpus has heretofore been filed on behalf of said
2 client of Petitioner.

3 5. The Defendant has waived the 60 day limitation for bringing the accused to trial.

4 6. If the Petition is not decided within 15 days before the date set for trial, the Defendant
5 consents that the Court may, without notice or hearing, continue the trial indefinitely
6 or to date designated by the Court.
7

8 WHEREFORE, Petitioner prays that this Honorable Court make an Order directing the
9 County of Clark to issue a Writ of Habeas Corpus directed to the said Joseph Lombardo, Sheriff,
10 commanding him to bring the above-mentioned client of Petitioner before your Honor, for a
11 determination of said Writ.
12

13 DATED this 19th day of January, 2017.
14

15 /s/ Gary A. Modafferi
16 By: _____
17 Gary A. Modafferi, Esq.
18 Nevada Bar No. 12450
19 Attorney for Defendant/Petitioner
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PLEASE TAKE NOTICE that on the 6 day of Feb., 2017, Defendant Green will bring the foregoing **PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)** on for hearing at the hour of 8 : 30 a.m. in the above-referenced court.

/s/ Gary A. Modafferi

Gary A. Modafferi, Esq.
Nevada Bar No. 12450
Attorney for Defendant/Petitioner

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

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

/s/ Gary A. Modafferi

GARY A. MODAFFERI

**MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT OF WRIT**

I. OVERVIEW

Petitioner is charged by way of Information with Lewdness with a Child under the Age of 16 (Counts 1 through 3 – Category B Felony – NRS 201.230 – NOC 5874) and Lewdness with a Child under the Age of 14 (Counts 4 and 5 – Category A Felony – NRS 201.203 – NOC 50975).¹ The dates of the alleged offenses are on or between January 1, 2016 and August 1, 2016.² On Tuesday, November 1, 2016 a preliminary hearing was held before the Honorable James Bixler, Pro Tem, Justice of the Peace. The State presented three complainants.³ A.W. testified at pp.3 through 38 of volume two of the transcripts. She is referenced in Count 3. J.L. testified at pp. 38 through 63 of volume two of the transcripts. She is referenced in Counts 1 and 2. H.H. testified at pp. 19 through 49 in volume one. She is referenced in Counts 4 and 5. At the end of the State's case, probable cause was found to a reconstructed charging instrument. Two other witnesses testified at the hearing including Nakesha Duncan and Alejandra Guerrero.

II. FACTUAL BACKGROUND

A. The club attendance records for August 1, 2016.

These allegations arise from the accusation that the Petitioner, while working as a supervisor at the Boys and Girls Club of America, inappropriately touched three girls. The Petitioner has worked with young students and athletes his entire life and is adamant in his innocence.

¹ See a copy of the Information filed on November 8, 2016 attached for the Court's convenience as Exhibit A.

² Exhibit A at p.1.

³ Copies of the preliminary hearing transcripts are attached for Court's convenience. Initials are used for the complainant's identification. Volume One (TR1) is attached for Court's convenience as Exhibit A and Volume Two (TR2) as Exhibit B.

1 The first witness to testify was an attorney employed by Springel and Fink, hired to
2 represent the Boys and Girls Club of America.⁴ Nakesha Duncan Esq. responded to a subpoena
3 duces tecum issued by the defense to produce a participant attendance activity log at the Club for
4 August 1, 2016.⁵ The records were requested to show that during an approximate twenty minute
5 period beginning at approximately 7:00a.m., multiple children and families were passing through
6 the front desk area where Petitioner was seated and receiving payment and checking children
7 into the Club.⁶ The attendance logs, the number of clients, and the number of transactions
8 occurring during this specific time period – when a sexual assault was allegedly being committed
9 by Petitioner against A.W. at the same counter – constituted substantial proof that there was no
10 opportunity to commit this crime.⁷ After substantial foundation established regarding these
11 records, the attendance logs were admitted into evidence.⁸

14 **B. H.H. Counts 4 and 5.**

15 The second witness to testify was H.H. She told the Court that she was twelve years old
16 and that she currently lives in California.⁹ She was in the sixth grade when she lived in Las
17 Vegas and she then lived with her aunt and uncle.¹⁰ H.H. went to the Boys and Girls Club in
18 Southern Highlands almost every day both during the summer and also during the school year.¹¹
19 She knew the Petitioner as Coach Will and identified him in court.¹² They would normally say hi
20 to each other and the only time she was in his office was when she was in trouble.¹³ H.H. had
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24 ⁴ TR1 at p.9.

25 ⁵ TR.1 at p.10.

26 ⁶ TR1 at p.6.

27 ⁷ TR1 at p.4.

28 ⁸ TR1 at p.14.

⁹ TR1 at p.19.

¹⁰ TR1 at p.20.

¹¹ TR1 at p.21 (hereinafter the "Club")

¹² TR1 at p.27.

¹³ TR1 at p.25.

1 been disciplined for stealing and talking back. She said when they were in his office he hugged
2 her and touched her thigh.¹⁴ She did not remember when this happened even after multiple
3 promptings by the prosecutor through questioning.¹⁵ H.H. described the touching as “near my
4 thigh” ... “outside, kind of in the front.”¹⁶

6 Petitioner did not say anything during this incident and H.H. did not tell anyone about it-
7 though she now said it made her “uncomfortable.”¹⁷ The touch was described as being on the
8 thigh of H.H. in the middle front part of her thigh.¹⁸ Petitioner did not do anything with his hand
9 when it came into contact with the middle portion of her thigh.¹⁹ H.H. also testified Petitioner
10 brushed up her stomach with his hand in the middle of her stomach by her rib cage.²⁰ This
11 touching apparently occurred – though the testimony is painfully unclear – during the first mid-
12 thigh touch.²¹ H.H. said that she was touched by the Petitioner only in the office.²² Though H.H.
13 said the touches made her feel “uncomfortable,”²³ there was no testimony that the Petitioner ever
14 said anything that was sexual in nature to H.H. when this contact occurred. At the end of the
15 direct testimony of H.H. she testified that Petitioner, also put his hand on the “side of her
16 boob.”²⁴ This testimony would later be recalled and dismissed by H.H. further into her
17 examination.

20 On cross-examination, H.H. was confronted with a tape recorded statement given to
21 police where she told the investigating detective that Petitioner never touched her chest. H.H.
22

24 ¹⁴ TR1 at p.24.

25 ¹⁵ TR1 at p.25.

26 ¹⁶ TR1 at p.26.

27 ¹⁷ TR1 at p.26.

28 ¹⁸ TR1 at p.27.

¹⁹ TR1 at p.27.

²⁰ TR1 at p.28.

²¹ TR1 at pp.28, 29, and 30.

²² TR1 at p.29.

²³ TR1 at p.26.

²⁴ TR1 at p.32.

1 said she did not recall the statement she made to police that Petitioner did not touch her chest, the
2 side of her boob, or any portion of her upper body.²⁵ The incidents, that constitute counts 4 and
3 5, two class A felonies, occurred on a day when H.H. was being disciplined for talking back to a
4 staff member named Ms. Ashley. Upon further cross-examination the witness testified that she
5 was **not** touched by Petitioner on “the side of her breast” but rather “like on the side.”²⁶ This
6 entire incident all happened in one physical motion, during a hug that lasted “for a second.” This
7 testimony came in direct contradiction to the state’s argument to the district court that, “Because
8 there is pause in that action that in the state’s opinion makes it 2 separate counts. He is not doing
9 one continuous action.”²⁷

12 The Court eventually sustained a probable cause finding on the two H.H. counts that are
13 counts 4 and 5 – but it did so with grave concern and for improper legal reasons, as will be later
14 argued in this writ. The Court stated, “here is my take on this, and this is kind of troubling me.
15 Counsel, you are not incorrect. These counts have to be considered separately and independently
16 based on evidence provided on each of the counts. I got to tell you the counts involving H.H.”
17 are not very strong. They are not very strong at all. **When you take the testimony of that little
18 12 year old girl completely isolated by itself, it wouldn’t amount to squat in terms of
19 criminal conduct.**”²⁸

22 It will be argued that the Court was correct in its assessment of these charges and should
23 not have found probable cause. Counts 4 and 5 should be dismissed. On further cross-
24 examination, H.H. admitted to writing a text message which stated, “My mom is pressing

26 ²⁵ TR1 at pp.34-36.(emphasis supplied)

27 ²⁶ TR1 at p.39.

27 ²⁷ TR2 at p.69, argument of prosecution.

28 ²⁸ TR2 at p.86. The State presented somewhat misleading testimony when it lead H.H. into stating that Petitioner brushed up “the side of her boob.” TR2 at p.32. On cross-examination H.H. was clear “I said he brushed up near my rib cage. I didn’t want to say boob.” (emphasis supplied TR1 at p.41.)

1 charges against Coach Will. I am most likely to get paid a lot of money for it, but it will most
2 likely go to pay for my college.”²⁹ H.H. also testified to multiple incidents where she was
3 disciplined by Coach Will (Petitioner) aside from stealing and talking back. These incidents
4 included sitting on a ping-pong table and being suspended for drawing a picture of a penis.³⁰
5

6 When Petitioner touched H.H. on the mid-thigh and the side of her chest, nothing sexual
7 in nature was said by the Petitioner to H.H.³¹ The reason given by H.H. as to why she thought
8 the touching to her mid-thigh and upper body were sexual in nature were because, “It made me
9 feel uncomfortable.”³² Even though H.H. could only give testimony about one incident, she
10 volunteered to police in a recorded statement that it happened “four thousand million times.”³³
11 The witness admitted that she did not tell anyone about the incident when it allegedly
12 happened.³⁴
13

14 **C. Testimony of A.W. as it relates to Count 3.**
15

16 The remaining witness, A.W., J.L., and Alejandra Guerrero testified in volume two of the
17 preliminary hearing transcripts. (hereinafter TR2” attached as Exhibit C) A.W. is fifteen years
18 old and a sophomore in high school.³⁵ She attended the Boys and Girls Club continuously since
19 it opened, going both after school and during the summer.³⁶ She had been in California during
20 the summer of 2016 but returned to the Club at the beginning of August. The evidence would
21 clearly indicate that this is the time period when these allegations collectively surfaced from
22 these three friends who attended the club.
23
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25 ²⁹ TR1 at p.43.

26 ³⁰ TR1 at pp. 43 and 44.

27 ³¹ TR1 AT PP.45-47.

28 ³² TR1 at p.45.

³³ TR1 at p.48.

³⁴ TR1 at p.48.

³⁵ TR2 at p.4.

³⁶ TR2 at p.6.

1 The incident involving A.W. allegedly occurred on August 1, 2016 between the hours of
2 7:02 a.m., the time when she arrived and about 7:15a.m., the time when she left the desk area
3 with her friend Tyler Alvarez. The Petitioner was helping out behind the desk because another
4 employee was unable to be there when the Club opened at 7:00 a.m.. The records subpoenaed by
5 the defense, combined with the testimony of Alejandra Guerrero, another Girls and Boys Club
6 employee, were argued as proof that A.W.'s allegations were spurious and that Petitioner clearly
7 did not have the opportunity to assault A.W.
8

9 A.W. testified that she returned from her California vacation she also returned to the
10 Club on August 1, 2016 at 7:00 when it opened in the morning. She testified that Petitioner was
11 seated behind the desk where children are checked into the computer system when they enter the
12 facility.³⁷ A.W. said she went to sit behind the desk where Petitioner was working "just talking
13 catching up."³⁸
14

15 A.W. testified "I was wearing this romper thing, so my legs were out. It was short. He
16 said my legs looked amazing and he asked if he can touch them." ... "I chuckled, because it was
17 weird, and I was like; sure I guess..." "He touched my leg."³⁹ A.W. said Petitioner touched her
18 mid-thigh in a continuous motion.⁴⁰ Approximately five minutes after the touching allegedly
19 occurred, the person who usually works the desk came to replace Petitioner, according to A.W.⁴¹
20 A.W. testified that once the woman came to work, A.W. went into Petitioner's office and he
21 proceeded to ask her questions of a sexual nature.⁴² A.W. said the office door was closed.⁴³ A.W.
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25 ³⁷ TR2 at p.7. It is crucial that this Honorable Court review the photographs taken by defense investigators showing
26 the front desk layout. The seats where Petitioner and A.W. were sitting are set many feet apart and the open setting
27 allowed for Alejandra Guerrero to see what was occurring.

28 ³⁸ TR2 at p.7.

³⁹ TR2 at p.8.

⁴⁰ TR2 at p.9.

⁴¹ TR2 at p.10.

⁴² TR2 at p.10.

1 said she told J.L. about the incident that day.⁴⁴ An employee of the Club would later testify that
2 A.W. did not go into Petitioner's office and that Petitioner was never close enough to A.W. to
3 even touch her.

4
5 On cross-examination defense counsel presented the witness with photographs marked as
6 Exhibits B through D of the counter area where this alleged assault occurred.⁴⁵ A.W. testified
7 that the set-up of the counter space by the reception area had the chairs where the Petitioner and
8 A.W. were seated but those chairs were closer than they usually were. Instead of being in front
9 of the respective computers they served, A.W. stated that the chairs were approximately two feet
10 from each other.⁴⁶ A.W. testified that she arrived at 7:02 that day.⁴⁷ That exact time was reflected
11 in the attendance logs received as Exhibit A.
12

13 A.W. testified that the touching which is the basis for count 3 happened "maybe 15, 20
14 minutes" after she arrived at the front desk seat at 7:02a.m.⁴⁸ A.W. testified that she was not
15 paying attention to the people coming into the facility.⁴⁹ Petitioner was tasked with signing these
16 children in and taking fees for the club for those children. A.W. also testified that she did not
17 notice Alejandra Guerrero, the club employee, standing on the other side of the desk who would
18 eventually testify that she did not see what A.W. testified had happened.⁵⁰
19

20 A.W. testified that she had been previously told that she should not leave the premises of
21 the Club with another boy named Tyler Alvarez.⁵¹ On her first day back to the Club after
22

23
24 ⁴³TR 2 at p. 10.

25 ⁴⁴ TR2 at p.12.

26 ⁴⁵ Defense Exhibit A, at the preliminary hearing, was marked and received. Exhibit A was the participant
attendance log authenticated by Nakesha Duncan Esq. for August 1, 2016. It reflected the children who were
checked into the Club during the twelve minute window (7:02 a.m. to 7:14 a.m.)of this alleged assault.

27 ⁴⁶ TR2 at p.15.

28 ⁴⁷ TR2 at p.15.

⁴⁸ TR2 at p.16.

⁴⁹ TR2 at p.17.

⁵⁰ TR2 at p.17.

⁵¹ TR2 at p.18.

1 returning from California, A.W. testified that she left the front desk area with Tyler Alvarez,
2 when he came into the Club on Monday, August 1, 2014 at 7:14a.m.⁵² This was established both
3 by A.W.'s testimony and the participant attendance records admitted as Exhibit 1.

4
5 Accordingly, the assault, if it did occur as alleged, happened between the arrival of A.W.
6 at the Club at 7:02a.m. and before Tyler Alvarez' arrival at the Club at 7:14. According to A.W.,
7 it was during this twelve minute period that A.W. was assaulted and invited back into the office
8 for sexual conversation with Petitioner.⁵³

9
10 A.W. further testified that the woman who normally checks in the children, takes their
11 fees, and swipes their identification cards into the system returned so that Petitioner could vacate
12 his ongoing duties at the desk to speak with her in the office.⁵⁴ As the attendant records and the
13 testimony of Alejandra Guerrero prove – this simply did not happen.

14
15 A.W. testified to a disciplinary incident handled by Petitioner and a track director named
16 Elena where A.W. accused a boy named Malik of attempting to grab and kiss her at the Club.⁵⁵
17 This incident occurred on August 8, 2016 – two days before the allegation against Petitioner by
18 A.W. and the two other girls surfaced.⁵⁶

19
20 J.L. went into the office after A.W. during the disciplinary meeting about Malik.⁵⁷ Two
21 days later A.W. told a counselor that Petitioner had touched her and this investigation began.
22 That same morning A.W. called J.L. to talk about Petitioner and “things he may have done,”⁵⁸
23 A.W. told J.L., according to her testimony, that Coach Will (Petitioner) touched her from the
24

25
26 ⁵² TR2 at p.19.

27 ⁵³ TR2 at p.20.

28 ⁵⁴ TR2 at p.20.

⁵⁵ TR2 at pp. 21 and 22.

⁵⁶ TR2 at p.21.

⁵⁷ Id.

⁵⁸ TR2 at p.24.

1 ankle to the thigh.⁵⁹ A.W. called both J.L. and the police the same day. A.W. was upset and
2 wanted an update on the status of her accusation but Metro told her she needed to contact CPS.⁶⁰

3 Part of the reason that A.W. was so upset that she called both Metro and CPS, was
4 because Petitioner was still working at the Girls and Boys Club.⁶¹ The witness testified that she
5 was “uncomfortable” as the reason for not calling the police about this incident that so upset her
6 on August 8, 2016 as opposed to when she called the police several days later.⁶² A.W. stated she
7 may have called Metro the same day she got into trouble for the physical incident with Malik.⁶³

8 This assault is alleged to have taken place behind the front desk of the Boys and Girls
9 Club on August 1, 2016 between 7:02a.m. when A.W. arrived and 7:14 when Tyler Alvarez
10 arrived . It was at that time that A.W. left the front desk area to spend time with Tyler Alvarez
11 the “front of the doors.” A.W. stated there were “a lot of people coming in” the club and they
12 were registering and paying but she could not recall their names.

13 During this thirteen minute time period, the Hamilton family with Liana, Michelle and
14 Selinalei came in with their parent at 7:02a.m.⁶⁴ A.W. acknowledged she saw Petitioner “writing
15 them or typing them in.”⁶⁵ Wyatt Hardy came in at 7:17a.m.⁶⁶ Giselle Kurtz came in at
16 7:20a.m.⁶⁷ Chase Lawson came in at 7:15a.m.⁶⁸ Caleb Little and his sister Hailey Little came in
17 at 7:08a.m.⁶⁹ Alvaro Lopez and his sister Sofia came in at 7:12a.m.⁷⁰ Charles McMains came in

18 ⁵⁹ Id. and TR2 at p.58.

19 ⁶⁰ TR2 at p.30.

20 ⁶¹ Tr2 AT PP. 31 AND 32.

21 ⁶² TR2 at p.32.

22 ⁶³ TR2 at p.33.

23 ⁶⁴ TR2 at p.35.

24 ⁶⁵ Id.

25 ⁶⁶ Id.

26 ⁶⁷ TR2 at p.36.

27 ⁶⁸ TR2 at p.36.

28 ⁶⁹ Id.

⁷⁰ Id.

1 at 7:16a.m.⁷¹ Hazel Jennel Molano and her sister Sienna came in at 7:13a.m.⁷² Jacob Ortega
2 came in at 7:04a.m.⁷³ Emma Sharp came in at 7:09a.m.⁷⁴ Carmen Pipes came in at 7:21a.m.⁷⁵
3 Isabell Thomas came in at 7:18a.m.⁷⁶ All of these times and all of these children were checked
4 in, registered, and paid for by Petitioner at or around this limited time window when Petitioner is
5 alleged to have sexually assaulted A.W.⁷⁷

7 **D. Testimony of Alejandra Guerrero as it relates to count 3 and the testimony of**
8 **A.W.**

9 Petitioner called Alejandra Guerrero to testify to the events of August 1, 2016. Ms.
10 Guerrero was working as an employee of the Boys and Girls Club on August 1, 2016.⁷⁸ Her
11 responsibilities included assisting in opening the club and assisting in the game room **“which is**
12 **right next to the front desk.”**⁷⁹ Ms. Guerrero was shown a photograph admitted as Defendant’s
13 Exhibit C which confirmed the direct vantage point that she had during the time this alleged
14 assault occurred.⁸⁰ She stated that Petitioner was seated at the front desk on the right hand side
15 looking towards the main entrance.⁸¹ He remained there at that seat the entire time. A.W. came
16 and sat behind the desk where the other computer station is located. Ms. Guerrero testified that
17 A.W. did not come within 2 feet of the Petitioner during this time period and she was in a
18 position and would have had the opportunity to see that movement had it actually occurred.⁸²

23 ⁷¹ Id.

24 ⁷² Id.

25 ⁷³ Id.

26 ⁷⁴ TR2 at p.37.

27 ⁷⁵ TR2 at p.36.

28 ⁷⁶ Id.

⁷⁷ See Exhibit A presented at hearing.

⁷⁸ TR2 at p.73.

⁷⁹ Id. (Emphasis supplied) The photographs admitted as Defenses exhibits clearly support this physical description.

⁸⁰ TR2 at p.74.

⁸¹ Id.

⁸² TR2 at p.75.

1 The distance between the witness and the Petitioner was approximately twenty feet.⁸³ The
2 witness testified that she never saw A.W. leave that area to go into Petitioner's office. The
3 witness testified that she would have seen that if that happened. The witness testified that the
4 Petitioner was busy, "Receiving, taking care of parents walking in, signing in their kids in, trying
5 to make payments, whatever it is. He is in charge of that."⁸⁴

7 The witness had no special relationship with the Petitioner and only knew him for 3
8 months before this incident.⁸⁵ Petitioner was terminated after these allegations were made against
9 him and the witness continued to work at the club.⁸⁶ The witness was asked the following
10 questions and gave the following responses:

12 **Q. So from your vantage point, from what you saw that day, what**
13 **you observed of Coach Will and Aricha Willis, would you say that it was**
14 **physically impossible for Coach Will to touch that girl?**

15 **A. Unless he got up and walked to her. There is no way you reach**
16 **from one computer station to the other.**

17 **Q. Did you ever see him do that?**

18 **A. No.**⁸⁷

19 **E. The testimony of J.L. as it relates to Counts 1 and 2.**

20 J.L. testified that she is fifteen years old and that she attended the Boys and Girls Club of
21 Southern Highlands after school.⁸⁸ She had gone to Hawaii for the beginning of summer in 2016
22 but came back to Nevada and the Club at the end of July.⁸⁹ She testified that when she returned
23 Petitioner "started acting a little different" and asked her inappropriate questions.⁹⁰ On that same
24 day J.L. testified that he hugged her and touched the middle of her butt with one hand for a

25 ⁸³ TR2 at p.77.

26 ⁸⁴ Id.

27 ⁸⁵ TR2 at p.78.

28 ⁸⁶ TR2 at p.73.

⁸⁷ TR2 at p.78.

⁸⁸ TR2 at p.40.

⁸⁹ Id.

⁹⁰ TR2 at p.43.

1 couple of seconds. She testified “It wasn’t there for long.” This was the substance of Count 1.
2 J.L. testified that several days later in the kitchen, Petitioner asked her for a hug and both of
3 Petitioner’s hands touched her butt, again, “It was for a couple of seconds.”⁹¹ This was the
4 substance of Count 2. The Petitioner did not say anything and neither did J.L.⁹²
5

6 On cross-examination, J.L. testified that she told police that she was not sure whether the
7 first incident, Count 1, was an accident.⁹³ She also testified that from the first time she began
8 attending the Club in February 2016 until she returned from Hawaii at the end of July, 2016
9 nothing inappropriate occurred with the Petitioner.
10

11 J.L. testified that the day the police questioned her she received a phone call from her
12 friend A.W. who told her what she had just told the police about the Petitioner.⁹⁴ J.L. also had a
13 conversation about Petitioner with H.H.⁹⁵ The “only” thing that H.H. told J.L. about an
14 inappropriate touching by Petitioner was that H.H. said “he (Petitioner) touched her (H.H.) boobs
15 in a bowling alley.”⁹⁶ Petitioner was never with H.H. at a bowling alley and H.H. herself testified
16 that Petitioner did not touch her boob and she never described being at a bowling alley with the
17 Petitioner.⁹⁷
18

19 The day that J.L. reported these allegations was the same day J.L. got into trouble at the
20 Club for physical contact, specifically kissing Malik with A.W.⁹⁸ Malik denied wrongdoing and
21
22
23
24

25 ⁹¹ TR2 at pp. 44 and 45.

26 ⁹² TR2 at p.47.

27 ⁹³ TR2 at p.49.

28 ⁹⁴ TR2 at p.53.

⁹⁵ Id.

⁹⁶ TR2 at p.54.

⁹⁷ Vol. I at p.41.

⁹⁸ TR2 at p.55.

1 J.L. and A.W. got into trouble.⁹⁹ J.L. was in the office being disciplined by Elena, the track
2 director, and Petitioner.¹⁰⁰

3 J.L. testified that when she left the office that day, she felt like she had done something
4 wrong with Malik.¹⁰¹ J.L. also testified that A.W. was upset with Petitioner “because she felt
5 Coach Will was blaming her for the incident.”¹⁰² J.L. had previously been disciplined by
6 Petitioner at the Club for kissing boys at the Club.¹⁰³ This latest incident involving Malik had
7 heightened tensions between her and what was expected of J.L. by the Club staff. Alejandra
8 Guerrero had also reprimanded J.L. about her inappropriate conduct at the Club with her
9 boyfriend.¹⁰⁴

10 When Counsel asked J.L. to describe the second incident, J.L. said the Petitioner crossed
11 his wrists during the time he touched her butt in the pantry. J.L. then pointed out that this
12 awkward, seemingly physically impossible explanation of events was being inaccurately
13 portrayed in Court because, “He is bunched up, he can’t reach correctly because he is in a
14 suit.”¹⁰⁵ Her physical description of this alleged assault, aside from Petitioner allegedly crossing
15 his wrists on her bottom, included that Petitioner was “sticking his butt out” during this hug.¹⁰⁶
16 J.L. said the contact lasted a couple of seconds but she could not be sure.¹⁰⁷

17 ⁹⁹ Id.

18 ¹⁰⁰ TR2 at p.56.

19 ¹⁰¹ TR2 at p.57.

20 ¹⁰² Id.

21 ¹⁰³ TR2 at p.58.

22 ¹⁰⁴ TR2 at p.59.

23 ¹⁰⁵ TR2 at p.60.

24 ¹⁰⁶ TR2 at p.60.

25 ¹⁰⁷ TR 2 at p.61.

1 J.L. recalled an incident on Memorial Day when she was outside the Boys and Girls Club
2 with his family and she was wearing a bikini. Coach Will told her to put some clothes on and she
3 reacted strongly stating that Petitioner did not control her outside of the Club.¹⁰⁸
4

5 At the end of the State's evidence, the Petitioner strongly objected to any further
6 proceeding on the H.H. Counts.

7 Counsel stated:

8 There wasn't even slight or marginal evidence to prove that there was sexual
9 gratification or the intent to arouse. And counts with Holiday should be
10 dismissed. That to me this is the type of incidental every day contact that people
11 have, that if that happens on an elevator, and I got charged for an A felony, I
12 would be like whoa, is this what this world come to, and that's the way the
13 Court has to look at this. You can't legally borrow Lefcourt and Willis'
14 testimony, however skewed it may be in my mind to supplant the evidence for
15 sexual gratification, arousal intent, showing that this is anything other than
16 incidental conduct. These counts should be thrown out.¹⁰⁹

17 The Court agreed with Petitioner's counsel that evidence and/or inference could not be
18 borrowed from the counts involving A.W. and J.L. to sustain the H.H. counts. The Court stated,
19 "Counsel, you are not incorrect. These counts have to be considered separately and
20 independently based on the evidence provided on each of these counts."¹¹⁰

21 The Court was rightly concerned about this specific argument and the Court made those
22 concerns known to the State:

23 I am not quite certain, I don't mean to preview my findings and cutoff your
24 arguments, but I want the State to address that. If you didn't have the 2 other
25 victims, the only thing you had was Holiday Howland's testimony, if her case
26 was all by itself, how would you argue that what happened, his touching her
27 thigh, brushing her on the side as they separate, how would you interpret that
28 as a lewd act?¹¹¹

¹⁰⁸ TR2 at p.62.

¹⁰⁹ TR2 at p.7.

¹¹⁰ TR2 at p.86.

¹¹¹ TR2 at p.87.

1 The Court eventually sustained two of the counts as to H.H. The Court dismissed Count 6
2 and declined to add Count 7. The Court then, sua sponte , took Petitioner off house arrest.¹¹²
3

4 **III. LEGAL ARGUMENT**

5 **A. Standard of Review.**

6 The standard to hold a citizen for trial is whether the State proved probable cause that a
7 suspect committed the offense alleged. In order for a defendant to be bound over, the State must
8 prove (1) probable cause to believe that a crime has been committed, and (2) probable cause to
9 believe that the person charged committed the crime.¹¹³
10

11 **B. The State failed to prove that probable cause existed to sustain Counts 4 and 5** 12 **involving H.H.** 13

14 The justice court recognized the paucity of evidence regarding Counts 4 and 5 but still
15 bound those counts up to District Court. Counts 4 and 5 are not sustainable under any test of
16 probable cause. It is generally assumed by the United States Supreme Court and all lower courts
17 that the same quantum of evidence is required whether one is concerned with the determination
18 of probable cause to search, to arrest, or to charge.¹¹⁴
19

20 In Abzill, the Nevada Supreme Court held that before a person can be held for trial two
21 things must be proved by sufficient legal evidence before a grand jury if an indictment is sought
22 or before a magistrate if a complaint is filed and a preliminary hearing is held. They are (1) the
23 fact that a crime has been committed; and (2) probable cause to believe that the person charged
24 committed it.¹¹⁵ The record is barren of such evidence.
25

26
27 ¹¹² TR2 at p.94.

¹¹³ Sheriff v. Richardson, 103 Nev. 180 734 P.2d. 735 (1987)

28 ¹¹⁴ See United States v. Humphries, 372 F.3d. 453 (4th Cir. 2004)(quantum of facts the same for either
determination).
19

¹¹⁵ Azbill v. State, 84 Nev. 345, 440 P.2d. 1014 (1968). Hicks v. Sheriff, 86 Nev. 67, 464 P.2d. 462 (1970)

1 The conduct between Petitioner and H.H. was nothing more than incidental conduct and
2 lacked any evidence that it was sexual in nature. In order to even consider this conduct as lewd
3 under the statutory definition,¹¹⁶ evidence must be borrowed or moved from the testimony of
4 A.W. and J.L. This is not legally permissible.
5

6 Merely touching a person is not and cannot be a crime. It must be proven that it was done
7 with the necessary intent of arousing or appealing to, or gratifying, the lust or sexual desires of
8 that person or of the child.¹¹⁷ This did not happen and the Justice Court recognized that the only
9 way it could possibly infer this necessarily element was to also include in this consideration the
10 factually weak circumstances involving A.W. and J.L. This methodology is legally unsound.
11

12 The justice court had a legal duty to compartmentalize and distinguish the evidence
13 produced on each count. In the words of the Justice Court, "I got to tell you that the counts
14 involving H.H. are not very strong. They are not very strong at all. When you take the testimony
15 of that little 12 year old girl completely isolated by itself, it wouldn't amount to squat in terms of
16 criminal conduct."¹¹⁸ The Court had a duty to consider the weight of each count, specifically as
17 they related to separate accusers, in isolation. This legal duty was not followed and the failure to
18 do so mandates the dismissal of counts 4 and 5.
19

20 **C. The State failed to prove that probable cause existed to sustain Count 3 involving**

21 **A.W.**

22
23 The testimony of A.W. was so improbable that it cannot be relied upon to sustain a probable
24 cause finding as to count 3. A.W. testified that Petitioner touched her leg from ankle to mid-thigh
25

26 ¹¹⁶ NRS 201.230 defines this crime as "willfully and lewdly committing any lewd or lascivious act, other than acts
27 constituting the crime of sexual assault, upon or with the body, or any member thereof, of a child under the age of 16
28 (or 14), with the intent of arousing, appealing to, or gratifying the lust or passion or sexual desires of that person or
that of the child."

¹¹⁷ Id.

¹¹⁸ TR2 at p.86.

1 while she was seated behind the Club's front desk. This occurred on August 1, 2016 between the
2 time of her arrival at 7:02 a.m. and 7:14 a.m. when she left the front desk area when her friend
3 Tyler Alvarez arrived. Exhibit A presented to the Justice Court through attorney Nakesha
4 Duncan proves both the arrival times of A.W. and Tyler Alvarez. Equally important, the log
5 shows that Petitioner was tasked with registering and accepting payment from over a dozen
6 children with their parents during this approximate time. The testimony of Ms. Guerrero, a staff
7 employee, is critical to understanding that the physical separation between Petitioner and A.W. at
8 the separate computer stations was never breached.
9

10
11 Ms. Guerrero testified that she was in a position to see and would have seen Petitioner and
12 A.W. being two feet apart from each other had that happened. It did not happen. The
13 photographs admitted at the hearing clearly show the distance that existed between Petitioner and
14 A.W. Ms. Guerrero also flatly contradicted A.W.'s false testimony that she went into Petitioner's
15 office after this alleged assault occurred. A.W. herself contradicted her own testimony when she
16 testified that she left with Tyler Alvarez from the desk area when he arrived as opposed to going
17 back into Petitioner's office.
18

19 Plainly, A.W. was motivated, just as J.L. was, by the disciplinary actions taken by Petitioner
20 over the Malik incident and multiple incidents in the past. Ms. Guerrero was an independent
21 witness with no reason to directly contradict the testimony of A.W. for any other reason than it
22 was not true. Ms. Guerrero testified clearly and succinctly that the event A.W. swore to did not
23 happen.
24
25
26
27
28

1 **D. The State failed to prove that probable cause existed to sustain Counts 1 and 2**
2 **involving J.L.**

3 J.L. testified that she initially thought that the conduct that comprised Count 1 was an
4 unintentional "accident." Her testimony about the second incident involving crossed wrists and
5 the Petitioner's body position is a physical improbability. It is apparent that all three
6 complainants came forward at the same time, during the initial part of the second week of
7 August, after discord brewed between the three girls due to discipline at the hands of Coach Will
8 and others. Their response was to implicate a man they had long known without previous
9 inappropriate sexual incident. The finding that Petitioner touched the complainants in a sexual
10 manner, within the statutory definition, was not sustained at preliminary hearing.
11

12 **CONCLUSION**

13
14 Petitioner respectfully prays that the charges be dismissed.

15
16 DATED this 19th day of January, 2017.

17
18 By: /s/ Gary A. Modafferi
19 Gary A. Modafferi, Esq. (12450)
20 Counsel for Defendant/Petitioner
21
22
23
24
25
26
27
28

1 **CERT**

2 GARY A. MODAFFERI, ESQ. (12450)
3 LAW OFFICE OF GARY A. MODAFFERI
4 815 S. Casino Center Boulevard
5 Las Vegas, NV 89101
6 Telephone: (702) 474-4222
7 Fax: (702) 474-1320

8
9 **DISTRICT COURT**
10 **CLARK COUNTY, STATE OF NEVADA**

11 In the Matter of the Application of

12 WILLIS T. BROWN

13 For a Writ of Habeas Corpus.

Case No. C-16-319125-1

Dept No. XIX

14 **CERTIFICATE OF SERVICE**

15 I, the undersigned, hereby certify that on the 19th day of January, 2017, I served a true
16 copy of **PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)** upon the following:

17 Jennifer Clemons, Esq.
18 Chief Deputy District Attorney
19 jennifer.clemons@clarkcountyda.com

20 /s/ Erika W. Magana

21 _____
22 Erika W. Magana,
23 Assistant to Gary A. Modafferi, Esq.
24
25
26
27
28

EXHIBIT “A”



CLERK OF THE COURT

1 CASE NO. C-16-319125-1

2 DEPT. NO. 5

3
4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
5 COUNTY OF CLARK, STATE OF NEVADA
6

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 WILLIS T. BROWN,)

11 Defendant.)
12 -----

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS
14 BEFORE THE HONORABLE JAMES BIXLER, PRO TEM,
15 JUSTICE OF THE PEACE

16 TAKEN ON TUESDAY, NOVEMBER 1, 2016
17 AT 9:00 A.M.

18 APPEARANCES:
19

20 For the State: Jennifer Clemons, Esq.
Chief Deputy District Attorney

21 For the Defendant: Gary Modafferi, Esq.
22 Las Vegas, Nevada
23
24

25 REPORTED BY: ROBERT A. CANGEMI, CCR No. 888

I N D E X

WITNESSES:

D C RD RC

NAKESHA DUNCAN

9 11 12

HOLIDAY HOWLAND

19 32

1 LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 1,
2 2016

3 * * * * *

4 THE COURT: State of Nevada versus Willis
5 Tyron Brown.

6 Good morning. The Defendant is present out
7 of custody?

8 MR. MODAFFERI: Yes, Your Honor.

9 MS. CLEMONS: Jennifer Clemons for the
10 State.

11 THE COURT: What's up?

12 MR. MODAFFERI: We are ready for the prelim.

13 MS. CLEMONS: Jennifer Clemons for the
14 State.

15 We have 3 witnesses. One of the witnesses is
16 an out of state witness.

17 THE COURT: We lose the Court at 12:30.

18 So, if you are ready to start, because there
19 is one another case going.

20 We can start this case right now.

21 MR. MODAFFERI: Fine.

22 There's just one issue. There is corporate
23 counsel regarding the Boys and Girls Club of
24 America.

25 They submitted a response to a subpoena

1 duces tecum, and counsel for the State is not
2 willing to allow these attendance records in, and
3 counsel from Springel & Fink, Ms. Nakesha Duncan, is
4 willing to affirm and swear to the Court that these
5 records are a true and accurate copy of a response
6 to the subpoena that was served upon them for
7 attendance records of the Boys and Girls Club of
8 America.

9 THE COURT: What does that have to do with
10 this?

11 MR. MODAFFERI: It will show at the time of
12 the alleged sexual assault, the number of children
13 coming in and out of the public area, where it
14 occurred.

15 And it will show that the Defendant was
16 present doing administrative things, such as for all
17 of the children that are on this attendance record
18 for the relevant time period in which the sexual
19 assault allegedly happened, bringing children in,
20 taking their lunch money, their registration fees,
21 signing them in on a computer in the same area where
22 this alleged sexual assault is to have occurred.

23 So it goes to prove that he didn't have the
24 opportunity.

25 THE COURT: This isn't a trial.

1 MR. MODAFFERI: I understand that, Judge, but
2 we also have another witness that will testify that
3 she watched the entire time, and was in viewing
4 distance during that same time while he was checking
5 people in and out.

6 That they sat apart from each other, and
7 never got close to each other, and never had the
8 opportunity as well to have committed sexual
9 assault.

10 I am just asking that the records be
11 received by the Court as self-authenticating, and
12 that counsel would testify instead of submitting a
13 certificate that they are true and accurate copies
14 of what they purport to be, in response to the
15 defense subpoena, that she be allowed to testify.

16 If that's the case, she's ready to do so.
17 And I made copies. Counsel has had these records for
18 quite sometime.

19 MS. CLEMONS: Because the detective did get
20 the records for the preliminary hearing, so the
21 standard is probable cause.

22 If he wants to admit documents, he has to
23 authenticate them, just as I would have to.

24 I don't think somebody saying they responded
25 to -- if he wants the counsel to get up there and

1 testify that they responded to a subpoena, and in
2 response to that got those records, fine, but there
3 still needs to be testimony about that.

4 We don't just skip over that, because he
5 wants to admit the records.

6 A lot of what he said, that's not going to
7 come in based upon what legal counsel says, they are
8 not going to be able to say this means this person
9 was sitting here checking in all of these people.

10 All this shows is who was in attendance at
11 the Boys and Girls Club. Our time frame is over a
12 month long talking about one victim. There are 3
13 victims here.

14 I would ask that he be held to the same
15 evidentiary standards as the State.

16 MR. MODAFFERI: The time period is 20
17 minutes for the first count against my client made
18 by a minor named AW.

19 The time frame goes from 7:02 in the
20 morning, which she is alleged to have walked into
21 this club, to about 20 minutes later where he gives
22 up his desk at that computer and walks away.

23 It is during that 20 minutes that he is
24 alleged to have committed that assault.

25 And during that time period there were

1 multiple families coming in and. It is reflected by
2 these records where he took lunch money,
3 registration money and signed them in on a computer.

4 MS. CLEMONS: I object to these. Those
5 records are not going to prove that.

6 If his client wants to take the stand, and
7 he can testify as to what he was doing.

8 The records do not show what the Defendant
9 was doing at the time. All they show is who was in
10 attendance at the Boys and Girls Club, and what time
11 they got there.

12 MR. MODAFFERI: They give me that argument,
13 combined with my other witness observing the
14 incident, the entire incident.

15 THE COURT: We are not going to solve this
16 argument about whether or not these records come in
17 are self-authenticating.

18 MR. MODAFFERI: I didn't want to waist
19 corporate counsel's time.

20 THE COURT: What I was considering doing is
21 to just call the case and have her take the witness
22 stand, and be placed under oath, and give the kind
23 of testimony that would be necessary to authenticate
24 those records, and then we are done with that issue,
25 that part, and I can go do this other case and come

1 back to you guys.

2 MR. MODAFFERI: It sounds like a great
3 solution.

4 Thank you, Judge.

5 THE COURT: Let's do it like that. Call her
6 as a witness.

7 I will put this on the record. State of
8 Nevada versus Willis Tyron Brown, Case Number
9 16F13242X.

10 We are going to start this case and call one
11 witness for the defense.

12 MR. MODAFFERI: The defense calls Nakesha
13 Duncan.

14 MS. CLEMONS: I am going to ask that before
15 the girls testify, that the courtroom is cleared.

16 THE COURT: We are starting the preliminary
17 hearing.

18 Anybody who is a witness or could be a
19 potential witness in this case, whether you are a
20 witness for the State or the defense, you need to go
21 out in the hallway, and I would admonish that
22 everyone who is a witness or a potential witness not
23 to discuss any of their testimony about this case
24 while they are waiting outside in the hallway.

25 MR. MODAFFERI: That would go for the State

1 as well.

2 MS. CLEMONS: Our witnesses are upstairs.

3 THE COURT: Is there anybody back there; is
4 there anybody who is a witness or a potential
5 witness in this case?

6 No.

7
8 NAKESHA DUNCAN,

9
10 who, being first duly sworn to tell the truth, the
11 whole truth, and nothing but the truth, was examined
12 and testified as follows:

13
14 THE CLERK: Please be seated.

15 THE COURT: State your full name and spell
16 both your first and last name for the record.

17 THE WITNESS: Nakesha S. Duncan
18 N-a-k-e-s-h-a S. D-u-n-c-a-n.

19 THE COURT: Thank you.

20
21 DIRECT EXAMINATION

22
23 BY MR. MODAFFERI:

24 Q. Ms. Duncan, how are you employed?

25 A. I am an attorney at Springel and Fink, hired

1 by the Boys and Girls Club.

2 Q. Have you been counsel assigned to respond to
3 subpoenas issued by the State and defense in this
4 case?

5 A. Yes.

6 Q. And in that capacity, did you respond to a
7 subpoena by the defense which requested the
8 participant attendance activity log for August 1,
9 2016?

10 A. Yes.

11 MR. MODAFFERI: May I have this marked,
12 Judge, to show it to her?

13 THE COURT: Yes. It will be marked as
14 Defendant's Proposed Exhibit A.

15 MR. MODAFFERI: Thank you.

16 Thank you.

17 Your Honor, may I approach the witness?

18 THE COURT: Yes.

19 Q. I am showing you what's been marked as
20 Defense Exhibit A; do you recognize that?

21 A. Yes.

22 Q. And is that the participant attendance
23 activity log that you gave to defense counsel in
24 response to our subpoena duces tecum?

25 A. Yes.

1 Q. And is that a true and accurate copy?

2 A. Yes.

3 Q. And that particular document would have been
4 the subject of a certificate of authenticity, if we
5 had requested one?

6 A. Yes. I received it directly from my client.

7 As far as the contents within it, I can't
8 testify to what it records.

9 But in response to the subpoena of what was
10 asked for in regards to participant activity, this
11 is what was provided to me by the Boys and Girls
12 Club.

13 MR. MODAFFERI: Thank you. No further
14 questions.

15 THE COURT: Any questions?

16

17 CROSS-EXAMINATION

18

19 BY MS. CLEMONS:

20 Q. How many pages is that document?

21 A. Without counting them, I have page numbers
22 of one to 28.

23 Q. Basically if I understand you correctly, you
24 received that information from your client, the Boys
25 and Girls Club?

1 A. Correct.

2 Q. You can't testify regarding anything it
3 contains, it is just the documents you received from
4 the Boys and Girls Club?

5 A. Correct.

6 MS. CLEMONS: Okay.

7 Nothing further.

8
9 EXAMINATION

10
11 BY THE COURT:

12 Q. Are you familiar with the way they log in
13 folks?

14 A. I am.

15 Q. Does that comport with the normal manner in
16 which folks are logged into the Boys and Girls Club?

17 A. It does, yes.

18 MR. MODAFFERI: If I may.

19
20 REDIRECT EXAMINATION

21
22 BY MR. MODAFFERI:

23 Q. Is that a document normally kept in the
24 routine business activity at the Boys and Girls
25 Club?

1 A. It is.

2 Q. And that's something that is used to keep
3 track of the children at the Boys and Girls Club?

4 A. Yes.

5 Q. It shows what time they came in, and what
6 time they left, is that correct?

7 A. It does.

8 Q. That also gives you their name, and a number
9 that is assigned to their name, right?

10 A. Correct. It is whatever card they scanned
11 in that day.

12 Q. The attendance is taken according to the
13 document and according to procedure, is that
14 correct?

15 A. Yes.

16 MR. MODAFFERI: I have nothing further.

17

18 EXAMINATION

19

20 BY THE COURT:

21 Q. Is that information all logged manually, or
22 is it done in some kind of computerized fashion; do
23 these kids, when they show up, do they have
24 identification cards?

25 A. Correct. They scan. They usually scan in,

1 which would be the time in and the time out.

2 However, if the machine is down, then they
3 would be logged manually.

4 Q. It would be done manually if something was
5 wrong with the computer system?

6 A. Yes.

7 Q. And they just use their identification card?

8 A. Correct.

9 MS. CLEMONS: Nothing from the State.

10 THE COURT: Thank you very much for your
11 testimony.

12 There is a motion to admit?

13 MR. MODAFFERI: Yes.

14 THE COURT: Any objection?

15 MS. CLEMONS: No objection.

16 THE COURT: Is that it?

17 MR. MODAFFERI: Yes.

18
19 (Matter trailed.)

20
21 THE COURT: We are on the record in the
22 State of Nevada Willis Tyrone Brown, and the actual
23 next witness will be the State's witness, right?

24 MS. CLEMONS: Correct.

25 Your Honor, before we start, I would ask

1 that the Court room be cleared under NRS 171.204,
2 which allows upon good cause shown to request of any
3 party to be excluded from the Court, except for the
4 people involved, including the Defendant and the
5 parties involved.

6 I would ask that anybody else be cleared
7 from the courtroom. The first victim is a 12-year-
8 old, and the other 2 are 15.

9 This is sensitive subject matter, talking
10 about things that are quite frankly embarrassing for
11 young girls to talk about being that there are a few
12 strangers in the courtroom.

13 I feel it is better.

14 THE COURT: I will be perfectly honest, I am
15 not inclined to do that.

16 However, how old are the witnesses?

17 MS. CLEMONS: The first one is 12 and the
18 other 2 are 15.

19 MR. MODAFFERI: The nature of the charges,
20 Judge, even though they are sexual inflated, do not
21 involve penetration, do not involve anything other
22 than the allegations that the Defendant touched the
23 girls over their clothing.

24 So, I mean, to some degree I think that
25 makes a difference. I also do think that the

1 Defendant is entitled to somewhat of a --

2 THE COURT: Here is what causes me problems,
3 that wouldn't happen at a District Court trial.

4 At a District Court trial, other than
5 persons who have some knowledge of the case or are
6 potential witnesses would be excluded.

7 Other than that, the Defendant has a right
8 to have a trial in an open Court. And under some
9 circumstances, where they are real young, little
10 kids, I am talking 3, 4, 5, 6, I would be much more
11 inclined.

12 But these are young kids. They are going to
13 have to at some point testify if this thing goes to
14 trial. They will testify in front of a lot of
15 people in the District Court setting.

16 So they might as well get used to it, as
17 long as nobody that is here in the courtroom has any
18 knowledge or anything that has to do with this case.

19 None of these folks are potential witnesses?

20 MS. CLEMONS: Well, the witness for legal
21 counsel is still here for the Boys and Girls Club.

22 THE COURT: Her testimony had to do with
23 records from the Boys and Girls Club. She's not a
24 percipient witness to any criminal activity.

25 She's subpoenaed pursuant to the defense

1 subpoena, relative to some records that really don't
2 have anything to do -- I don't have any problem with
3 her staying here.

4 The rest of these folks are not witnesses of
5 any sort. Just for the record, would you all just
6 identify yourselves so we know who you are.

7 MS. RAYFORD: I am Roslyn Rayford. I am just
8 a friend of Mr. Wills.

9 THE COURT: Okay.

10 MR. ABRAMS: My name is Robert Abrams and my
11 daughter Karen Abrams.

12 THE COURT: Okay.

13 MS. LONGORIA: Danielle Longoria.

14 THE COURT: The first witness for the State
15 will be?

16 MS. CLEMONS: Holiday Howland.

17 THE COURT: There is handwritten information
18 on the top of Defense Exhibit A.

19 MR. MODAFFERI: You can white it out or
20 disregard it. It is of no pertinence.

21 MS. CLEMONS: I don't have a copy of that.

22 THE COURT: Take a look at it. It looks like
23 some kind of notes from the Boys and Girls Club.

24
25 HOLIDAY HOWLAND,

1
2 who, being first duly sworn to tell the truth, the
3 whole truth, and nothing but the truth, was examined
4 and testified as follows:

5
6 THE COURT: Have a seat, and tell us -- you
7 see this young fellow right here in front of you, he
8 is a court reporter, and he takes down everything
9 that everybody in Court says, okay; so it is really
10 important that when you are answering a question, or
11 when you are speaking that you speak very clearly,
12 and loud enough so that everybody can hear you,
13 right towards that microphone, okay?

14 THE WITNESS: Um-hum.

15 THE COURT: Is that a yes?

16 THE WITNESS: Yes.

17 THE COURT: When you answer a question, if
18 the answer is yes or no, make sure you say yes or
19 no, not uh-huh or huh-uh. They kind of sound the
20 same, and he might get the wrong answer down.

21 The first thing is; state your full name,
22 your first name and your last name. Then I want you
23 to spell your first and last name so he makes sure
24 he gets it right, okay.

25 Now, also scoot that chair up close to that

1 microphone, that way that will help everybody hear
2 what you have to say.

3 State your full name and spell your first
4 and last name.

5 THE WITNESS: Holiday Howland, H-o-l-i-d-a-y
6 H-o-w-l-a-n-d.

7 THE COURT: Go ahead.

8 MS. CLEMONS: Thank you.

9
10 DIRECT EXAMINATION

11
12 BY MS. CLEMONS:

13 Q. Holiday, when is your birth date?

14 A. June 7, 2004.

15 Q. How old are you?

16 A. 12.

17 Q. What grade are you in at school?

18 A. 7.

19 Q. 7.

20 Where do you live right now?

21 A. San Jose, California.

22 Q. Did you get an airplane to come here this
23 morning?

24 A. Yes.

25 Q. Did you ever live in Las Vegas?

1 A. Yes.

2 Q. What grade were you in when you lived in Las
3 Vegas?

4 A. 6.

5 Q. And who did you live with?

6 A. My aunt and uncle.

7 Q. So, do you know the difference between a
8 truth and a lie?

9 A. Yes.

10 Q. What is the truth?

11 A. The truth is -- I don't know how to really
12 explain it. It is like when I don't lie, basically.

13 Q. Let me give you a simple example.

14 If I said I was wearing a bright pink shirt,
15 would that be the truth or a lie?

16 A. A lie.

17 Q. Why is it a lie?

18 A. Because you are wearing dark pink.

19 MS. CLEMONS: Let the record reflect that my
20 shirt is dark pink, reddish.

21 THE COURT: I was a little confused with
22 that.

23 Q. So is the truth something that really
24 happened?

25 A. Yes.

1 Q. Okay.

2 And a lie would be something that is made
3 up, fair?

4 A. Yes.

5 Q. So today you are going to promise to tell
6 the truth; is that right?

7 A. Yes.

8 Q. That's what we did when you raised your hand
9 all of that stuff?

10 A. Yes.

11 Q. When you lived in lags Vegas, did you ever
12 go to the Boys and Girls Club in Southern Highlands
13 in Clark County?

14 A. Yes.

15 Q. And when would you go there?

16 A. Almost everyday, except for when my aunt was
17 off of work.

18 Q. Did you go there during the school year?

19 A. Yes.

20 Q. Did you go there during the summer?

21 A. Yes.

22 Q. And when did you stop going to the Boys and
23 Girls Club?

24 A. When I moved back to California with my mom.

25 Q. Do you remember when that was?

1 A. No.

2 Q. So you are in 7 grade right now, correct?

3 A. Yes.

4 Q. When you started school, did you start
5 school in Las Vegas or California?

6 A. California, but school started here, but I
7 didn't go.

8 Q. So school started here in August?

9 A. Yes, I believe so.

10 Q. When did you start school in California?

11 A. I think it was September.

12 Q. Okay.

13 So it sounds like you went to the Boys and
14 Girls Club quite a bit, is that right?

15 A. Yes.

16 Q. Did you know a person named Coach Will?

17 A. Yes.

18 Q. Do you see him in Court today?

19 A. Yes.

20 Q. Can you point to him and tell me something
21 he is wearing.

22 A. A tannish color.

23 MS. CLEMONS: MAY THE record reflect the
24 identification of the Defendant?

25 MR. MODAFFERI: No objection.

1 THE COURT: The record will so show.

2 Q. Do you know what his job was at the Boys and
3 Girls Club?

4 A. He is the director.

5 Q. And would you ever talk to Coach Will?

6 A. Yes, if I saw him outside his office, I
7 would say hi.

8 Q. Okay.

9 What kind of stuff would you talk to him
10 about?

11 A. Nothing. I would just say hi, and he would
12 say hi back.

13 Q. Did you ever talk to him inside his office?

14 A. Yes.

15 Q. And what would you talk about inside his
16 office?

17 A. I kind of only went in there when I got in
18 trouble.

19 Q. Okay.

20 So when you got in trouble you would go talk
21 to Coach Will?

22 A. Yes.

23 Q. Was that with the door opened or closed, if
24 you remember?

25 A. Closed, because it was kind of private, I

1 guess.

2 Q. You probably didn't want everyone to know
3 what was going on?

4 A. Like what I was in trouble for.

5 Q. What kinds of stuff did you get in trouble
6 for?

7 A. I got in trouble for taking food and talking
8 back.

9 Q. Okay.

10 When you were in Coach Will's office, did he
11 ever touch you?

12 A. Yes.

13 Q. Where would he touch you?

14 MR. MODAFFERI: I want to ask for a time,
15 Judge, I mean, if she can.

16 THE COURT: We will get there.

17 A. When he went to hug me, he would touch like
18 my thigh.

19 Q. Okay.

20 The first time this happened, do you
21 remember if you were in school or if it was summer?

22 A. I honestly don't remember.

23 Q. Okay.

24 So your birth date is in June, right?

25 A. Yes.

1 Q. Do you remember if it was before your
2 birthday or after your birthday, the first time?

3 A. Before, I think.

4 Q. Are you usually still in school on your
5 birthday?

6 A. No. I think I got out June 4.

7 Q. Okay.

8 You think it was -- do you have a spring
9 break at school?

10 A. Yes.

11 Q. Do you think it was before spring break or
12 after?

13 A. I don't know.

14 Q. Okay.

15 What about Christmas, do you think it was
16 before Christmas or after Christmas?

17 MR. MODAFFERI: Again, I ask which Christmas
18 are we talking about, the Christmas that preceded
19 her getting out of school, or the Christmas that
20 came after?

21 THE COURT: I assume we are talking about
22 last Christmas.

23 Q. You were in 6 grade in Las Vegas?

24 A. Yes.

25 Q. The Christmas break of 6 grade, do you think

1 that is when Coach Will touched you on your thigh;
2 was it before Christmas or after?

3 A. I am pretty sure it was after.

4 Q. All right.

5 So you remember it is before your birthday,
6 after Christmas, sometime in between there, fair?

7 A. Yes.

8 Q. So you mentioned he went to go hug you; is
9 that right?

10 A. Yes.

11 Q. How would he hug you; where would his arm
12 go?

13 A. Near my thigh.

14 Q. The outside or inside?

15 A. Outside, kind of in front.

16 Q. Outside in the front, is that what you said?

17 A. Yes.

18 Q. And how did that make you feel when that
19 happened?

20 A. Uncomfortable.

21 Q. Would you say anything about it?

22 A. No. I didn't want to interfere with going
23 back with my mom.

24 Q. And did he say anything when that happened?

25 A. No.

1 Q. Then would that be before you started
2 talking in his office, or at the end?

3 A. At the end.

4 Q. Okay.

5 So when he would touch you on the outside
6 front part of your thigh, was it closer to your knee
7 or your waist?

8 A. Kind of the middle.

9 Q. The middle?

10 A. Yes.

11 Q. Would his hand do anything, or was it just
12 there?

13 A. No. It was just there.

14 Q. Do you know how long his hand was there for?

15 A. Until I walked away.

16 Q. Would this happen -- was this the only time
17 that happened?

18 A. What do you mean?

19 Q. Is that the only time he touched you on your
20 thigh?

21 A. Yes.

22 Q. Okay.

23 Did Coach Will ever touch you anywhere
24 else?

25 A. Like he would like kind of -- like I don't

1 know how to explain it.

2 Q. When he was hugging you, is that when you
3 are talking about?

4 A. Yes.

5 Q. He would let go. Then you did a motion with
6 your hand; what do you mean by that?

7 A. Just kind of like brush up after, as if he
8 was letting go.

9 Q. So when you said he would brush up, did you
10 feel his hand anywhere else?

11 A. Kind of like near the middle, like my
12 stomach, where your rib cage is.

13 Q. Okay.

14 So did that happen this first time?

15 A. Yes.

16 Q. Okay.

17 How did you feel when his hand brushed up
18 and touched your stomach?

19 A. Really awkward and nervous.

20 Q. Are there other times that you were in his
21 office and nothing would happen?

22 A. When Angela or another staff was in there.

23 Q. Then nothing would happen?

24 A. Yes.

25 Q. What about if a staff member wasn't in the

1 office?

2 A. Then it would happen.

3 Q. Okay.

4 So did it ever happen anywhere else?

5 A. No.

6 Q. Only in the office?

7 A. Yes.

8 Q. How many times in the office, do you think?

9 MR. MODAFFERI: I object to the form of the
10 question, Judge.

11 We are not clear as to what happens; are we
12 talking about having someone touched on the stomach,
13 touched on the shoulder?

14 It is unclear. She's leading the witness,
15 first of all, and the question is also vague.

16 Those are my 2 objections.

17 THE COURT: I think you are fine.

18 Be careful not to suggest your answer. Go
19 ahead.

20 Q. How many times -- did he touch you on your
21 thigh in the office?

22 A. Yes.

23 Q. How many times?

24 MR. MODAFFERI: Asked and answered, Judge.

25 She already answered that he only touched

1 her on the thigh once.

2 THE COURT: You are going to get plenty of
3 opportunity to cross-examine her.

4 Go ahead.

5 MR. MODAFFERI: Thank you.

6 A. Only when I would get in trouble. Other than
7 that, I kind of the tried to avoid going near him.

8 Q. Did you get in trouble more than one time?

9 A. Yes.

10 Q. Do you know how many times it was that you
11 got touched on your thigh?

12 A. More than once.

13 Q. Okay.

14 So earlier you talked about how you got in
15 trouble for stealing food.

16 A. Yes.

17 Q. And you also got in trouble for talking
18 back; is that right?

19 A. Yes.

20 Q. Are those 2 different incidents, or did
21 those happen the same day?

22 A. Those are 2 different.

23 Q. So after each of those times when you got in
24 trouble, did you have to go to Coach Will's office?

25 A. Can you repeat that?

1 Q. When you got in trouble for stealing food,
2 did you have to go to Coach Will's office?

3 A. Yes.

4 Q. When you got in trouble for talking back,
5 did you have to go to his office?

6 A. Yes.

7 Q. Do you remember if you, when you were in his
8 office getting in trouble for those 2 things that he
9 touched you on the thigh?

10 A. Yes.

11 Q. Do you recall ever telling somebody that he
12 touched you on the side of your breast?

13 A. What do you mean?

14 Q. Did you ever tell anybody that that
15 happened?

16 A. Only when he brushed up.

17 Q. Is that what you meant, if somebody thought
18 they heard you say that, is that what you meant by
19 it?

20 A. Yes, but I didn't tell anybody other than --
21 am I allowed to say names -- other than Jade and
22 Aricha, when they told me what happened to them,
23 then I told them what happened to me.

24 Q. Do you remember what you told them happened
25 to you?

1 A. Yes, exactly what I just said today, do you
2 want me to repeats it?

3 Q. Okay.

4 When his hand would brush up, did it touch
5 the side of your stomach?

6 A. Yes. He would go up like just like -- he
7 mainly felt near my stomach. I still got the
8 chills.

9 Q. Did you feel it anywhere else besides your
10 stomach?

11 A. Right here.

12 Q. What part of your body are you pointing to?

13 A. Near the --

14 Q. What is the word you use for that part of
15 your body?

16 A. The side.

17 Q. The side of your boob, is that what you
18 said?

19 A. Yes.

20 MS. CLEMONS: No further questions from the
21 State.

22 THE COURT: Cross-examination.

23
24 CROSS-EXAMINATION
25

1 BY MR. MODAFFERI:

2 Q. Ms. Howland, do you recall giving a
3 statement to the police detectives in this matter?

4 A. Like who?

5 Q. Did the police come and talk to you sometime
6 in August?

7 A. Yes.

8 Q. And at that time, when the police came to
9 talk to you, do you remember a young man telling you
10 that it was one of the most important rules, when
11 you gave that statement, was that you tell him the
12 truth?

13 A. Yes.

14 Q. And by this time, by the time that you had
15 already talked to the detective before he even came
16 to visit you, you had gotten together with Aricha
17 Willis and also with Jade Lefcourt and talked about
18 Coach Will; is that correct?

19 A. When?

20 Q. Before the detective came to talk to you.

21 A. Yes.

22 Q. And when you got together with Jade Lefcourt
23 and Aricha Willis, you talked about things that you
24 thought the 3 of you, that Coach Willis had done to
25 you; is that correct?

1 A. Yes.

2 Q. Okay.

3 A. I wasn't lying.

4 Q. Now, when the detective came to you and told
5 you about telling you the truth, isn't it true that
6 at that time in August, when you were supposed to be
7 telling him the truth, you told him that can Coach
8 Willis never touched your breasts, ever?

9 A. I did tell him.

10 Q. Okay.

11 Are you sure about that?

12 A. Yes. I don't understand why I would lie.

13 Q. Do you remember being asked the question;
14 okay, this is page 26 of her statement.

15 Coach Willis had touched your chest, and you
16 answered; no, I don't remember that.

17 So are you saying that answer was not true?

18 MS. CLEMONS: Your Honor, I at this point. He
19 is not doing it the proper way in relation to
20 refresh the witness with her statement.

21 MR. MODAFFERI: I can cross-examine her.

22 THE COURT: If you are going to impeach her
23 with a prior statement --

24 MR. MODAFFERI: I will do it that way. If I
25 can approach the witness.

1 A. I tried to forget.

2 Q. Before you answer the question, I want to
3 show you what page 26, counsel, for your
4 recollection.

5 MR. MODAFFERI: May I approach the witness?

6 THE COURT: Sure.

7 A. Can you read the first line of that.

8 THE COURT: Just to yourself.

9 A. I am sorry, I don't remember saying that.

10 Q. So reading that portion of the voluntary
11 statement where you said that he did not touch your
12 breasts didn't refresh your recollection about
13 telling him that?

14 A. Can you repeat what you said?

15 Q. Sure.

16 A. You just read a portion of your taped
17 interview with the detective, correct?

18 A. Yes.

19 Q. And you have no doubt that what is on this
20 transcript is what you said; is that correct?

21 A. I don't get what you are saying.

22 THE COURT: Restate that.

23 Q. I am asking you, you told the detective then
24 in August that Coach Willis never touched your
25 chest, correct?

1 A. Like I said, I don't remember saying that.

2 Q. But you are saying in Court today that he
3 did?

4 A. Yes.

5 Q. And can you tell me where it happened?

6 A. In his office.

7 Q. And when?

8 A. I don't remember the date. I try to forget.

9 Q. Do you recall what you were in there for?

10 A. I was in trouble for talking back to one of
11 the staff members.

12 Q. Who was the staff member that you were in
13 trouble for talking back to?

14 Do you recall?

15 A. Ms. Ashley.

16 Q. What did you say to Ms. Ashley that got you
17 in trouble?

18 A. It was during homework hour. I told her I
19 didn't have any homework. She went off about me
20 reading a book, and I wanted to draw instead of
21 reading the book.

22 Q. So did Ms. Ashley bring you to the office?

23 A. Yes.

24 Q. And did you sit outside the office until he
25 was ready to see you?

1 A. Yes. I sat outside, and then he called me
2 in.

3 Q. Okay.

4 I want to show you what's been marked as
5 Defendant's Exhibit E; do you recognize this
6 photograph?

7 MR. MODAFFERI: May I approach?

8 THE COURT: Sure.

9 Q. Do you recognize this photograph?

10 A. Yes, it is his office.

11 I believe so.

12 Q. Is that a fair and accurate depiction of
13 what it looks like when you got sent to the office?

14 A. Yes.

15 MR. MODAFFERI: Okay.

16 I would ask that it be admitted, Judge.

17 THE COURT: Any objection?

18 MS. CLEMONS: Is that the inside of the
19 office; is that inside?

20 THE WITNESS: That is the inside.

21 MS. CLEMONS: Okay.

22 No objection.

23 THE COURT: Defendant's Exhibit E, is that
24 what that is?

25 MR. MODAFFERI: Yes.

1 THE COURT: E is admitted.

2 Q. Can you tell me where you were seated when
3 he touched your breast?

4 A. I wasn't seated. I was over this area
5 around his desk.

6 Q. Why were you around his desk?

7 A. Because he said give me a hug, like he was
8 going to forgive me for talking back.

9 Q. Do you recall what you were wearing?

10 A No.

11 Q. You said that he touched your breast that
12 day, on the day that you were talking back to
13 Ms. Ashley?

14 A. Sorry, can you repeat that? I am a little
15 confused.

16 Q. I am just trying to understand; did you have
17 your breast and your thigh touched on the same day?

18 A. Yes.

19 Q. And do you recall, was that the day that you
20 were in trouble for talking back to Ms. Ashley?

21 A. Yes.

22 Q. And you don't recall whether it was in June
23 or July, or August?

24 A. I don't keep track of the dates.

25 Q. Now, you say when he went to hug you, he

1 touched your middle thigh?

2 A. Yes.

3 Q. And where at the side of your breast?

4 A. What?

5 Q. And the side of your breast?

6 A. No.

7 Q. You said he brushed the side of your breast;
8 was that your testimony?

9 A. Yes. He touched my thigh. When he went to
10 let go he went like that.

11 Q. He didn't touch your nipple?

12 A. No.

13 Q. Did he touch your rib cage?

14 A. When he brushed up, yes.

15 Q. And you were wearing clothing on the outside
16 where he touched you?

17 A. Yes.

18 Q. And how far did he get towards the center of
19 your breast?

20 A. Like on the side. I don't know how to
21 answer that. I just know it was on the side.

22 Q. Okay.

23 Was that the time he also touched you on the
24 stomach?

25 A. Like I said, he touched my thigh.

1 Q. Yes.

2 A. And then brushed up.

3 Q. So this all happened in one motion, in one
4 incident?

5 A. Yes. We had hugged for a second. Then he
6 went to let go. I went to walk away, and he went
7 like that.

8 Q. So when he went to walk away, were you
9 walking away as well, or did you turn to walk away?

10 A. After he did that, then I walked out of his
11 office.

12 Q. And you said he touched what part of the
13 thigh?

14 A The middle.

15 Q. So when you say the middle, you are talking
16 about here on my pants?

17 A. A little more that way.

18 Q. Here?

19 A. Yes, but down more.

20 Q. By the knee?

21 A. Not by the knee, the middle of your thigh.

22 Q. If you can stand up, please; how far from --
23 can you show me where it was?

24 A. Right here.

25 Q. You said he touched it with his hand or with

1 his finger?

2 A. Not like that.

3 Q. How long did it remain there; was it a
4 second?

5 A. Just like a few seconds. Then he went like
6 that, and then I walked away.

7 Q You just touched your breast, he didn't do
8 that.

9 I said that he went like this.

10 (Indicating.)

11 Q. That is not what you testified earlier to.
12 What you said was he went and touched the outside of
13 your rib cage.

14 A. I said he brushed up near my rib cage. I
15 didn't want to say boob.

16 Q. You just previously testified that he never
17 touched your nipple?

18 A. I didn't say he touched my nipple right now,
19 no.

20 Q. Do you recall writing an e-mail, or the
21 telling anybody that you were going through this
22 exercise because you wanted to get paid?

23 A. Paid?

24 Q. Yes, get paid, money.

25 A. No.

1 Q. Do you recall a text message to a girl by
2 the name of Alex Farmer in which you wrote; I am
3 most likely to get a lot of money for it. It will
4 go to pay for my college.

5 A. Because my mom said she was going to sue
6 him.

7 Q. You did write that?

8 A. Yes, because my mom said she was going to
9 sue him. I left. I didn't this for the money.

10 Q. But that wasn't my question.

11 My question was; did you tell anybody that
12 because of your involvement in this you were hoping
13 to get paid?

14 A. I never said I was hoping to get paid.

15 MS. CLEMONS: Objection, Your Honor, he is
16 being very argumentative.

17 THE COURT: This is all part of the
18 discovery; everybody has seen a copy of this text
19 message?

20 MR. MODAFFERI: It is.

21 THE COURT: Did you read it --

22 MR. MODAFFERI: Verbatim. She adopted it.

23 THE COURT: Read it again.

24 MR. MODAFFERI: Okay.

25 I will read the entire e-mail.

1 Tomorrow morning --

2 MS. CLEMONS: Objection, no, that's not in
3 evidence.

4 MR. MODAFFERI: Just the part about being
5 paid.

6 THE COURT: Is this an e-mail or a text?

7 MR. MODAFFERI: A text.

8 Q. My mom is pressing charges against Willis.
9 I am most likely to get paid a lot of money for it,
10 but it will most likely go to pay for my college.

11 Did you write that?

12 A. Yes. I didn't do it for the money.

13 Q. Do you recall you told the Court there were
14 2 incidents in which you got in trouble for, one
15 involving talking back, and one involving stealing
16 food; is that correct?

17 A. Yes.

18 Q. But there were other incidents that you got
19 in trouble for; is that correct?

20 A. Yes, for sitting on the ping-pong table.

21 Q. Okay.

22 Was there another incident earlier in the
23 year where you got into trouble and suspended for
24 drawing a penis?

25 A. No. I don't understand why I got in trouble

1 for that. I didn't draw it.

2 Q. Did you get in trouble for it?

3 A. For that; I don't remember why I was
4 suspended.

5 Q. You were called to the office that time
6 because of the penis incident, right?

7 A. Like I said, I don't remember. I recall I
8 was suspended.

9 I don't remember what I was suspended for.
10 I thought it was for stealing foods.

11 Q. You don't recall being in the office with
12 Ms. Dare and Coach Willis?

13 A. Who?

14 Q. Dare, Angela.

15 A. Okay.

16 Q. And Alex Farmer and Chris Erico?

17 A. Yes. We were all stealing food. I don't
18 remember drawing a penis.

19 Q. You don't remember that allegation coming
20 out at all?

21 A. No.

22 Q. Do you recall what you said about Coach
23 Willis after you were suspended?

24 A. No.

25 Q. Did you say anything like words to the

1 effect of; I hate that M-Fer?

2 A. No.

3 Q. You never told the other girls that?

4 A. No.

5 Q. How many other times had Coach Willis
6 disciplined you besides the incident involving the
7 food and/or the penis, and the talking back, how
8 many times were you in his office altogether?

9 A. I don't keep track of that stuff.

10 Q. More than 6, more than 10?

11 A. More than once, I can say that.

12 Q. You are saying that Coach Willis touched you
13 inappropriately the time that you were in the office
14 together alone; is that correct?

15 A. Can you repeat that?

16 Q. You told the Court that he touched your
17 thigh and the side of your chest and your stomach;
18 are you -- you are saying, you are telling the Court
19 that you thought that was a of a sexual nature?

20 A. Yes. It made me feel uncomfortable.

21 Q. Did he say anything of a sexual nature at
22 the time he did that?

23 A. Did he say anything?

24 Q. Yes.

25 A. No.

1 Q. He didn't say anything, I want your body, I
2 want to have sex with you, anything like that?

3 A. No.

4 Q. No?

5 A. No.

6 Q. Did you ever make a claim that Coach Willis
7 touched you inappropriately at the bowling alley on
8 a field trip?

9 A. No, because he didn't go. He didn't go to
10 the field trip. It was Mr. Amoni and Mr -- I think
11 Mr. Dustin also went, I believe so, and I was with
12 Eden the whole time.

13 Q. There was nothing on that day that Coach
14 Willis did that would lead you to believe that he
15 touched you inappropriately?

16 A. What do you mean?

17 Q. Did you go on the bowling trip?

18 A. Yes.

19 Q. Could Coach Willis wasn't there?

20 A. Yes.

21 Q. Did you initially say that he had done
22 something wrong on the bowling trip?

23 A. I never said that.

24 Q. You never said that, okay.

25 So from what I gather from your testimony so

1 far, the only time that Coach Willis did touch you,
2 according to you inappropriate is when he touched
3 your thigh mid-drift and chest; is that correct?

4 A. Yes.

5 Q. And that happened one time in his office
6 while you were alone?

7 A. Not one time.

8 Q. When was the other time?

9 A. Mostly when I was in office.

10 Q. When you say mostly, you don't recall how
11 many times you have even been in his office, do you?

12 A. No. I am not keeping track of that.

13 Q. And can you tell me the date, or were they
14 close to each other?

15 A. I don't know. I don't remember.

16 Q. After they happened, how many were there; do
17 you have any idea? Can you tell me a ballpark
18 figure, once, twice, 3 times?

19 A. What for?

20 Q. That you are accusing Coach Willis of
21 touching you inappropriately; can you tell me?

22 A. I don't understand your question.

23 Q. How many times did it happen?

24 A. I told you, more than once.

25 Q. That's all you can say about that is just

1 for than once?

2 A. Yes.

3 Q. Did you tell the police that it happened
4 four thousand million times?

5 A. More than once.

6 Q. No. I mean, did you actually use the words
7 four thousand million times?

8 A. Yes.

9 Q. Why would you tell the police that then?

10 A It is more than once. I am sorry. I am not
11 giving -- I am not keeping track with that. I don't
12 understand why I would keep track of it.

13 Q. If you felt that Coach Willis was touching
14 you inappropriately, why didn't you tell anybody?

15 A. Because I didn't want it to interfere with
16 me going back with my mom.

17 Q. How would it interfere with going back to
18 your mom?

19 A I didn't want to have to stay here to do
20 this.

21 Q. How would you know that you would have to be
22 here to do this?

23 A. Because once you tell somebody something,
24 they are going to tell somebody and the police.

25 Q. Did you call CPS to get an update on the

1 case?

2 A. No.

3 Q. Did you call Metro and get connected to CPS
4 to see if Coach Willis had been arrested?

5 A. No.

6 Q. You didn't do that?

7 A. No.

8 MR. MODAFFERI: I have nothing further, Your
9 Honor.

10 THE COURT: Any redirect?

11 MS. CLEMONS: Nothing from the State.

12 THE COURT: Thank for your testimony. I
13 appreciate it.

14 You may step down.

15 And while you are outside in the hallway,
16 don't discuss any testimony.

17 THE WITNESS: Okay.

18 THE COURT: The last witness is excused.
19 Do you have a problem with that?

20 MR. MODAFFERI: No.

21 THE COURT: We will be up on the 8 floor.
22 We will at 1:00 o'clock.

23

24 (A recess was taken.)

25

1 REPORTER'S CERTIFICATE

2
3 STATE OF NEVADA)

4) ss.

5 CLARK COUNTY)
6
7

8 I, Robert A. Cangemi, a certified court
9 reporter in and for the State of Nevada, hereby
10 certify that pursuant to NRS 239B.030 I have not
11 included the Social Security number of any person
12 within this document.

13 I further certify that I am not a relative
14 or employee of any party involved in said action,
15 nor a person financially interested in said action.
16
17

18 (signed) /s/ Robert A. Cangemi
19 _____

20 ROBERT A. CANGEMI, CCR NO. 888
21
22
23
24
25

C E R T I F I C A T E

STATE OF NEVADA)

) ss.

CLARK COUNTY)

I, Robert A. Cangemi, CCR 888, do hereby
certify that I reported the foregoing proceedings,
and that the same is true and accurate as reflected
by my original machine shorthand notes taken at said
time and place.

(signed) /s/ Robert A. Cangemi

Robert A. Cangemi, CCR 888

Certified Court Reporter

Las Vegas, Nevada

/s/

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EXHIBIT “B”



CLERK OF THE COURT

1 CASE NO. C-16-319125-1

2 DEPT. NO. 5

3
4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
5 COUNTY OF CLARK, STATE OF NEVADA
6

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 WILLIS T. BROWN,)

11 Defendant.)
12 =====

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS
14 BEFORE THE HONORABLE JAMES BIXLER, PRO TEM,
15 JUSTICE OF THE PEACE

16 TAKEN ON TUESDAY, NOVEMBER 1, 2016
17 AT 9:00 A.M.

18 APPEARANCES:
19

20 For the State: Jennifer Clemons, Esq.
Chief Deputy District Attorney

21 For the Defendant: Gary Modafferi, Esq.
22 Las Vegas, Nevada
23
24

25 REPORTED BY: ROBERT A. CANGEMI, CCR No. 888

I N D E X

WITNESSES:

D C RD RC

ARICHA WILLIS

3 12

JADE LEFCOURT

39 48 63

ALEJANDRA GUERRERO

72 78 83

1 LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 1,
2 2016

3 * * * * *

4 THE COURT: We are back on the record
5 in State of Nevada versus Willis Brown and a
6 new witness.

7 MS. CLEMONS: The State's next witness is
8 Aricha Willis.

9
10 ARICHA WILLIS,
11
12 who, being first duly sworn to tell the
13 truth, the whole truth, and nothing but the
14 truth, was examined and testified as follows:

15
16 THE CLERK: Please be seated.

17 THE COURT: State your full name,
18 first and last, and spell both your first and
19 last name, okay?

20 THE WITNESS: Aricha Willis,
21 A-r-i-c-h-a W-i-l-l-i-s.

22 THE COURT: Go ahead.

23 MS. CLEMONS: Thank you.

24

25 DIRECT EXAMINATION

1
2 BY MS. CLEMONS:

3 Q. Aricha, when is your birthday?

4 A. April 17.

5 Q. Of what year?

6 A. 2001.

7 Q. How old are you?

8 A. 15.

9 Q. What grade are you in?

10 A. Sophomore.

11 Q. 10 grade?

12 A. Yes.

13 Q. What kinds of things do you like to do in
14 school?

15 A. I am in ROTC and also the armed drill team.
16 I like to read and sing.

17 Q. Okay.

18 So you just raised your hand and promised to
19 tell the truth; is that right?

20 A. Yes.

21 Q. Do you know the difference between the truth
22 and a lie?

23 A. Yes.

24 Q. What is the truth?

25 A. The truth is something that happened.

1 Q. What is a lie?

2 A. A lie is something that didn't happen, or
3 something that happened, but was twisted.

4 Q. You promise to tell the truth today in
5 Court?

6 A. Yes.

7 Q. Ever been to the Boys and Girls Club on
8 Southern Highlands here in Clark County?

9 A. Yes.

10 Q. When would you go to the Boys and Girls
11 Club?

12 A. I would go after school, then during the
13 summer.

14 Q. How old were you when you started going?

15 A. I started going when it opened, so I don't
16 know what year that was, but it was I think around 6
17 grade.

18 Q. And did you go pretty continuously, or have
19 breaks?

20 A. I went pretty continuously. I had breaks,
21 but would end up going back.

22 Q. When you were going to the Boys and Girls
23 Club, did you know a Coach Will?

24 A. Yes.

25 Q. Do you see that person in Court today?

1 A. Yes.

2 Q. Can you point to him and tell me something
3 he is wearing?

4 A. He is right there wearing kind of a tan-gray
5 suit.

6 MS. CLEMONS: May the record reflect the
7 identification of the Defendant?

8 MR. MODAFFERI: No objection.

9 THE COURT: The record will so show.

10 MS. CLEMONS: Thank you.

11 Q. Did you attend The Boys and Girls Club this
12 past summer?

13 A. I did.

14 Q. The entire summer, or just part?

15 A. Just part.

16 Q. Do you remember what part of the summer that
17 was?

18 A. The beginning of August.

19 Q. Where were you before August?

20 A. I was in California.

21 Q. After you got back from California did you
22 go back to the Boys and Girls Club?

23 A. I did.

24 Q. I am going to direct your attention to
25 around August 1 of this year, did anything unusual

1 happen on that day at the Boys and Girls Club?

2 A. Yes.

3 Q. What happened that day?

4 A. I got there earlier. I got there right when
5 it opened, at 7, and Coach Will was there.

6 He was behind the desk, because the lady had
7 not gotten there yet.

8 Q. Is that a position that he is usually behind
9 the desk?

10 A. His office is behind the desk. Sometimes he
11 is.

12 Q. Is there normally a different person behind
13 the desk?

14 A. Yes, checking the kids.

15 Q. When you got there at 7 a.m., what did you
16 say?

17 A. Hi. I went there because I end up sitting
18 there a lot.

19 Q. You went to sit behind the desk?

20 A. Yes.

21 Q. Was there anybody else at the desk besides
22 you and Coach Will?

23 A. No.

24 Q. What were you doing behind the desk?

25 A. Just talking catching up.

1 Q. Are their kids coming in and checking in?

2 A. Just little kids. They would go into the
3 cafeteria.

4 Q. What is your definition of little kid?

5 A. Like right after toddler, like first, second
6 grade, maybe third.

7 Q. While you are sitting there behind the desk
8 with Coach Will, did anything weird happen?

9 A. We were talking. It got quite. I was
10 wearing this kind of romper thing, so my legs were
11 out. It was short.

12 He said my legs looked amazing, and he asked
13 if he can touch them.

14 Q. What is a romper?

15 A. It is like a one piece outfit, so it is like
16 a shirt and shorts combined. It is like short
17 shorts.

18 Q. After the Defendant asked if he could touch
19 your legs, what did you say?

20 A. I chuckled, because it was weird, and I was
21 like; sure, I guess.

22 Q. Did anything happen after that?

23 A. He touched my leg.

24 Q. How?

25 A. He went from my inner thigh down to my

1 ankle.

2 Q. What part of his body did he use to touch
3 your leg?

4 A. His hand.

5 Q. When you said your inner thigh, how far up
6 your thigh was that?

7 A Like mid-thigh.

8 Q. With that one continuous motion, or was
9 there a break?

10 A. One continuous motion. It was slow, but
11 continuous.

12 Q. Did he said anything?

13 A. Your legs are soft, cool. He asked me to
14 come into his office when the lady arrived.

15 Q. Did you say anything?

16 A. No, I stopped talking.

17 Q. How did you feel when that happened?

18 A. Really creeped out.

19 Q. You mentioned that the lady showed up?

20 A. Yes.

21 Q. How long after this happened did the
22 lady show up who usually works there?

23 A. I don't know, maybe like 5 minutes.

24 Q. Did you stay at the desk the entire time?

25 A. Yes. I kind of froze there.

1 Q. Okay.

2 And once she showed up, where did you go?

3 A. Into his office.

4 Q. When you got into his office, what did talk
5 about?

6 A. We were catching up. Then he started asking
7 me about the boyfriend that I had at that time.

8 Then he continued on to ask if I had done
9 sexual things with him, asking me if it was
10 pleasurable.

11 At one point he asked what my favorite
12 position was.

13 Q. And so what did you say in response to those
14 questions?

15 A. I just kind of chuckled. I really don't
16 want to answer those. Those are personal.

17 Q. Do you remember, was the door open was or it
18 closed?

19 A. Closed.

20 Q. Had you ever gone into Coach Will's office
21 before?

22 A. Yes.

23 Q. After he started asking you the sexual
24 questions, did you talk about anything else?

25 A No. The only thing he really said after that

1 was that I didn't have to be scared because he had 2
2 daughters.

3 Then he mentioned something about he had
4 worked at other Boys and Girls Club, and because he
5 was s good listener, there were girls that had
6 thrown themselves at him.

7 Q. Okay.

8 Is that it?

9 A. Yes.

10 Q. What did you do after he said that?

11 A. I was like, okay, just really creeped out.
12 I wanted to leave.

13 Q. And did you say anything before you left?

14 A. Bye

15 Q. Did he say anything before you left?

16 A. Not that I remember.

17 Q. Did anything else with Coach Will happen
18 that day?

19 A. I avoided him the rest of the day.

20 Q. Did you tell anybody about what happened?

21 A. I told Jade Lefcourt.

22 Q. Was that the same day or a different day?

23 A. The same day.

24 Q. After you left the Boys and Girls Club, did
25 you tell anybody outside of Boys and Girls Club what

1 happened?

2 A. Not that day.

3 Q. When did you tell somebody?

4 A. I think it was that Thursday. I was with my
5 counselor. I told her.

6 Q. Okay.

7 Then is it fair to say after that the police
8 got involved?

9 A. She called them immediately.

10 MS. CLEMONS: Okay.

11 Nothing further.

12 Thank you.

13 THE COURT: Cross.

14

15 CROSS-EXAMINATION

16

17 BY MR. MODAFFERI:

18 Q. You knew the police would be called
19 immediately, didn't you?

20 A. No.

21 Q. You didn't?

22 A. No.

23 Q. Tell me exactly where you sat when you came
24 into the office on August 1?

25 A. I came into his office and there is --

1 Q. Not into his office, into the Boys and Girls
2 Club. I apologize.

3 A. Right when you walk in, there's a desk, and
4 I sat behind it in the chair.

5 Q. Okay.

6 I want to show you --

7 THE COURT: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes.

10 MR. MODAFFERI: This is marked as Defense
11 Exhibit B.

12 THE COURT: B?

13 MR. MODAFFERI: Yes.

14 A. That's the office right when you walk in.

15 Q. Is that what it looked like that day?

16 A. I don't recall.

17 Q. Is that the way the counter was set up?

18 A. Yes, I think.

19 MR. MODAFFERI: I ask that that be admitted
20 in evidence.

21 THE COURT: B?

22 MS. CLEMONS: No objection.

23 THE COURT: B is admitted.

24 Q. I would like you to take a look at what's
25 been marked as Exhibit D; is that the area that you