

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

Docket No. 72988

---

**KENNETH FRANKS**  
**Appellant,**

**vs.**

**THE STATE OF NEVADA**  
**Appellee.**

Electronically Filed  
Nov 14 2017 02:55 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

---

Appeal from a Judgment of Conviction  
Eighth Judicial District Court, Clark County  
The Honorable Carolyn Ellsworth, District Judge

---

---

**APPELLANT'S APPENDIX, VOLUME 3**

---

Lisa A. Rasmussen, Esq.  
Nevada Bar # 7491  
Jim Hoffman  
Nevada Bar # 13896  
Law Office of Lisa Rasmussen  
601 S. 10<sup>th</sup> Street, Ste. 100  
Las Vegas, NV 89101  
Tel. (702) 471-1436  
Fax. (702) 489-6619  
Email: Lisa@lasmussenlaw.com  
Email: Jim@RasmussenLaw.onmicrosoft.com  
**Attorneys for Appellant**

Steven B. Wolfson  
Clark County District Atty.  
Nevada Bar #001565  
Steven S. Owens  
Chief Deputy District Atty.  
Nevada Bar #4352  
Regional Justice Center  
200 Lewis Avenue  
P.O. Box 552212  
Las Vegas, NV 89155-2212  
(702) 671-2750  
**Attorneys for Appellee**

### Alphabetical Index of Exhibits

<b>Name</b>	<b>Ex.</b>	<b>Page</b>	<b>Vol.</b>
Complaint	1	1	1
Jury Instruction #14	A	548	3
Notice of Appeal	7	545	3
Transcript, Sentencing	6	534	3
Transcript, Trial Day 5	2	3	1-2
Transcript, Trial Day 6	3	249	2
Transcript, Trial Day 7	4	404	2
Transcript, Trial Day 8	5	469	2-3

### **Chronological Index of Exhibits**

<b>Name</b>	<b>Ex.</b>	<b>Page</b>	<b>Vol.</b>
Complaint	1	1	1
Transcript, Trial Day 5	2	3	1-2
Transcript, Trial Day 6	3	249	2
Transcript, Trial Day 7	4	404	2
Transcript, Trial Day 8	5	469	2-3
Jury Instruction # 14	A	548	3
Transcript, Sentencing	6	534	3
Notice of Appeal	7	545	3

1 were meticulous. And she said when she began, she wanted to  
2 take the kids out shopping, okay? Now, so that's why the  
3 dates of the 23rd and 24th were important. Now, there was a  
4 exhibit, and this is just a blank copy of it, that was  
5 presented in this case and said what I was trying to get when  
6 -- when was the time frame that was involved here.

7 And in -- when [REDACTED] testified, she said -- I  
8 asked her, was it a week day or a weekend, she couldn't  
9 remember. And then I said, okay -- and then she was shown a  
10 copy or some lines from her voluntary statement and says did  
11 that help you? She said, not really, okay? But Detective  
12 Hoyt said she said it was on the weekend. Now, if you look  
13 there, and if you believe that the only time -- I mean, the  
14 defense is saying that the only time that this occurred, if  
15 it did occur at all, would be the 23rd and 24th, and there  
16 was no weekend involved in this month, okay?

17 So, I will go through that -- this a little  
18 further, but I just kind of wanted you to understand the  
19 elements that's involved in this case. Now -- so and if you  
20 have an act, you've got to have an actor and you got to have  
21 a person. So when [REDACTED] said -- I was in the direct line  
22 of sight with him, and he was asked a question, do you -- can  
23 you tell us if Uncle Kenny was in the court and he said no.  
24 He said that.

25 So that we feel was -- I mean, that was very

1 unusual because he could describe so many other things. I  
2 will go through and summarize some of the testimony because  
3 what you're going to see is there's so many inconsistencies  
4 involved in this case, all right?

5 Remember when I was asking all the various jurors,  
6 I was asking all kinds of questions? I said what's a good  
7 liar do? And he said -- whoever the prospective juror said  
8 to me, he said I don't know. I said, well, what's a bad liar  
9 do? What were some things that they say? Well, they kind of  
10 hesitate. It took him a long time to answer a question. Or  
11 there's inconsistencies.

12 You can draw upon your background and experience to  
13 determine the credibility of any witness yourself, okay? So  
14 these are the elements that it -- the State has to prove.  
15 Whether we did anything at all or not, they have to show the  
16 time frame, they have to have the act and the intent.

17 Now, what did the -- how did the testimony come  
18 about? Well, let me go to the proposition that the only time  
19 they ever came over to the house was on June 23rd and June  
20 24th of 2015. You're the only ones that can determine that.  
21 You determine the facts. You heard the testimony. Was there  
22 another time? Will we speculate or whatever? Can you  
23 speculate on any other date, okay? So that's the defense  
24 that we used to show.

25 Now, the 24th, contrary to what was argued by

1 State, it wasn't at the end of the day, the kids call and  
2 we'll have to take them home now. It wasn't that. She was  
3 referring to another time about talking about the  
4 relationship with -- when I was asking her questions what's  
5 your relationship with Amor, what's your relationship with  
6 the kids, okay? And she indicated that this was the first  
7 time she took them shopping, okay?

8 Now, there's some factual questions on that day  
9 that came into issue. I said to Amor, how -- who got the  
10 kids in the morning? He says -- he says she came over there  
11 and picked them up. Now, you took all notes during this  
12 time. You're probably writing when this witness said and  
13 what they said -- what somebody else said. You're making a  
14 comparison. So it's not -- I'm not trying to dwell too much  
15 on that particular inconsistency, but the fact that there are  
16 so many inconsistencies that are presented in the month of  
17 June, okay?

18 So Amor said -- it was Maria that came over and  
19 picked up the kids. If you looked at the receipts that she  
20 had, she went to Costco, she went to go get gas. She's very  
21 detailed, the time when she was doing everything all during  
22 that day. But actually, it was very surprising somebody  
23 would be that accurate as far as what everything that she did  
24 and what she purchased.

25 At the end of the day she says, I took the kids

1 home. If you remember Amor's testimony, he says I took the  
2 kids home, okay? Now, again, look at your notes and look at  
3 the inconsistencies. If this was a -- you know, if this was  
4 a planned story that Amor was doing -- he was called --  
5 characterized as a master mind. I never said he was a master  
6 mind of anything.

7 But there are some inconsistencies. You remember  
8 when [REDACTED] said, yeah, [REDACTED] was on my back and, you know,  
9 and she was trying to go out after being touched. She says,  
10 I went outside and my dad was there. You saw his reaction  
11 when he was -- when he was talking about his brother Kenny,  
12 talking about his daughter. He was passionate.

13 Don't you believe that if he was told that they --  
14 by [REDACTED] that he instantly become very excited? Remember  
15 what he did when he first heard on September 15th -- oh, it's  
16 September 6th -- that something happened, he went over to May  
17 Denina's home, you know, you know? What did he want to do?  
18 They had to give a story. They were worried about Janice,  
19 whether she was driving or not. They were worried about  
20 Amor, waiting for him to come over to the house before they  
21 told him. And she made up a story that they were fighting or  
22 whatever it was. And there may be something, of course,  
23 about his character that anyone would react. And of course,  
24 people would react if they heard something that occurred.

25 Now, so he would have that if his son came out and

1 told them that they knew he was at the house, and he was at  
2 the house for sure, I submit to you, that he would have  
3 reacted right there and confronted on June 24th of 2015.  
4 Dates are important. You can't use to say he -- it must have  
5 been happened in June because it was in the middle of the  
6 summer, okay?

7           So you have to determine, you have to decide when  
8 in the month of June this occurred. How about June 23rd, the  
9 day before? Now, nobody indicated they -- [REDACTED] couldn't  
10 remember if she was there the day before or whatever. On  
11 June 23rd, the only person that came over -- that was at the  
12 home at the time was [REDACTED] and Kenneth, okay? And they  
13 dropped over later in the evening. Maria and her husband  
14 Raymond were not there, okay?

15           So and if the allegation is, I went out and told my  
16 father on that date, or whatever it was, you can use your  
17 common sense. You can bet Amor would have reacted then? And  
18 there were allegations, there were allegations that were  
19 made, statements, found in her statement that [REDACTED] had her  
20 pants down, Uncle Kenny was touching her and [REDACTED] was  
21 trying to help his sister. Remember, he said I'm trying to  
22 help her, and jumps on the back, right? And [REDACTED] goes  
23 out, dad being in the living room, which it was not true  
24 either, I mean on the 24th, and that [REDACTED] would make this  
25 statement to his dad.



1           Now, [REDACTED] said he was in the room, and he did  
2 not see [REDACTED] with her pants down on the 23rd. Now, that's  
3 -- the State's correct when they said I'm going to make a big  
4 deal of the date, because was there any other date that was  
5 sometime in that time frame, any evidence of any other time  
6 that it occurred, okay?

7           Now, if you believe -- if you have a belief that  
8 something happened but it was at another time, it's not in  
9 the complaint, all right? Or what did I call it? Amended  
10 information. An Information's what they call it when you  
11 come up to the District Court level, okay?

12           So going back to some of the testimony that was in  
13 this particular case. And you took notes. You were there,  
14 you listened to everything. I'm -- it's my position that as  
15 far -- our position that as far as this case is concerned and  
16 the comments that I'm going to make about that, other  
17 inconsistency that the State hasn't proven their case are  
18 that we have created a doubt as far as the act and the intent  
19 by the inconsistencies that I'm about to tell you, okay?

20           And if I have done that, then the State hasn't  
21 proved material elements in this case, and you must acquit my  
22 client, all right? Now let's go through some of the  
23 statements made. I already mentioned about the weekend and  
24 was it a week day? I'll just go through, like I can start  
25 with [REDACTED] okay?

1           ██████████ was very soft spoken, very low voice.  
2       Seemed like a very pleasant person. I mean, there's no  
3       question about it. And ██████████ was talking about the reason  
4       why she waited three months or waited so long -- this is the  
5       time period that's in question -- is because she was  
6       concerned about the relationship with -- that her -- Amor had  
7       with the mom.

8           Now, it's unusual that children would be so  
9       concerned about that relationship if there was something  
10      special. But she didn't remember even going over to the  
11      house in 2015. And remember about contact. We asked the  
12      family when's the last time -- you know, was there that  
13      anybody went over to the other house. ██████████ -- ██████████  
14      ██████████ said he hasn't been over there since 2014, when there  
15      was a incident in which he was accused of something, and so  
16      he said he hasn't been over there since then.

17           Now, when I asked Maria, do you go visit -- did you  
18      go visit over at Amor and Janice Flores house, she said yeah,  
19      we brought some gifts or something like that. But they don't  
20      generally do that. Now, when she also testified, she says I  
21      don't answer his phone calls. Okay?

22           Certainly, after this event she got a new cell  
23      phone, she wouldn't give the number. But she said she  
24      generally doesn't answer his calls. There is something there  
25      in the relationship, and I'm only talking about relationship,

1 relationship between Maria and Amor, the kids, I mean,  
2 [REDACTED] and the grandmother that is not from your own common  
3 experience, normal. There's something not good.

4           So when I said -- asked Maria what if I told you  
5 Amor said I love you, I love you, and it wasn't regarding any  
6 car thing. It wasn't anything about credit. It was a  
7 general statement like that. And you saw how she reacted.  
8 It's not the kind of reaction that a mother normally would  
9 say when somebody says I love you. And she -- there was some  
10 hesitation, some disbelief; no, she didn't have a  
11 relationship with Amor, okay?

12           Now, going back to relationship. I said -- she  
13 said, when's the last time you've -- you visited the Franks?  
14 She said oh, after we came back from New Jersey. They went  
15 off to New Jersey. Who was there? I don't remember. That  
16 was August the 4th. Another time. If it happened on August  
17 the 4th, it would be the application of that Jury Instruction  
18 that I just indicated to you it's not in the time frame,  
19 okay?

20           A lot of things that when I asked [REDACTED]  
21 questions, she wasn't sure, she couldn't remember, and she  
22 took a long time to answer some of the questions, many of the  
23 questions. And you can use your own common experience to  
24 determine what does that mean? What does that mean when she  
25 answered that?

1           When I asked her about the shopping trip, there's a  
2 lot of things she didn't remember on July 24th of 2015. I  
3 said do you remember eating? No. I mean, maybe kids don't  
4 remember things like that. Do you remember Circus Circus?  
5 Do you remember going to Adventure Dome? She says I don't  
6 remember, right? And she didn't remember all the thing that  
7 is she -- she remembered about the backpack and she  
8 remembered that for some reason either it was too small, not  
9 the right size, but she gave it to her dad, okay?

10           Now, I asked her was uncle -- was [REDACTED] on Uncle  
11 Kenny's back? And she says, yes. Does he like to jump on  
12 people's back, I asked her? She says, does he like to jump  
13 on your dad's back? She says yes, okay? Her back? She says  
14 not really, no. Okay? But -- and as far as when I asked her  
15 about whether Kenneth and [REDACTED] were in the computer room  
16 that day, she said she couldn't remember. Okay?

17           How did you get home? Don't remember. What did  
18 Amor say? I took them home. What did Maria say? I drove  
19 the kids home. I'm seeing these inconsistencies. And I'll  
20 go through more of them. Creates a doubt. It creates a  
21 doubt, okay?

22           I asked her, do you remember if you went -- came to  
23 the house the day before? Don't remember, right? And like  
24 she -- every time I asked her a question, she's -- usually  
25 kids like to, you know, if they don't like you, they just say

1 I don't like you. They don't hesitate. They give an answer  
2 right away, okay?

3 I said on the 23rd, I tried to ask about -- I mean,  
4 I tried to ask her different questions. Who was there in the  
5 computer room? I asked her, is [REDACTED] usually in that  
6 computer room? Yeah, usually in there. All right? She was  
7 -- she could say yes, that's [REDACTED] [REDACTED] uses that  
8 computer. She's smart enough to say, I don't know whose  
9 computer it is, but [REDACTED] uses it. So she's definitely got  
10 the intelligence to remember those kind of things.

11 The whole exercise about the room, you know, which  
12 way the bed faced and, you know, what it was, and it wasn't  
13 about -- it wasn't that, that the carpets were removed in  
14 June 3rd of 2014 or Internet. The point was they didn't go  
15 visit. There wasn't a relationship with the Franks as cozy  
16 as you might imagine. All right?

17 Now, she said the bed was aligned by the wall, the  
18 dresser was in wrong place, you know? We even talked about  
19 the bathroom, you know? And do you remember the differences  
20 when I was talking about that bathroom? Asking questions  
21 about the master bathroom. Maria testified she uses that.  
22 That's her bathroom. That's her and her husband, Raymond's  
23 bathroom that they using.

24 But if you -- you ask -- when I was asking  
25 questions of Amor, it was always, always hostile, and I

1 didn't ask anything in a hostile manner. He says, that's a  
2 bathroom anybody uses it, you know? Obviously, you can count  
3 his -- you can see his experience when he was speaking.

4 Now, as far as a incident that occurred in summer  
5 or this June 1st of -- to June 30th of 2015, she says, you  
6 know, Kenny grabbed my leg, pulled me, pulled down my pants.  
7 [REDACTED] still on Kenny's back, right? [REDACTED] [REDACTED] -- did  
8 [REDACTED] say anything? Not sure. Okay?

9 Was [REDACTED] working on his computer? Not sure.  
10 What did you do, try to walk out of the room? Was Amor at  
11 your house? She says yes. Say anything to anyone? No.  
12 Okay? And then she says later on, the dad -- I asked her did  
13 dad drive you home? And she says yes. So there's  
14 inconsistencies there, and if there's inconsistencies about  
15 June 24th, and there are inconsistencies about the  
16 allegations on June 23rd, it raises a doubt in my mind.

17 Now, let say the State's correct, you know, there  
18 is a definite and certain that in this time period there was  
19 a act that had occurred, an act of lewdness committed by  
20 Kenneth Franks, clear, why would there be so many different  
21 either missed memories or inconsistencies involved in this  
22 case, right?

23 And the only reason about mentioning driving home  
24 here is maybe people forget who drove home, and it's common.  
25 Did you drive that day? I don't know, somebody came up like

1 that. But it's important as far as if [REDACTED] went out there  
2 and told his dad on any of the instances, the dad would  
3 definitely react, okay?

4 Now, I asked [REDACTED] about her cell phone, and you  
5 -- I would think that in any relationship between a mother  
6 and a daughter, that's a stronger bond that she has with  
7 anybody else. And when I was talking to -- or I asked what  
8 Janice was describing, she got cradled, [REDACTED] in her arms  
9 to get her to ask her what happened, okay? Do you remember,  
10 she's very -- she was there in the stand?

11 And this was in September, September 6th, several  
12 months after this incident. And you wonder from your own  
13 experience, in somebody that has such a relationship as she  
14 described on September 6th, when she first found out about  
15 it, why wouldn't [REDACTED] just tell her mother? Why wouldn't  
16 -- why wouldn't [REDACTED] tell anybody? A relationship? Not  
17 with somebody else. It's your relationship with the person  
18 that will make you not say something, okay? But three months  
19 later in September, then this -- then this event comes out  
20 that she tells her mother.

21 [REDACTED] does mention that -- and there's a chain of  
22 events, I told friend [REDACTED] and [REDACTED] a cute kid up there. He  
23 didn't like know very many things and he forgot some things,  
24 you know? He even, when you asked him first time -- I asked  
25 do you remember when was said? I don't remember, you know.

1 Just kind of innocent, what you would expect from somebody  
2 that's his age in how he answers, you know?

3 And later on when I asked him, I said what  
4 happened, he goes [REDACTED] was inappropriately touched. I go  
5 wow, that's -- for a kids six years old to -- or eight years  
6 old to use that kind of word, I was surprised. And I said  
7 where did you learn that word like that? First of all, it's  
8 a word that's been repeated many times in this trial,  
9 inappropriate, inappropriate.

10 And when I asked [REDACTED] that, he said, you know, I  
11 asked somebody at church, you know, what inappropriate meant.  
12 So he's -- I don't think I know too many children of his age  
13 that would use that word. There's a story going on. There's  
14 a story that's been done, and somehow words like  
15 "inappropriate" comes up because it's the one that's been  
16 said in the voluntary statements from the very beginning,  
17 okay?

18 Court's indulgence. I'm just going to -- the State  
19 made a comment that as far as defense witnesses were  
20 concerned -- as mean as far as the witnesses that appeared,  
21 everybody lied. If you believe that the story about the car,  
22 the story about the credit, or whether or not Maria had a  
23 motive, that wasn't the point in any of this whole trial.  
24 The question was going back to the same questions that  
25 occurred, time frame, act and intent, okay?



1           Now, the phone call mentioned on June 24th, you  
2 know, in June, I asked Maria, did she receive a phone call  
3 from Amor, and she did answer that phone call. It was -- she  
4 indicated that normally she doesn't answer the call, but she  
5 answered that call that day. And one of the questions that I  
6 asked her was did the kids have is a good time? The question  
7 was did the kids have a good time? Was it a normal -- was it  
8 a normal day on June 24th, okay?

9           If anything happened in June, it certainly didn't  
10 come out by anything that [REDACTED] [REDACTED] said or anything  
11 that Maria said regarding that entire month, all right? So  
12 I'll go back to where I started. When you Judge this case,  
13 it the time frame, the act, and the intent that's involved in  
14 this case here. The time frame is very important. It is a  
15 material element in this case. If you believe that something  
16 occurred another time, it's not in the Amended Information as  
17 presented in this case, all right?

18           And if the act that you indicated, if the  
19 inconsistencies that you have in your own notes -- I was  
20 about to go through a whole list of them, but I figured  
21 you're tired of hearing this for a week or so, so I'm going  
22 to just go on, and I'm sure that you take better notes than I  
23 am when I'm asking the questions -- that not all the elements  
24 that you have. And the only reason I brought this Amended  
25 Information, these Jury Instructions is, you take the Jury

1 Instructions as a whole, everything that the Court has  
2 indicated to you, and apply them in this particular case, and  
3 ask yourself, not guess; did something happen in June? I  
4 mean, could it have happened, or because somebody -- [REDACTED]  
5 said that? When? Where was it? What -- where were the  
6 other people around? What were the other evidence, testimony  
7 and circumstances when that occurred?

8           And if you apply or analyze it, it's our position  
9 that you should return a verdict in this case of not guilty.  
10 When you -- after you have these Instructions, you'll get  
11 just one piece of paper, and all it will ask you is one  
12 question: Defendant is guilty or not guilty and that's going  
13 to be signed by the foreperson, okay?

14           I believe, the State is going to have one more --  
15 to make the final --

16           THE COURT: Correct. They have rebuttal argument.

17           MR. LEE: All right. So I appreciate this  
18 opportunity to make a presentation. And after your  
19 deliberation, we, the State and ourselves, we're always  
20 looking for any comments after you make your deliberation,  
21 and you're not required to talk to us at all after that  
22 deliberation, but I appreciate it so I can maybe improve the  
23 next trial. Thank you.

24           THE COURT: And the State's final argument.

25           MS. CLEMONS: Thank you, Your Honor.

1 THE COURT: Anybody need a break before we start?  
2 Are you all okay? All right.

3 STATE'S REBUTTAL CLOSING ARGUMENT

4 MS. CLEMONS: I'm going to stay by the podium.  
5 Okay. Good afternoon, ladies and gentlemen, so we have the  
6 burden of proof, which is why we get to go first and then  
7 last. There's a couple things I want to touch on about what  
8 defense has just said and then a couple of things I kind of  
9 just want to review because I know it's been a long two weeks  
10 that we've been here, and sometimes it's easy, even for us,  
11 to kind of forget what people had said and kind of to connect  
12 the dots.

13 So before we started, the Judge talked about how  
14 opening statements are kind of like putting the jigsaw puzzle  
15 together. Well, this is the point where I'm going to take  
16 all the pieces that we heard and put the puzzle together to  
17 show you that State's proven this case beyond a reasonable  
18 doubt.

19 First I'm going to address some of the things that  
20 defense brought up in their statement. So the defense told  
21 you, you need to pick a date in June that this event  
22 happened. You absolutely do not have to do that. The State,  
23 as the Jury Instruction states, Number 9, we don't have to  
24 tell -- prove and you guys don't have to guess at when in  
25 June this happened. Some of you can think this happened on

1 June 24th. Some of you can think this happened on June 6th.  
2 It does not matter. As long as everyone agrees that  
3 something happened in the month of June, that is all that is  
4 required. So do not be misled that you have to pick a  
5 specific date.

6 Defendant's theory, obviously, is that the --  
7 [REDACTED] and her dad only went over on the 23rd and 24th.  
8 That's not the testimony of Amor, and it also wasn't the  
9 testimony of [REDACTED] and it's further not the testimony or  
10 the statement the defendant gave to Detective Hoyt. Amor  
11 testified they had gone over in June several times. He  
12 recalled possibly the last time was before the shopping trip  
13 that Maria took them on. The defendant in his statement to  
14 Detective Hoyt said that he recalled it being early June that  
15 [REDACTED] and her dad and brothers were over. And [REDACTED]  
16 testified it was sometime in June, probably when school got  
17 let out. But it was definitely before New Jersey.

18 So they went to New Jersey end of June, into July,  
19 so that's where we get our time frame of they were over there  
20 in June and that's when this event happened.

21 What happens a lot of times with victims of sex  
22 assault is they cannot remember, particularly in this happens  
23 multiple times. In children, they cannot remember all the  
24 dates and specifically of each and every event. So she  
25 testified this happened five times. She couldn't really

1 recall when the first time was. So what the detective does  
2 in his forensic interview is he tries to narrow down well,  
3 let's talk about the last time this happened. And the last  
4 time it happened was the incident in June.

5 [REDACTED] then gave us details about what happened in  
6 June. Now, she didn't necessarily remember initially all the  
7 details about June. You heard mom testify that the past  
8 year-and-a-half they've put her in counseling, they've got  
9 her in activities, they've tried to just have her move on  
10 with her life so she doesn't have to think about this  
11 horrible thing every single day.

12 So to make her go back in time and expect her  
13 really, or an adult to remember every single detail of a day  
14 that wasn't all that significant, particularly, because this  
15 wasn't the first time that had happened to her. This was  
16 something five times. That's something that happens on a  
17 pretty regular basis when she goes over to the Franks' house,  
18 she's not going to remember all the details. It just kind of  
19 became part of her life. So that helps to explain why a  
20 year-and-a-half later she's not going to remember who drove  
21 her, what they ate, what time of day it was, what the date  
22 was.

23 What she did remember were the specifics of that  
24 last incident. That she was trying to get out of the room.  
25 That Uncle Kenny pulled her legs, that he pulled her pants

1 down, and pulled her underwear down, that he touched her  
2 vagina with his finger and that her brother had climbed on  
3 top of Kenny's back. Those were the things that stood out in  
4 her mind because that's what she experienced that day.

5           Whether or not she -- what game she was playing or  
6 if she charged her iPhone that day, those are things that  
7 people are just aren't going to remember even a day prior.  
8 But the specific details of the traumatic event she did  
9 remember those.

10           Okay. Mom also -- so there's a lot of testimony  
11 about Grandma Maria and her calendars. I mean, I have to  
12 give the lady credit, she keeps meticulous notes about where  
13 she goes shopping, she has a lot of receipts, and that  
14 obviously, is very important to her. She's worried about  
15 something, I don't know, credit card bills or something. But  
16 she also indicated on her calendar she mostly marks down  
17 where she's going shopping and how much money she spent.

18           She indicated that she did put the 24th down  
19 because that was a planned date. So if there's planned  
20 dates, that's what she's putting down. She stated she  
21 doesn't mark down every time that Amor and his kids come  
22 over, though. So we know for sure they went shopping on the  
23 24th, and no one's saying that that trip never happened. But  
24 when they came over prior to that, that's not something she  
25 marks down on her calendar. So the fact that it's not there

1 and she doesn't recall specific dates of that has really no  
2 significance in this case and does not prove that this didn't  
3 happen.

4           What's interesting is that she testified that she  
5 forgot Amor's graduation. He had called her to tell her he  
6 was graduating from nursing school, and she forgot to mark  
7 that down in the calendar, so she missed it. So obviously,  
8 there's sometimes where she doesn't mark everything down in  
9 her calendars.

10           So her calendar isn't the be all/end all of when  
11 things happened on what dates. The interesting thing about  
12 the shopping trip is -- and I'm not sure if everybody caught  
13 this -- but Maria testified that she wanted to buy things so  
14 the kids would remember her by, which is an odd thing to say  
15 on June 24th, because the defendant isn't arrested on this  
16 case until September of 2015.

17           So why she's now saying she wants the grandchildren  
18 to remember her and she took them shopping in June right  
19 around the time when these incidents are happening in home,  
20 it's a very odd and curious statement for her to make. So  
21 it's just something to kind of think about.

22           So the defendant kind of described [REDACTED]  
23 testimony. He said he thought it was unusual for her to be  
24 so concerned about [REDACTED] dad, Amor and his mom's  
25 relationship. Based upon the family history, and she's

1 11-years-old, she's at an age where she -- her mom obviously  
2 loves her very much. You could tell by the way her mom  
3 talked about when [REDACTED] told her what had happened to her.  
4 She has a very close family. The family does a lot of stuff  
5 together. They, you know, took care of her after this  
6 happened by getting her in counseling. She grows up in a  
7 very loving home.

8           So [REDACTED] at the age where she realizes my dad  
9 didn't have what I have with his mom. And she knows that  
10 they go over to Grandma Maria's house, and when they're over  
11 there, she goes and plays in the game room, and he spends  
12 time with his mom. So whether or not Maria and Amor have  
13 this relationship that's amazing that [REDACTED] think it is, it  
14 doesn't really matter. What matters is her perception of  
15 their relationship, and her perception was that my dad  
16 finally has a mom after not having a mom, and that's why I  
17 have to keep this a secret because I don't want to be the one  
18 that takes his mom away from him again.

19           So that is a perfectly reasonable explanation for  
20 why an 11-year-old girl isn't going to run and tell her  
21 parents the first time something like this happens. She had  
22 to harbor it as a secret, because she didn't want to be the  
23 one responsible for breaking up the family. And in fact,  
24 when it did come out through [REDACTED] and May, that's exactly what  
25 happened. They haven't spent any time with Grandma Maria.



1 They don't see their uncles anymore. Dad and mom obviously  
2 do not have a relationship anymore. In fact, Grandma Maria,  
3 I would submit, pretty much hates Amor at this point. That  
4 was pretty clear from her testimony.

5           So her fears about what would happen if this came  
6 out, came true. That's exactly what happened, the  
7 relationship was ruined. So that makes sense why she would  
8 wait to tell -- not tell her parents, and then when she got  
9 to the point where she couldn't kind of keep it in anymore,  
10 she goes and tells her best friend.

11           And that's common for children to do, they're going  
12 to tell somebody that they trust, that they trust to keep a  
13 secret, which is her best friend. And [REDACTED] testified, you  
14 know, he kept it for a while. He did forget for a second.  
15 But then he realized it was a secret that needed to be told  
16 because it was a serious matter.

17           So that is a reasonable explanation as to how this  
18 case came out, and why [REDACTED] chose who she chose, to tell.  
19 She it to tell somebody so she told the person outside her  
20 family that she trusts the most.

21           [REDACTED] testified she did not remember the shopping  
22 trip. Well, that's kind of not surprising because there was  
23 really nothing significant about that shopping trip a year-  
24 and-a-half ago. She does recall what Grandma Maria purchased  
25 her, and she recalls going, but whether she recalls who

1 dropped her off, who picked her up, I mean, to her they just  
2 -- she hung out with Grandma Maria that day, and that was  
3 about it. There's no -- nothing that happened that day for  
4 her to remember all those details.

5 Which is interesting, because defendant said --  
6 talked about [REDACTED] testimony that, you know, [REDACTED] didn't  
7 remember a lot at first and then he kind of remembered, and  
8 isn't that what you would expect from a child of that age?  
9 Well, [REDACTED] and [REDACTED] are about the same age. She's only  
10 a-year-older than [REDACTED] is, and when this was happening to  
11 [REDACTED] and she disclosed, she was [REDACTED] age.

12 So if [REDACTED] according to defense, is acting like a  
13 normal child on the stand, there's no reason to think that  
14 [REDACTED] is not also acting like a normal child on the stand.  
15 They both had difficulties remembering details. But they  
16 remembered the significant events in their lives. [REDACTED]  
17 remembered that [REDACTED] told her my uncle plays with my  
18 private parts. I mean, that's something that I think an  
19 11-year-old kid, 10-year-old at the time, he's going to  
20 remember that because you don't hear that every single day.

21 But is he going to remember what day of the week it  
22 is, what he was doing after that happened? No, he's not,  
23 because that's not the significant part that sticks out. So  
24 if it's normal for [REDACTED] not to hear on the stand, there's no  
25 reason that it's not normal for [REDACTED] to also not remember

1 details on the stand as well.

2           If you noticed, [REDACTED] and actually her entire  
3 family, and even the Deninas, everybody in this case, was  
4 extremely literal. You had to make sure that you were asking  
5 a question in a way they understood it, or else they didn't  
6 understand or they would say, I don't remember or can you  
7 repeat the question. And I'm not sure if that's a language  
8 issue or that's just the way their family is. [REDACTED]  
9 testified she's in advanced ESL, English as a second  
10 language, so I would submit that her pausing isn't her  
11 thinking about what to say. It's her making sure she can  
12 understand what's being asked of her and respond to the  
13 actual question.

14           If you noticed, her mother did the same thing. Her  
15 mother also would take some time and pause a little bit  
16 before she would answer questions, and this is the home that  
17 they're in. So that's just the way this family is. They're  
18 very literal. Their parents are nurses. The kids are very  
19 into math. It's very kind of a logical household. And so  
20 her pausing isn't oh, let me see what I'm supposed to make up  
21 next. It's more I want to make sure I'm not saying something  
22 that isn't true on the stand.

23           When we went through truth and a lie with her, she  
24 completely understood the difference between a truth and a  
25 lie. And as Mr. Stephens pointed out, if she was going to

1 lie on the stand and Amor told her what to say, well, they  
2 did a horrible job of prepping her. I mean, she should have  
3 -- she's had a year-and-a-half to figure out what to do.

4 So the fact that she doesn't remember things, even  
5 after I showed her a statement, sometimes she didn't remember  
6 things, goes to show that she's telling you what she  
7 remembers and she doesn't want to make things up. She wants  
8 to tell you exactly what she remembers, how she remembers it  
9 and not guess or speculate as to what she thinks happened.

10 So what's interesting about Maria is when we go  
11 talk about the Instruction on credibility and bias, she  
12 obviously, is very biased. I mean, she loves, obviously, her  
13 son Kenny. And she clearly has a dislike for Amor. But  
14 what's interesting is she kept going back and forth about  
15 well, you know, I left him at home and then he comes to the  
16 US and he lived with me, and then I hated him, and then he  
17 moved to New Jersey, and then I asked him to come back, and  
18 then I got mad at him, but then I -- they brought [REDACTED]  
19 over when he was born.

20 It's obviously a very tumultuous relationship. But  
21 I think what the most telling statement that she gave was  
22 that the last time that she contacted Amor was the day that  
23 Kenny was arrested, and you would expect her to say oh, my  
24 gosh, what happened, what's going on? That's not what she  
25 said. She says to him, what did you do to my son? And those

1 words are very telling. He is my son and you are no longer  
2 my son.

3           So I think that statement alone shows you where her  
4 biases are in this case. There's a couple other things I  
5 just want to touch on real quick. Mr. Stephens went over  
6 intent a little bit. I just want to touch on that a tiny  
7 bit. So the Instruction's going to tell you, obviously, you  
8 can't take these other five instances to say the defendant's  
9 a horrible person. But what you're allowed to do is look at  
10 that as motive, intent, and propensity. And propensity is an  
11 inclination or natural tendency to behave in a particular  
12 way.

13           So let's say, for instance, there was only evidence  
14 of this happening one time. And say that the defendant said  
15 oh, it was an accident. Well, at one time like it could be  
16 an accident. I mean, probably not, but, you know, it's more  
17 possible if it's one time than more than one time.

18           But when you have five times of this happening,  
19 that is not an accident. The only reason to touch a  
20 prepubescent little girl's vagina and genital area is the  
21 intent to sexually arouse. There's no other reason why this  
22 would happen more than one time. So that is the evidence  
23 that shows you his intent was either to gratify himself or to  
24 gratify her.

25           And as Mr. Stephens indicated, it doesn't matter

1 that nobody was gratified, or there's no evidence of that.  
2 That doesn't matter. What matters is that he did it more  
3 than once and it was not an accident.

4 So reasonable doubt Instruction, which is number 5,  
5 that's what defense touched on a little bit; it has to be --  
6 it cannot be just mere possible doubt. It has to be actual.  
7 And it can't just be mere possibility or speculation.

8 So a lot of what defense has argued is all  
9 speculation. You know, speculating, well, there's all these  
10 inconsistencies so everybody must be lying. That's just not  
11 the case in this case. There's a lot of evidence to  
12 corroborate what [REDACTED] has testified to. And that's where  
13 you kind of look to number 15, which is the common sense  
14 Instruction.

15 I know the Judge keeps telling you don't consider  
16 anything else outside the courtroom, you're only allowed to  
17 consider what's in here. Well, 15 is the only thing that  
18 lets you allow to consider for other life experiences.

19 So you're allowed to draw reasonable inferences  
20 from the evidence that you feel are justified in light of  
21 common experience. So like Mr. Stephens said, those of you  
22 who have children or experience with children, how different  
23 kids react to different traumatic events in their life,  
24 that's life experience you're allowed to kind of bring in  
25 with you to the jury room.

1           So these are the things that help to corroborate  
2           ██████ testimony of the abuse. So first off, mom and  
3           ██████ both talk about her grades suffering in sixth grade.  
4           That she wasn't doing very well. That they had to get her  
5           tutoring and that was unlike her, because in fifth grade she  
6           had great grades. Once they got her -- so that's all sixth  
7           grade.

8           ██████ testified that this abuse happened in  
9           sixth grade. The last incident happening in June. So that  
10          makes sense that her grades would start suffering at school  
11          during the year where she's being abused by Uncle Kenny. So  
12          the fact that Janice corroborated that and ██████ also said  
13          yeah, my grades weren't very good. She think it's because of  
14          video games, but she's also 11 years old. She may not  
15          comprehend at this point in her life why her grades were so  
16          bad at that time.

17          They've also testified both about how her grades  
18          have vastly improved since she got counseling and help after  
19          this incident. That also makes sense that now she's been  
20          able to cope and become, as she said, become a stronger  
21          person from this event, and she's learned more life skills  
22          why her grades would be better.

23          Mom also testified, Janice, that she noticed in  
24          sixth grade ██████ wasn't acting like herself. She was very  
25          withdrawn, she was sitting by herself a lot, and she kind of

1 thought something was up, but she just didn't know what it  
2 was. And it was when [REDACTED] finally disclosed to mom what  
3 -- that Uncle Kenny had been touching her privates that it  
4 clicked for mom. Oh, my gosh, now I know why we're having  
5 these problems at school, why she's not acting normal. That  
6 corroborates what happened to [REDACTED] because that's behavior  
7 you would expect from a person who's being victimized by an  
8 uncle.

9 Mom testified she also saw [REDACTED] crying at church  
10 after they returned home from New Jersey. [REDACTED] testified that  
11 when [REDACTED] told her (sic) what was happening to her by  
12 Uncle Kenny, they were at church and they were at a dance  
13 class. That she was terrified and upset. He couldn't recall  
14 specifically if she was crying, but dad also testified he  
15 remembers seeing [REDACTED] crying at church right after they  
16 came back in New Jersey. All of that makes sense when you  
17 put it together. That's the day [REDACTED] told [REDACTED] what was  
18 going on and she was very upset.

19 Amor asked her, you know, what's going on, and she  
20 wouldn't tell him. Well, that makes sense, too, because she  
21 doesn't want to tell her dad because that's the relationship  
22 she's worried about ruining.

23 [REDACTED] and [REDACTED] also testified that they recall  
24 in this last incident that [REDACTED] was sleeping in the room.  
25 So [REDACTED] and [REDACTED] recollection of this very last



1 incident in June is pretty similar based upon kind of their  
2 role that they played in that room. [REDACTED] recalled [REDACTED]  
3 was sleeping, she recalled that [REDACTED] jumped on or climbed  
4 on Kenny's back, and [REDACTED] recalls Kenny tickling her and  
5 then pulling her pants down and climbing on her back.

6 So both of the version of events makes sense based  
7 upon their ages and what was happening to them in that moment  
8 in that room. So those help to corroborate what [REDACTED]  
9 saying happened to her.

10 Amor also testified that the last time they went to  
11 his mom's house before the shopping trip, he recalled seeing  
12 Uncle Kenny pulling [REDACTED] back to the game room. And he  
13 thought it was just horseplay. She was trying to pull away.  
14 He was trying to pull her, and he didn't think anything of it  
15 at the time, because why would you think anything of it?  
16 It's a normal family visit. The kids always play together.  
17 No big deal. But now looking back on it, he kind of  
18 understands why she didn't want to go back there, and that  
19 corresponds to the same time frame in June where [REDACTED] was  
20 being touched by Uncle Kenny. So that corroborates what  
21 [REDACTED] is saying as well.

22 The other thing that corroborates what [REDACTED] is  
23 saying is that [REDACTED] knew that [REDACTED] didn't want to tell her  
24 dad because she was worried about ruining a relationship. He  
25 wasn't quite clear on what relationship or who, but he

1 recalled her -- that was her main concern. The fact that [REDACTED]  
2 knows that piece of information corroborates what [REDACTED] was  
3 saying on the stand.

4 And May being the first to know from [REDACTED] you know,  
5 she had a consistent version from [REDACTED] obviously, the message  
6 got a little confused when you have three kids all trying to  
7 talk at one time and there's a bunch of uncles and they just  
8 came back from New Jersey, May was confused. But the fact  
9 that May is the first person to know and [REDACTED] is -- the only  
10 person [REDACTED] told was [REDACTED] that helps to corroborate  
11 [REDACTED] story. Because if she only tells [REDACTED] how does May  
12 find out unless it's from [REDACTED]

13 And what I thought was interesting is that May's  
14 really the driving force behind this whole case. She  
15 basically said I have a moral, ethical and professional  
16 responsibility to report this. So this isn't Amor driving  
17 the bus here. It's really May. She knows being a nurse,  
18 she's a mandatory reporter, and she was going to report it  
19 whether they wanted her to not.

20 So that kind of makes sense that she be the one to  
21 report because it's information coming from her son that  
22 [REDACTED] said.

23 The last thing I want to go over real quick is the  
24 defendant's statements to Detective Hoyt. Interestingly, the  
25 defense didn't talk about this at all in their closing

1 statement. It's almost like they want to forget that this  
2 even happened. The last time defendant says he saw [REDACTED]  
3 was sometime in early June. And so that puts [REDACTED] in the  
4 residence at the same time that [REDACTED] saying she was  
5 there, the same time that Amor's saying they've showed up at  
6 the house. So that clearly solidifies the timeline in this  
7 case.

8 He also admits that they came over and that he  
9 tickles when she comes over. So there's no dispute that he's  
10 not tickling her and that she's not in the house or not in  
11 the game room.

12 He initially denies that he ever pulled her pants  
13 down. But as he starts talking to the detectives, he kind of  
14 starts giving bits and pieces about okay, well, maybe her  
15 pants came down. Well, maybe they wiggled off because she's  
16 like wiggling on the ground when I'm tickling her. And then  
17 eventually, you know, he says, well, I might have snagged her  
18 pants, but my hands get really cold and I can't really feel  
19 my hands so I don't really know what I'm doing.

20 As Maria said, he doesn't have a circulation  
21 problem so I'm not sure where this cold hands comes from  
22 other than an excuse possibly. And then, finally, you know,  
23 he admits that he possibly had touched her genital area while  
24 he was tickling her. How that happens, possibly, is -- it's  
25 beyond explanation. I mean, there's no reason why you're

1 tickling an 11-year-old girl to pull her pants down and  
2 underwear down to begin with, and how you go from her stomach  
3 to her private area, that just doesn't make any sense.  
4 Obviously, he did that on purpose, it wasn't an accident. As  
5 we've shown, it's been more than one time.

6           The fact that he's even admitting it's a  
7 possibility, shows that he knows that he did this. If you  
8 didn't do it, you're going to say this is ridiculous, I did  
9 not do this, I'm not talk being this anymore. But to slowly  
10 kind of start admitting here and there and make kind of lame  
11 excuses for your behavior shows that you know you did it, you  
12 just don't want to fully admit to it.

13           There's some other statements about -- or other  
14 interesting things he says during his statement where he  
15 doesn't deny, but he doesn't really -- the way he answers the  
16 questions indicates a consciousness of guilt. When the  
17 detective asked the defendant, had [REDACTED] been in the room  
18 when he touched the victim, his response was, he wasn't there  
19 for any time. He doesn't say, no, because this never  
20 happened, you know. [REDACTED] wasn't there because I never did  
21 anything. It was more well, he just wasn't there for any  
22 time.

23           So that indicates a consciousness of guilt.  
24 Detective Hoyt also asks him well, when -- tell me about the  
25 first time? And he doesn't say there wasn't a first time.

1 He says, I don't know what's considered the first time. So  
2 that also indicates a consciousness of guilt. That's not how  
3 you respond if you didn't do anything.

4 And then lastly, at the end of the interview,  
5 Detective Hoyt asks him if there's anything else that you  
6 want to add, and he states, I didn't mean to cause any  
7 trouble or hurt her. That is the most telling statement that  
8 he gave the entire interview. Why would you be worried that  
9 you were going to cause trouble or hurt her if you didn't do  
10 anything wrong? That answer shows that he knew his actions  
11 were wrong and that he did the -- he actually touched her on  
12 purpose.

13 The evidence in this case is clear that in June  
14 2015, the defendant pulled down [REDACTED] pants and underwear  
15 and that he touched her genital area with his hand. And he  
16 did that to gratify either himself or for her in a sexual  
17 manner, and he did it in the presence of [REDACTED] brother,  
18 [REDACTED]

19 The defendant is guilty of lewdness with a minor  
20 under 14, and we ask you to return that verdict. Thank you.

21 THE COURT: Thank you. And I'll have the Clerk  
22 swear the officers to take charge of the jury.

23 (CLERK SWEARS OFFICERS OF THE COURT)

24 THE COURT: Thank you. And so ladies and  
25 gentlemen, the jurors, the 12 jurors will go with the

1 Marshal, and the two alternates will go with my Judicial  
2 Assistant, and she's going to take you to a separate room,  
3 and you'll have the Jury Instructions and all the evidence  
4 that was admitted will be brought to you.

5 (Jury retires to deliberate at 2:53 P.M.)

6 (Outside the presence of the jury)

7 THE COURT: And the record will reflect the jury  
8 has departed the courtroom. Any matters outside the  
9 presence?

10 MS. CLEMONS: Not from the State.

11 MR. LEE: No, Your Honor.

12 THE COURT: If you'll give the Clerk your numbers,  
13 we'll call you if we hear from the jury.

14 MS. CLEMONS: Your Honor, what's your practice as  
15 to how late you keep them? Is it just to 5:00?

16 (Court recessed at 2:55 p.m. until 4:12 p.m.)

17 THE MARSHAL: All rise for the jury, please.

18 (In the presence of the jury)

19 THE COURT: Thank you, please be seated. And the  
20 record will reflect the presence of the defendant with his  
21 counsel, the Chief Deputies District Attorney prosecuting the  
22 case, all officers of the court, all 12 members of the jury  
23 as well as the two alternates. And do we have a foreperson?  
24 Is that Mr. Heavener?

25 JUROR NO. 10: Yes.

1 THE COURT: And has the jury reached a verdict?

2 JUROR NO. 10: We have.

3 THE COURT: And would you hand the verdict to the  
4 Marshal, please? The Clerk will please read the verdict.

5 VERDICT

6 THE CLERK: District Court, Clark County, Nevada.  
7 State of Nevada, plaintiff, versus Kenneth Franks, defendant.  
8 Case No. C-15-311519-1. Department No. 5. Verdict. We the  
9 jury in the above-entitled case find the defendant, Kenneth  
10 Franks as follows:

11 Count 1, lewdness with a child under the age of 14;  
12 guilty of lewdness of a child -- guilty of lewdness with a  
13 child under the age of 14.

14 Dated the 7th day of December, 2016. Ryan Heavener  
15 Foreperson. Ladies and gentlemen of the jury, is this your  
16 verdict as read, so say you one, so say you all?

17 THE JURY: Yes.

18 THE COURT: Would you like -- either side like the  
19 jury polled?

20 MR. LEE: No, thank you, Your Honor.

21 MS. CLEMONS: No, thank you.

22 THE COURT: All right. So ladies and gentlemen,  
23 thank you very, very much for your participation in this  
24 case. I know that it's approaching the holidays and that for  
25 some they had to make other plans, cancel shopping, you know,

1 what have you, and it always interrupts the normal things  
2 that we attend to day to day. But without our jury system in  
3 place, we could not have the jury by peers that we are  
4 entitled to under our system. And so I really thank you for  
5 being willing to serve and not trying to get out of it as you  
6 saw some of the other folks do.

7           You are now relieved of your obligation not to  
8 speak to anyone. You may speak to anyone you wish to. If  
9 you don't wish to speak to anybody about the case or your  
10 deliberations or your thoughts on it, you don't have to.

11           And so I'm going to have the Marshal bring you back  
12 briefly into the jury room so I can find out if you would  
13 like to speak to the lawyers, and then I'll communicate  
14 whether any of you would like to speak with them. And if any  
15 of you do, then they can meet with you there. And those of  
16 you who don't wish to are certainly free to leave. And I  
17 believe that we also have the checks for your service. Your  
18 jury service checks are available for you as well.

19           Also, if anybody -- if you don't want to talk to  
20 somebody and they persist in asking you to speak about it,  
21 then please feel free to let the Marshal know. Contact my  
22 chambers if it's after you've left the courthouse, and we  
23 will take care of that as well.

24           I would encourage you, if you are so inclined to  
25 speak with the lawyers in the case, to do so because they



1 call it the practice of law for a reason, and that is we  
2 continue to learn and grow throughout the years that we are  
3 practicing law, whether it's five years, ten years, 40 years,  
4 you know, we continue to learn.

5 And so comments that can be constructive comments  
6 are always helpful. So thank you very much for your service,  
7 and I'll be with you in just a moment.

8 THE MARSHAL: All rise for the jury, please.

9 (Jury excused at 4:17 P.M.)

10 THE COURT: All right. And so the defendant will  
11 be remanded to custody, and we'll set this down for a  
12 sentencing date and refer it to the Division of Parole &  
13 Probation for a Presentence Investigation Report.

14 THE CLERK: January 25th at 9:00 A.M. So I can  
15 exonerate the bond?

16 THE COURT: Yes, bond is exonerated. Thank you.  
17 And I will go and speak to the jury and see if they wish to  
18 speak to you at all. And court's in recess.

19 MR. STEPHENS: Thank you.

20 (Court adjourned at 4:18 P.M.)

21 \* \* \* \* \*

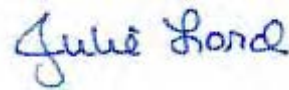
22

23

24

25

1 ATTEST: I hereby certify that I have truly and correctly  
2 transcribed the audio/visual proceedings in the above-  
3 entitled case to the best of my ability.

4   
5

6  
7 \_\_\_\_\_  
JULIE LORD, INDEPENDENT TRANSCRIBER  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

# **Exhibit 6**

# **Exhibit 6**

DISTRICT COURT  
CLARK COUNTY, NEVADA

Defendant.

DEPT. V

**RECORDER'S TRANSCRIPT OF PROCEEDINGS  
SENTENCING**

AA 535

1 WEDNESDAY, MARCH 29, 2017 AT 10:55 A.M.

2  
3 THE COURT: Case number C311519, State of Nevada versus Kenneth  
4 Franks, who's present in custody.

5 Good morning.

6 MS. RASMUSSEN: Good morning, Your Honor.

7 Lisa Rasmussen, bar number 7491, on behalf of Mr. Franks who, as the  
8 Court noted, is present before the Court in custody.

9 THE COURT: All right. And this is the --

10 MS. CLEMONS: And Jennifer Clemons for the State. Sorry.

11 THE COURT: Good morning. Excuse me.

12 And this is the time set for sentencing. Are you ready to proceed?

13 MS. RASMUSSEN: Yes, Your Honor.

14 THE COURT: Okay. So by virtue of the jury's verdict of guilty of the crime of  
15 lewdness with a child under the age -- under the age of 14, I hereby adjudge you  
16 guilty of that offense.

17 MS. RASMUSSEN: Thank you, Your Honor.

18 I wanted to just point out one thing in the presentence report. I didn't  
19 think it rose to the level of requesting that it be amended, but I think the State will  
20 agree with me --

21 [Colloquy between defense counsel and the State]

22 MS. RASMUSSEN: In the -- I was just showing to the State page 3 of PSI. In  
23 the criminal history section there's only this count, but it also has -- it shows a Count  
24 2, destroy property of another \$5,000 plus enhancement criminal gang. That's  
25 never been a part of this case --

1 THE COURT: Right.

2 MS. RASMUSSEN: -- and I just want the State to stipulate on the record that  
3 that is just probably an error.

4 I don't think it matters because -- because it's clear on -- higher up on  
5 that page that he has no gang affiliation. There's none reported. That's never been  
6 a factor in this case and he really has no criminal history. So I just wanted to make  
7 that clear that I think that was just an error.

8 THE COURT: All right. Well, we can address that because that potentially  
9 could impact --

10 MS. RASMUSSEN: Well, Your Honor, I --

11 THE COURT: -- how he's treated at the prison. So I can address it as part of  
12 the JOC --

13 MS. RASMUSSEN: Okay. Great.

14 THE COURT: -- that there appears to be a clerical error on page 3 of the  
15 presentence investigation report wherein it indicates that he was arrested for  
16 destroying property of another having a value of in excess of \$5,000 and  
17 enhancement for criminal gang and that he was never arrested --

18 MS. RASMUSSEN: Right.

19 THE COURT: -- on those charges.

20 MS. RASMUSSEN: He was never charged with that; right.

21 And I -- ordinarily I would have worried about it except it's clear from the  
22 facts as they're reported on page 4 that that has nothing to do with this case, so --

23 THE COURT: Right.

24 MS. RASMUSSEN: Okay. So I submitted a sentencing memorandum. And I  
25 know I got it to the Court yesterday afternoon. It contains numerous letters. I also,

1 of course, essentially conceded in the report that there's -- there's no discretion  
2 unfortunately to the Court in the sentencing on this case. And -- and it's very  
3 unfortunate because this would be the kind of case where the Court would consider  
4 an alternative to the statutory sentence of 10 to life. And I say that not lightly; not  
5 because the alleged conduct or the jury's verdict is to be taken lightly, but, Your  
6 Honor, this -- and I know I wasn't here. I didn't sit through the jury trial. This is a  
7 thin case. This is a very thin case.

8 And one of the reasons I pointed out to the Court the Defendant's  
9 statement versus the officer's testimony is because he never confessed to this. He  
10 never admitted that he did this conduct. In fact, in a 55 minute interview, the only  
11 thing he says when they say is it possible your hand brushed against her private  
12 parts is it's possible because anything's possible, but it wasn't an admission of guilt.

13 And I really think -- I'm not trying to blame the State or cast negative  
14 inferences on the way they presented the case, but the questions were leading.  
15 And they led -- I can see how it may have led the jury to think that he had somehow  
16 admitted that he had done this and that's not the case at all. That was never the  
17 case at all in his statement.

18 And, you know, normally I've done a lot of trials normally where a victim  
19 admits something. The first thing the State does is play the statement, play the  
20 confession, play the audiotaped interview and they didn't do that in this case. And  
21 they didn't do it for a reason. It's because he never admitted to anything.

22 So I -- you know, I see this as a whole picture of what -- what really it  
23 distills down to is the testimony of the victim. And I watched that. And, you know,  
24 I'm not here to argue against the jury's verdict, but I'm making the point that this a  
25 really thin case. She's not clear on a lot of stuff. She doesn't remember a lot of

1 stuff. She's led into a scenario that she never made in her statement which is that  
2 her underpants were down. And that's -- you know, that was never actually the facts  
3 of the case as it was charged. It was that he somehow touched with his hand or his  
4 fingers her private area over her clothing. And, in fact, that's what's in the PSI, but  
5 at trial there's somehow this allegation that her underpants are pulled down and --  
6 and that wasn't what she said.

7           And there was a lot of conflicting issues about the brother; whether the  
8 brother was -- my client's brother, I'm sorry, [REDACTED] was in the room or not.  
9 He wasn't in the room. I think that that was made clear. And there was also  
10 statements by the complaining witness' younger brother saying that the only one  
11 who had ever touched her, [REDACTED], in that area was their dad. And that he  
12 had never seen anything like that and he was in the room at the time that it allegedly  
13 occurred.

14           So I say all this to point out that -- maybe it's just going to be my rant on  
15 the legislative scheme, but to point out that it's really unfortunate that in cases like  
16 this that the Court doesn't have discretion to do anything based on this verdict other  
17 than sentence him to 10 to life. It's -- it's a terrible situation because here is a 22  
18 year old who was in college, who has no prior record, who has always stayed at  
19 home, kept to himself, been if anything protected by his parents, and who's now  
20 facing not just a felony conviction, but a 10 to life and lifetime registration as a sex  
21 offender. I mean, it's hard to think of, you know, scenarios that are much more  
22 severe than this. Even in murder cases we have different schemes that the Court  
23 can sentence to based on facts and circumstances of the case and whether it was  
24 more egregious, or less egregious, or the attributes of the Defendant, and it's  
25 unfortunate that you don't have that here.



1 I wanted to let the Court know that Mr. Franks' parents are here,  
2 Raymond and Maria Franks, as well as his brother, [REDACTED], and his aunt  
3 and his uncle, Cesar and Remi Bolas [phonetic] are also present before the Court in  
4 support of him. He has fortunately a wonderful family support system.

5 There are obviously issues that will be addressed on appeal. And I,  
6 you know, to some extent want to make a record in that regard. I just find this a  
7 tragic case. And I don't -- I don't think there's even anyone here for the complaining  
8 witness. And I -- I think it's a painful case. I think it's a very sad, unfortunate  
9 situation that we find ourselves in.

10 I have told Mr. Franks -- I've reviewed the PSI with him. I have told him  
11 that he is able to make a statement to the Court. I advised him not to based on his  
12 pending appellate issues and -- and the fact that there's not much difference that it  
13 would make for the Court here this morning.

14 MS. CLEMONS: Your Honor, if I could just briefly address a couple things.

15 I mean -- I know this defense counsel wasn't counsel at trial, but a lot of  
16 what she state -- she's stating is taking bits and pieces from the testimony. We  
17 were -- you were -- you observed the trial. I was the lead counsel on the trial. There  
18 was a lot of little things that corroborated what the victim said.

19 And also there's nothing improper about the State having the detective  
20 testify to the Defendant's statement. There's no requirement that we have to play  
21 the Defendant's statement. And for her to suggest there was something nefarious in  
22 that I think is overreaching and completely not appropriate. I was very careful when  
23 I questioned the detective not to put words in the detective's mouth about what the  
24 Defendant said. We went through the transcript to make sure it was accurate.  
25 Nobody argued he confessed. What we had argued was his version of events kept

1 changing. He never straight out denied this happened. He went from I don't  
2 necessarily remember, to maybe my fingers grazed it, to I don't know how her  
3 underwear got down, and those were all the things that the jury took into  
4 consideration.

5 Obviously from the State's perspective there's plenty of evidence to  
6 support the conviction. And everything that was kind of raised today is more of an  
7 appellate issue, so -- you know, the legislature decided it's -- it's a 10 to life. And I  
8 don't necessarily disagree that that seems, you know, harsh because lewdness with  
9 a minor incorporates touching over the clothes, under the clothes. I mean -- but  
10 that's what they decided, so that's kind of what we're stuck with at this point. So I'd  
11 just ask you to follow the statutory scheme.

12 THE COURT: Well -- okay. So I was present for the entire trial. And the  
13 victim's testimony was extremely convincing. Her father was a very credible  
14 witness. Her mother was a credible witness. I heard the testimony of Mr. Franks'  
15 mother. It was not helpful, I would say. My guess is that it was not helpful to his  
16 case, nor was his brother's testimony, frankly.

17 To characterize him as someone who's been protected by his family --  
18 this is an individual -- yes, I agree that the statutory scheme is problematic and that  
19 there may be a tragedy here because this -- this Defendant did not have a normal  
20 upbringing. He was -- you know, he stayed at home, never leaving the house; his  
21 brother the same way. There was a very unhealthy dynamic going on in that home.  
22 I don't -- I don't know still what's going on. I see -- I see his mother sitting apart from  
23 his father apparently. You know, so his -- we never saw -- I don't really know if his  
24 father's here actually because I --

25 MS. RASMUSSEN: He is here. He's is in --

1 THE COURT: -- never saw him during the trial.

2 MS. RASMUSSEN: -- the far corner.

3 THE COURT: Okay. So --

4 MS. RASMUSSEN: That is Raymond Franks.

5 THE COURT: -- he was never present at any time and now I see, you know --

6 so -- so anyway, there was a lot of disturbing things that came out in the trial that

7 really probably weren't necessarily -- bore more on how this could've happened, or

8 what kind of person he is, or how he came to be the person he is. You know, he's

9 characterized as a college student, but the testimony was, if I recall, that he was

10 doing all this online, so he never left the house. It was very strange.

11 But -- so, yes, he was advised, I believe, not to take a plea negotiation.

12 That maybe it would've been better for him to do. And that it appeared to me that

13 perhaps his mother pressured him into -- to going for the trial that maybe wasn't

14 advisable. But the witness -- the witness was very credible at trial and so --

15 MS. RASMUSSEN: I watched her testimony, Your Honor.

16 THE COURT: Yeah.

17 MS. RASMUSSEN: And I -- I think --

18 THE COURT: So I watched it live.

19 MS. RASMUSSEN: Okay.

20 THE COURT: And I watched -- I watched everything --

21 MS. RASMUSSEN: I know.

22 THE COURT: -- and I felt that she was quite credible.

23 So, as you say, I'm limited to the statutory requirements. And would I

24 maybe have done something different if I had the ability to? Probably, because I

25 think everybody kind of felt that way. The State is --

1 MS. CLEMONS: Yeah, I agree.

2 THE COURT: -- acknowledging that. So -- but I don't have that --

3 MS. RASMUSSEN: I know.

4 THE COURT: -- ability. And so by virtue of the adjudication, after the jury's

5 verdict, I am required to sentence you to life in prison with eligibility for parole

6 commencing after a minimum of 10 years has been served.

7 There is additionally an administrative assessment of \$25, a DNA

8 testing fee of \$150, and a \$3 DNA collection fee --

9 MS. RASMUSSEN: Okay.

10 THE COURT: -- that has to be assessed. And --

11 MS. RASMUSSEN: Your Honor, a have 123 days custody credits based on

12 the fact that we continued this because I came onboard. And I think the State

13 agrees with me on that.

14 THE COURT: Okay. And so is it --

15 MS. CLEMONS: Yeah, that's fine.

16 THE COURT: Is it a total --

17 MS. RASMUSSEN: Yeah, 123. He gets --

18 THE COURT: -- of 123 days?

19 MS. RASMUSSEN: The PSI indicates 60 days total, and then I added 6 days

20 for January, 28 days for February, and 29 days for March and came up with 123.

21 THE COURT: All right.

22 MS. RASMUSSEN: It basically added 63 days.

23 THE COURT: A hundred and twenty-three days credit for time served.

24 THE COURT CLERK: And does he register upon release from incarceration?

25 THE COURT: Yes. Pursuant to statute, his conviction mandates a special

1 sentence of lifetime supervision to commence after any period of imprisonment or  
2 release upon parole. As well, under 179d.460, he must register as a sex offender  
3 within 48 hours of release from custody.

4 Thank you.

5 MS. RASMUSSEN: Thank you, Your Honor.

6 MS. CLEMONS: Thank you.

7 [Proceedings concluded at 11:10 a.m.]

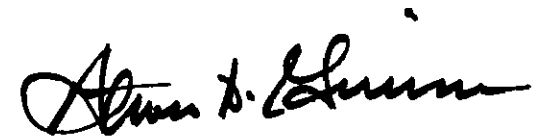
8 \* \* \* \* \*

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio/video proceedings in the above-entitled case to the best of my ability.

23   
24 SANDRA PRUCHNIC  
25 Court Transcriber

# **Exhibit 7**

# **Exhibit 7**



CLERK OF THE COURT

**LAW OFFICE OF LISA RASMUSSEN, P.C.**

Lisa A. Rasmussen, Esq.

Nevada Bar No. 7491

Email: Lisa@LRasmussenLaw.com

601 South Tenth Street, Suite #100

Las Vegas, Nevada 89101000

Tel: (702) 471-1436

Fax: (702) 489-6619

Attorneys for Kenneth Franks

**IN THE EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA

Plaintiff,

vs.

KENNETH FRANKS,

Defendant.

CASE NO. C-15-311519-1

DEPT. V

**NOTICE OF APPEAL**

COMES NOW the Defendant, KENNETH FRANKS, by and through his attorney of record, Lisa A. Rasmussen, and hereby files his Notice of Appeal to his Sentence and Judgment of Conviction, and all issues arising thereunder. The Judgment of Conviction was filed on April 6, 2017. It should be noted that the undersigned never received a copy of the JOC, despite the fact that she is counsel of record in this case.

Dated this 1st day of May, 2017.

**LAW OFFICE OF LISA RASMUSSEN,**

*/s/ Lisa A. Rasmussen*

LISA A. RASMUSSEN, ESQ.

Nevada Bar No. 7491

Attorneys for Kenneth Franks

LAW OFFICE OF LISA RASMUSSEN  
601 SOUTH TENTH STREET, #100  
LAS VEGAS, NEVADA 89101  
PH: (702) 471-1436 · FX: (702) 489-6619

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I served a copy of the foregoing NOTICE OF APPEAL on this 1st day of May, 2017 upon the following persons:

Via Wiznet Service: PDMotions@clarkcountyda.com

*/s/ Lisa A. Rasmussen*

---

LISA A. RASMUSSEN



# Exhibit A

# Exhibit A

1  
2 Evidence that the defendant committed offenses on a date other than that for which he  
3 is on trial, if believed, was not received and may not be considered by you to prove that he is  
4 a person of bad character or to prove that he has a disposition to commit crimes. Such  
5 evidence was received and may be considered by you only for the limited purpose of proving  
6 the defendant's motive, intent and propensity. You must weigh this evidence in the same  
7 manner as you do all other evidence in the case.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28