

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

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**No. 74581**

Electronically Filed  
May 18 2018 03:12 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**CALVIN ELAM**

Appellant,

v.

**THE STATE OF NEVADA**

Respondent.

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Appeal from a Judgment of Conviction  
Eighth Judicial District Court, Clark County  
The Honorable Valerie Adair, District Court Judge  
District Court Case No. C-15-305949-1

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**APPELLANT'S APPENDIX**

**VOLUME V**

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## **CERTIFICATE OF SERVICE**

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Nevada Attorney General

STEVEN S. OWENS  
Chief Deputy District Attorney

BY       /s/ Rachael Stewart        
An Employee of Oronoz & Ericsson, LLC

1 license or ID card --

2 A Yes, ma'am.

3 Q -- has a photograph with DMV, right?

4 A That's correct.

5 Q Okay. Was it your understanding -- well, did either  
6 Detective Matlock or Spiotto contact the defendant?

7 A They did.

8 Q Where did they contact him?

9 A At that apartment.

10 Q And did one or both of them place him under arrest at  
11 that apartment?

12 A They did.

13 Q Was it your understanding that whether or not the  
14 defendant ever went back after police arrived at 1108 to 1108?

15 A I don't believe he did.

16 Q So they arrested him at 6300 Lake Mead?

17 A Yes, ma'am.

18 Q And where -- did you cause them to bring him  
19 somewhere?

20 A Yes. He was brought to the Las Vegas Metropolitan  
21 Police Department Headquarters to be interviewed.

22 Q And did you cause one of the detectives to interview  
23 him there?

24 A Detective Weirauch did.

25 Q And did that take place at 11:00 o'clock p.m.?

1           A     Approximately, yes, ma'am.

2           Q     So while you were at 6300 Lake Mead, were any items  
3 that you were looking for located in Joanique Mack's apartment,  
4 the one that the defendant was at when he was arrested?

5           A     There was.

6           Q     What was located there?

7           A     I located a blue Dodgers hat in one of the bedrooms  
8 and also several cell phones.

9           Q     And what was the purpose behind the cell phones or  
10 the significance of I should say?

11          A     It's been my experience and training that when  
12 somebody's involved with a crime like this or there's a  
13 conspiracy it's typically going to take place with cell phones,  
14 via either text messaging or voice mail -- or I'm sorry voice  
15 calls, and I thought that the phones at the apartment would  
16 yield that evidence at a later date.

17          Q     Okay. Additionally, because of what Arrie said the  
18 females were doing, were you looking for cell phones for that  
19 purpose as well?

20          A     I was.

21          Q     Showing you what's been marked as State's Proposed  
22 Exhibits 69 and 70, are these cell phones that were taken from  
23 the 6300 apartment?

24          A     Yes, ma'am.

25          Q     Were they marked, tagged and placed into evidence?

1           A     They were.

2                     MS. LUZAICH: Move these photos into evidence.

3                     THE COURT: Any objection?

4                     MR. ERICSSON: No, Your Honor.

5                             (State's Exhibit No. 69-70 admitted.)

6 BY MS. LUZAICH:

7           Q     Did you ultimately cause these photos -- these cell  
8 phones to be examined by somebody who does that?

9           A     Yes, ma'am.

10          Q     There are individuals at Metro that do that?

11          A     There are.

12          Q     And were you able to locate any pertinent  
13 information?

14          A     I was not.

15          Q     So you said you found the Dodger hat -- or a, sorry,  
16 a blue Dodger hat at the location 6300 Lake Mead?

17          A     Yes, ma'am. It was consistent with what Arrie  
18 Webster had described.

19          Q     Did you also find a vehicle at 6300 Lake Mead?

20          A     I did.

21          Q     What vehicle did you find?

22          A     It was the white Sentra.

23          Q     Just showing you State's Exhibit 65, is that the  
24 Sentra?

25          A     It is.

1 Q And is it photographed right there at 6300 Lake Mead?

2 A It is.

3 Q I'm sorry. Showing you State's Exhibit 68, is that  
4 the blue Dodger hat that you found at the location?

5 A It is.

6 Q And showing you State's Exhibit 66, is this how the  
7 defendant looked on March 10th of 2015?

8 A It is.

9 Q Now, we talked a minute ago, well, a while ago about  
10 Arrie had said that the defendant was talking to her repeatedly  
11 about the dogs, dogs being missing. Did she indicate to you  
12 that the defendant was accusing her of having taken the dogs?

13 A Yeah. She stated that the defendant had accused her  
14 of taking the dogs or knowing who did.

15 Q Did you learn where the dogs actually were?

16 A We did.

17 Q Where?

18 A They were taken by animal control two days prior on  
19 May 8th -- or March 8th. I'm sorry. March 8th, 2015.

20 Q Okay. Now, once you served the search warrant at  
21 6300 Lake Mead on the 10th and caused the defendant to be  
22 interviewed, was that pretty much the end of what occurred on  
23 the 10th?

24 A Yes, ma'am.

25 Q Did you go back to 1108 over the course of the next

1 few days to conduct any kind of follow-up investigation?

2 A I did.

3 Q What did you do?

4 A I ended up developing a person that might have been  
5 the second suspect through my investigation, and I conducted a  
6 photo lineup with one of the witnesses by the name of Carl.

7 Q Okay. So let's go back for one second. As Arrie is  
8 describing this for you, that night you were easily able to  
9 identify Calvin Elam?

10 A Yes, ma'am.

11 Q The defendant. She had described a second male  
12 suspect. Were you trying to figure out who that was?

13 A Correct. I was.

14 Q That night did Arrie have any idea who that was?

15 A She did not.

16 Q And did anybody else that you spoke to that night  
17 have any idea who that person might be?

18 A Yes.

19 Q Who else did you -- who else was spoken to that night  
20 who may have an idea who that other individual was?

21 A A gentleman by the name of Carl.

22 Q And did you talk to Carl that night?

23 A I did. No, I'm sorry. I did not that night.

24 Q Okay. Somebody else did?

25 A Yes, ma'am.



1           Q     And you tried to kind of figure out who that other  
2 individual was. Did you have an idea of who you thought it  
3 might be?

4           A     Yes.

5           Q     And you said you conducted a photo lineup with Carl?

6           A     I did.

7           Q     Was Carl able to identify anybody in that photo  
8 lineup?

9           A     He was not.

10          Q     As of today, have you ever been able to actually  
11 identify that second suspect?

12          A     I have not.

13          Q     Did you also learn that Arrie had gone to UMC on  
14 March 12th of 2015?

15          A     Yes, ma'am.

16          Q     What was your understanding of the reason that Arrie  
17 went to UMC?

18          A     She stated that she had been sexually assaulted.

19          Q     Did she go for a sexual assault evaluation?

20          A     She did.

21          Q     And did you learn that the nurse had actually called  
22 to report the sexual assault?

23          A     Yes, ma'am.

24          Q     Now, did you ever have contact with the nurse?

25          A     I did not.

1           Q     Did your lieutenant have contact with anybody  
2     pertaining to the sexual assault aspect of it?

3           A     Just Arrie, Arrie Webster.

4           Q     And how did that occur?

5           A     My lieutenant went over to check on her a couple days  
6     later to see if she was doing okay, and she stated to him that  
7     she thought she had been sexually assaulted.

8           Q     Okay. Had he already learned that there was a sexual  
9     assault examination done?

10          A     I'm sorry. What was the question?

11          Q     Had your lieutenant learned already that there was a  
12     sexual assault examination done?

13          A     I think that he learned -- he directed that to occur.

14          Q     Okay.

15          A     So I think that he was over there checking on her to  
16     see what happened, learned about the sexual assault. He  
17     notified Detective Ryland from our sexual assault detail and  
18     summonsed Detective Ryland to -- Arrie's location where  
19     subsequently the sexual assault exam occurred.

20          Q     Okay. And then did your lieutenant ask Detective  
21     Ryland from the sexual assault detail to do an interview  
22     pertaining specifically to the sexual assault aspect of it?

23          A     He did.

24          Q     Now, additionally, did you request analysis to be  
25     done of certain items?

1           A     I did.

2           Q     What kind of analysis did you request to be done?

3           A     It was latent analysis and a DNA analysis of items  
4 used in the kidnapping.

5           Q     And --

6           THE COURT: And, Ms. Luzaich, I think I'm going to  
7 interrupt your direct examination. We're going to take a quick  
8 break.

9                     Can I see counsel at the bench before we take our  
10 break.

11                     (Conference at the bench not recorded.)

12           THE COURT: Ladies and gentlemen, we're just going to  
13 take a quick break until about 11:15.

14                     During the brief recess you are reminded that you're  
15 not to discuss the case or anything relating to the case with  
16 each other or with anyone else. You're not to read, watch or  
17 listen to any reports of or commentaries on the case, person or  
18 subject matter relating to the case. Do not do any independent  
19 research by way of the Internet or any other medium, and please  
20 don't form or express an opinion on the case.

21                     Please place your notepads in your chairs and follow  
22 the bailiff through the double doors. We'll see you back at  
23 11:15.

24                     (Jury recessed 11:04 a.m.)

25           THE COURT: And, Detective, please don't discuss your

1 testimony with anybody.

2 THE WITNESS: Yes, ma'am. May I step down?

3 THE COURT: Yes.

4 THE WITNESS: Thank you, ma'am.

5 (Proceedings recessed 11:04 a.m. to 11:16 a.m.)

6 (Outside the presence of the jury.)

7 THE COURT: -- I'm thinking that should put us at  
8 lunchtime, right?

9 MS. LUZAICH: Oh, yeah.

10 THE COURT: Then we'll take our lunch break. We'll  
11 do the jury instructions, I mean, over the lunch break.

12 MS. LUZAICH: I need time. My PowerPoint is not  
13 done. I had technical difficulties. It didn't all save. So  
14 this morning I got here early trying to put it back together.  
15 I just need some time to finish it. Sorry.

16 THE COURT: An hour and a half for lunch, that should  
17 give you enough time. Can you do it in an hour and 15 minutes  
18 do you think?

19 MS. LUZAICH: Well, not if we still have to settle  
20 jury instructions.

21 THE COURT: Right. Oh. I thought Mr. Ericsson  
22 didn't have any objections?

23 MR. ERICSSON: Your Honor, I had gone through all the  
24 instructions. I do believe there are a couple more --

25 MS. LUZAICH: I printed out a new set.

1 THE COURT: Right.

2 MS. LUZAICH: -- or I asked Krystal to print out -- I  
3 forgot the transition in a lesser second.

4 THE COURT: Okay.

5 MS. LUZAICH: So there's also a verdict form in there  
6 that's got the second, you know -- first, second, not guilty.

7 THE COURT: Right. So we need to redo the verdict  
8 form.

9 MS. LUZAICH: It's in there.

10 THE COURT: Is that what you're saying?

11 MS. LUZAICH: I did it.

12 THE COURT: Oh, okay.

13 MS. LUZAICH: I mean, so I sent it to her, but --

14 THE COURT: Okay.

15 MS. LUZAICH: -- we need copies because I didn't send  
16 it to him.

17 THE COURT: Okay. So, Kenny, go tell Krystal to  
18 print out --

19 Do you need a copy for yourself or you already have  
20 it?

21 MS. LUZAICH: I --

22 THE COURT: Okay. Tell Krystal to print out two more  
23 copies of the jury instructions. You don't have to do it right  
24 this second.

25 All right. So I'm going to give Mr. Elam his

1 admonishment.

2 Are we on the record?

3 THE COURT RECORDER: Yes.

4 THE COURT: Okay. Mr. Elam, you have the right to  
5 take the stand and testify on your own behalf. Do you  
6 understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: If you choose to take the stand and  
9 testify, the deputy district attorney will have the opportunity  
10 to cross-examine you, and anything you say, whether it's in  
11 response to a question from your lawyer, the deputy district  
12 attorney or the Court or one of the jurors will be the subject  
13 of fair comment by the deputy district attorney in her closing  
14 arguments. Do understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Also, if you choose to take the stand and  
17 testify, the deputy district attorney can ask you about prior  
18 convictions if you've been convicted of a felony within the  
19 past 10 years or you have discharged your sentence of parole,  
20 probation or imprisonment within the past 10 years.

21 Does he have any such priors?

22 MS. LUZAICH: He has a felony, but I don't think it's  
23 in time.

24 THE COURT: All right. So you don't have an  
25 impeachable offense then.

1           Conversely, you have the right not to take the stand  
2 and testify. If you -- if you choose to avail yourself of your  
3 right not to testify, the deputy district attorney is  
4 precluded, meaning forbidden, to comment upon that in her  
5 closing arguments. Do you understand?

6           THE DEFENDANT: Yes.

7           THE COURT: Also if you choose to avail yourself of  
8 your right not to testify, the Court will give an instruction  
9 to the jury if asked to do so by your lawyer. The instruction  
10 essentially says, That an accused in a criminal case cannot be  
11 compelled to testify. Thus the decision as to whether or not  
12 he should testify is left to the defendant on the advice and  
13 counsel of his attorney, and it tells the jury that they are  
14 not to draw any inference of guilt from the fact that he does  
15 not testify, nor should that be discussed or enter into their  
16 deliberations in any way. And the Court would give the  
17 instruction if requested. Do you understand that?

18          THE DEFENDANT: Yes.

19          THE COURT: Have you had an opportunity to discuss  
20 your right to testify as well as your right not to testify with  
21 your lawyer Mr. Ericsson?

22          THE DEFENDANT: Yes.

23          THE COURT: All right. Do you have any questions for  
24 the Court about either of these rights?

25          THE DEFENDANT: No.

1 THE COURT: And have you made a decision yet as to  
2 whether or not you will be testifying?

3 THE DEFENDANT: Yes.

4 THE COURT: And the decision is?

5 THE DEFENDANT: No.

6 THE COURT: All right. Did I cover those right to  
7 your satisfaction, Mr. Ericsson?

8 MR. ERICSSON: Yes, Your Honor.

9 THE COURT: Did I cover those to your satisfaction,  
10 Ms. Luzaich?

11 MS. LUZAICH: Yes.

12 THE COURT: All right. I think that's all we have to  
13 do before we resume. So, Kenny, you can bring them in.

14 Detective, come on back up here to the witness stand,  
15 please, and just --

16 THE WITNESS: Hang out.

17 THE COURT: -- stand or sit or whatever you want to  
18 do.

19 (Jury entering 11:21 a.m.)

20 THE COURT: All right. Court is now back in session.

21 And, Ms. Luzaich, you may resume your direct  
22 examination of the witness.

23 MS. LUZAICH: Thank you.

24 BY MS. LUZAICH:

25 Q I think when I stopped we were talking about analysis



1 that you had requested. One we talked about you had asked that  
2 the cell phones that you located be examined, right?

3 A Yes, ma'am.

4 Q And that didn't turn up anything. You mentioned  
5 fingerprint analysis. Did you request that the broom handle be  
6 analyzed for prints?

7 A I did.

8 Q And the leather belt, did you ask for that as well?

9 A Yes, ma'am.

10 Q And did you learn that there was nothing found?

11 A Correct.

12 Q And then as far as DNA analysis, you mentioned that  
13 you asked for things to be analyzed there as well, correct?

14 A That's correct.

15 Q Do you remember what you requested?

16 A I know I requested they have the shotgun processed  
17 for DNA.

18 Q Okay. And the shotgun itself?

19 A Yes, ma'am.

20 Q As well as were you -- I don't know if you were  
21 present, you were aware that crime scene analyst Brad Grover  
22 took swabs from the end of the shotgun?

23 A Yes. Those were the exhibits that I had compared,  
24 was the swabs themselves.

25 Q Okay. Additionally, the items that were found in the

1 dumpster, the hose, did you ask that that be analyzed?

2 A I believe so.

3 Q And the clear packaging tape, did you ask that that  
4 be analyzed for DNA as well?

5 A Yes, ma'am.

6 Q Now, what were you looking for?

7 A I was looking to see if the defendant Mr. Elam's DNA  
8 was on these items because it would be indicative that he's the  
9 one that bound her on the ligatures, and with the shotgun  
10 itself, the victim Arrie Webster stated that that was in her  
11 mouth. So I figured that if it was in her mouth spit from her  
12 mouth would be on the barrel of that shotgun that Crime Scene  
13 Analyst Grover had swabbed, and then, you know, I think that it  
14 would again corroborate her story that this actually did  
15 happen.

16 Q And did you also, sorry, ask that the end of the  
17 broom handle be swabbed for DNA as well?

18 A I did.

19 Q Or examined. Now, you mentioned whether the tape  
20 were -- if the defendant's DNA were on the tape. Now, these  
21 items were all found in his house, correct?

22 A They were.

23 Q Did that thought enter your mind?

24 A It did because if something's not -- you know, in  
25 your house, you know, really your DNA should be on it, you

1 know. It's assumed that your DNA will be on it, you know, if  
2 it's located in your residence just because it's your  
3 possessions.

4 Q So if his was on it, would that be kind of a no harm,  
5 no foul?

6 A In retrospect, correct.

7 Q And then did you learn that DNA was found in the swab  
8 from the barrel of the shotgun?

9 A I did.

10 Q And who's was that?

11 A That was Arrie Webster's DNA on the barrel of the  
12 shotgun.

13 MS. LUZAICH: Thank you. I have no further  
14 questions.

15 THE COURT: All right. Cross.

16 MR. ERICSSON: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. ERICSSON:

19 Q Good morning, Detective.

20 A Good morning, sir.

21 Q There was a lot of work that went into this  
22 investigation, correct?

23 A Yes, sir.

24 Q And so you were the lead detective. So you directed  
25 most of it?

1           A     Yes, sir.

2           Q     I want to begin by going through the interview that  
3 you had with Ms. Webster, and that was on the night of the  
4 alleged incident?

5           A     It was.

6           Q     And you held that in your unmarked car; is that  
7 right?

8           A     That is correct.

9           Q     And prior to coming here today, did you have the  
10 opportunity to go back and read your reports from this  
11 investigation?

12          A     I did.

13          Q     And what about did you go back and read the interview  
14 transcript from your interview with Ms. Webster?

15          A     Yes, sir I did.

16          Q     Okay. Good. That will hopefully speed up these  
17 questions. Now, you testified she indicated that she was asked  
18 to go into Mr. Elam's apartment, and she did so, correct?

19          A     Yes, sir.

20          Q     And that at some point she told you that Mr. Elam may  
21 have placed a phone call, and she thought it was to have other  
22 people come over to the apartment; is that correct?

23          A     Yes, sir.

24          Q     Now, she had told you that prior to the other people  
25 supposedly coming to the apartment that she had been hogtied,

1 was the word she had used, by Mr. Elam, correct?

2 A Yes, sir.

3 Q And that she had -- her face had been blindfolded  
4 with some type of a cloth, correct?

5 A That is correct.

6 Q And that he had put tape around her face, correct?

7 A Yes, sir, more specifically her mouth.

8 Q Okay. They placed tape around her mouth, but he had  
9 also covered her face with some type of a cloth device?

10 A Yes, sir.

11 Q And the way she reported this to you, this was before  
12 other people supposedly came over to the apartment, correct?

13 A Yes. If I recall correctly, she had been hogtied,  
14 the tape put over her mouth, the cloth, and then that's when  
15 people arrived at the apartment after that.

16 Q Okay. Now, she did describe to you that she thought  
17 that people were videotaping this incident; is that right?

18 A That's correct.

19 Q And part of your investigation was obtaining cell  
20 phones that you had investigative analysis done on; is that  
21 right?

22 A Yes, sir.

23 Q And from your analysis, you did not obtain any  
24 evidence related to this event that you were aware of, correct?

25 A Correct.

1           Q     And I want to go into some detail about that. In  
2 your work as a detective, you often do investigative analysis  
3 of phone devices; is that right?

4           A     We do.

5           Q     And one of the central things that you can do if it's  
6 alleged that phone calls have been made from a particular  
7 location is to try to obtain phone records and then the cell  
8 tower information to try to determine if a phone call was made  
9 from a particular device at a certain location; is that right?

10          A     Yes, sir.

11          Q     And it would be fair to say that her telling you that  
12 Mr. Elam had made a phone call while this was going on from  
13 that apartment would've been a very important piece of  
14 information, correct?

15          A     And I think it was documented in the cell phone, the  
16 evidence out of the cell phone a search warrant was done that  
17 calls were made and with the call number itself, but as far as  
18 getting call detail records to show where the call was made, I  
19 did not obtain those.

20          Q     So there are no records indicating from any devices  
21 that you have related to Mr. Elam a location of where phone  
22 calls were made, correct?

23          A     No, just the call log itself, sir.

24          Q     And you did not obtain any information related to  
25 alleged video recordings on cell phones; is that right?

1           A     No, we did not have any video recordings.

2           Q     How many cell phones did you take into custody in  
3 this investigation?

4           A     We took three.

5           Q     Now, according to Ms. Webster, she told you that it  
6 was the second male suspect who introduced a stun gun to this  
7 event; is that right?

8           A     Yes, sir.

9           Q     And again, just sequencing, she had indicated that  
10 that individual came over to the apartment after she had been  
11 blindfolded, correct?

12          A     It wasn't necessarily a blindfold because I did ask  
13 her about that, and she said the garment was placed over her  
14 head, and it obscured her vision, I would say mostly, but she  
15 could still see through it. I'd equate to if I was to take,  
16 you know, a T-shirt and put it over my head. You can still see  
17 some stuff outside of it, but you're not going to see clear as  
18 day unobstructed view, like, we have right here in the  
19 courtroom.

20          Q     Okay. Well, isn't it true that at some point she  
21 tells you that the second suspect allegedly placed the stun gun  
22 up to her eye, correct?

23          A     Yes, sir.

24          Q     And this was after she was blindfolded, correct?

25          A     Yes, sir.

1 Q And it was very clear from the way she told it to you  
2 that it was not Mr. Elam who had the alleged stun gun?

3 A No, it was the second suspect.

4 Q And it was very clear from the way she recounted what  
5 happened that the alleged second suspect is the one who had the  
6 broomstick and made threats to her with the broomstick; is that  
7 correct?

8 A Yes, sir.

9 Q And the way that you describe what she had told you  
10 was I believe you used the words that the second alleged  
11 suspect had tapped her on the rear end with the broomstick; is  
12 that correct?

13 A Yeah, on her buttocks.

14 Q And she -- she specifically told you that there was  
15 no penetration, correct, in your interview with her?

16 A She -- I asked her about that, and specifically, and  
17 she stated that she couldn't be sure because she thought that  
18 somehow during the ordeal she might have passed out and become,  
19 you know, not -- unconscious.

20 MR. ERICSSON: Okay. And, Counsel, I'm looking at  
21 page 36 of the interview.

22 BY MR. ERICSSON:

23 Q Do you recall her in response to your question, What  
24 do you mean started touching you with the broomstick, her  
25 responding, He -- I -- they didn't put no penetration, and then



1 you say, Uh-huh, and then her -- then she -- or she told you,  
2 but they act like they wanted to, you know, I thought they were  
3 going to do it. Do you remember her telling you that?

4 A Yes.

5 Q And then she told you that her pants and underwear  
6 were pulled down and that she was beaten with a belt, correct?

7 A Yes.

8 Q And how many times did she indicate to you that she  
9 was beaten with a belt?

10 A I believe it was in the area of, like, 20. I'd have  
11 to refer to my report to be sure, sir.

12 Q Oh, okay.

13 A I believe it was 20 or 25.

14 Q So if my notes indicate that she indicated it was  
15 over 25 strikes with a belt, does that sound accurate?

16 A That would be accurate. Yes, sir.

17 Q And she told you she had been tased with this alleged  
18 stun gun approximately six or seven times, right?

19 A That is correct.

20 Q Now, in your investigation it's important to try to  
21 document independent evidence of injuries; is that right?

22 A That's correct.

23 Q Did you personally or have somebody else look for any  
24 injuries consistent with tasing with the stun gun?

25 A I directed Crime Scene Analyst Grover to document her

1 injuries.

2 Q Okay. Did you personally observe either through  
3 photographs or looking at her yourself any injuries that you  
4 thought were consistent with someone been tased with a stun gun  
5 six or seven times?

6 A I did not.

7 Q Did you direct any of the crime scene analysts to  
8 attempt to document evidence of her being struck with a belt in  
9 excess of 25 times?

10 A I directed Crime Scene Analyst Grover to document her  
11 injuries. I think it was probably vague like that, not  
12 specific.

13 Q Okay. Do you remember her telling you that -- that  
14 she had -- that paramedics had seen the marks from the belt  
15 injuries?

16 A I do recall that, yes.

17 Q And I don't know if you were aware, but did you  
18 notice that there were AMR medical personnel there at the  
19 Smith's location when you were doing the interview?

20 A By the time that I arrived, they had already left.

21 Q Okay.

22 A I was informed by Officer Kroening that that occurred  
23 though.

24 Q So Officer Kroening had verified to you that AMR  
25 personnel had --

1           A     Attended to her, yes, sir.

2           Q     Sure. Thank you. Did you obtain any of the reports  
3 from the AMR analysis of her injuries?

4           A     No, I did not.

5           MR. ERICSSON: Your Honor, I believe that the State  
6 will stipulate to the admission of Defendant's Exhibit A, which  
7 is -- which has been previously marked as AMR records from this  
8 event.

9           THE COURT: Any objection to A, State?

10          MS. LUZAICH: No. No objection.

11          THE COURT: All right. We'll admit A then.

12                 (Defense Exhibit No. A admitted.)

13          MR. ERICSSON: Thank you, Your Honor.

14 BY MR. ERICSSON:

15          Q     Detective, I'm going to approach and give you a  
16 copy --

17          A     Okay.

18          Q     -- of the records that I'm holding here, which are  
19 Defense Exhibit A, and it's probably unlikely that you have  
20 seen -- I will submit to you that these are the records from  
21 the (unintelligible) AMR report from this incident, and I would  
22 ask you on the second page to read to yourself. There's a  
23 narrative section there in the middle of the page.

24          A     Okay. I see it.

25          Q     You can just read that to yourself, and then I'll ask

1 you some questions about it.

2 A I've read it, sir.

3 Q Okay. Detective, any indication from this report  
4 that you see of injuries consistent with the stun gun?

5 A No, sir, there's not.

6 Q And any reports from this narrative that there were  
7 injuries consistent with her being beaten with a belt?

8 A No, sir, there's not.

9 Q And specifically as to the allegations of the tasing,  
10 had she told you that she had been tased in her neck, legs and  
11 back?

12 A I believe she just told me it was all over her body  
13 in different spots.

14 Q Okay.

15 A I don't remember specifically if she told me body  
16 parts.

17 MR. ERICSSON: Okay. And, Counsel, I'm going to show  
18 on page 45 of the interview.

19 BY MR. ERICSSON:

20 Q Detective, I know this has been quite a while ago,  
21 and you've I'm sure done a lot of investigation since then. So  
22 I'm not expecting you to remember everything word for word. If  
23 you can just read this bottom part of page 5 -- excuse me,  
24 page 45.

25 A Where would you like me to start?

1 Q The bottom half.

2 A Okay. Read out loud or read to myself?

3 Q No. I'm sorry. Just read it to yourself.

4 A Okay.

5 Q See if that refreshes your memory.

6 A Okay. I've read, sir.

7 Q Okay. Does that refresh your memory as to whether

8 she had told you the areas of her body that she claims she had

9 been --

10 A It does.

11 Q -- struck with the stun gun?

12 A Yes, sir.

13 Q And what parts of her body does she say she had been

14 hit with the stun gun?

15 A The neck, legs and back.

16 Q Thank you. Is it accurate to say that towards the

17 end of the interview you were summarizing the event and making

18 sure that you understood what she was describing to you?

19 A Yes, sir.

20 Q And do you remember specifically asking her did they

21 ever sexually assault you at all?

22 A Yes, sir.

23 Q And do you remember what she responded to that

24 question?

25 A I believe it was no.

1           Q     And then did she also say, but I just thought they  
2 would?

3           A     Right. And then she also -- and to be fair, she also  
4 mentioned that she had blacked out. So she couldn't be certain  
5 about that.

6           Q     Okay. But she -- when she was asked if she was  
7 sexually assaulted, she told you that night that she just  
8 thought they would?

9           A     Yes, sir.

10          Q     Did you later find out the results of the sexual  
11 assault exam that was conducted on, I believe it was the  
12 12th of March?

13          A     I did from another detective.

14          Q     Okay. And were you aware of there being alleged  
15 inconsistencies with what she had reported to the sex assault  
16 nurse examiner?

17          A     That I can't be sure of.

18          Q     Did it ever come to your attention that she had  
19 according to the sex assault nurse examiner reported that she  
20 had been penetrated vaginally by a perpetrator's penis, finger  
21 and tongue?

22          A     Again, I can't be sure of that. I know another  
23 detective handled that aspect of the investigation, and I was  
24 given a brief summary of what had occurred.

25          Q     So as you sit here today, you don't recall if you had

1 heard that information?

2 A Correct.

3 Q When you were asked about your interview with her by  
4 Ms. Luzaich, she asked if you observed any evidence of her  
5 being under the influence, and you indicated, I believe, that  
6 you thought she may have been drinking; is that correct?

7 A Yeah, as I recall -- again, it was two years ago -- I  
8 do remember a scent of an alcoholic beverage on her breath.

9 MR. ERICSSON: Okay. Detective, thank you very much.  
10 I have no further questions at this time.

11 THE WITNESS: Thank you, sir.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MS. LUZAICH:

15 Q Detective Nelson, when you say scent of alcohol on  
16 her breath, that could very well have been post this traumatic  
17 incident, correct?

18 A Yes, ma'am.

19 Q Now, you indicated that you know that AMR had been  
20 there, but they were already gone when you left?

21 A That's correct.

22 Q Or when you, sorry, arrived?

23 A Yes, ma'am.

24 Q So you have no idea what if anything they did?

25 A That's correct.

1           Q     And the reports in front of you indicated that she  
2 refused to be transported. You know, she didn't want to.  
3 Correct?

4           A     That is correct.

5           Q     And, in fact, there is a last page that says refusal  
6 of service, and it indicates that it was signed by two  
7 paramedics and Arrie?

8           THE WITNESS: I'm reviewing the document, Your Honor,  
9 if that's okay?

10          THE COURT: Sure.

11          THE WITNESS: And that is correct.

12 BY MS. LUZAICH:

13          Q     When Mr. Ericsson was talking about the cell phones  
14 and the call detail records, you said that the examination had  
15 reflected a call log, so lists of phone calls that were made?

16          A     Yes, ma'am.

17          Q     And phone calls were, in fact, made during the time  
18 frame that Arrie alleged --

19          A     There was.

20          Q     -- from the defendant's phone, correct? And when you  
21 say you didn't get the call detail records, what specifically  
22 does that mean?

23          A     Well, request call detail records from the phone  
24 companies what they do is they not only give us the call logs  
25 of all the incoming and outgoing phone calls and text, but



1 additionally they let us know tower information, and what they  
2 typically would do is indicate somebody's presence in a  
3 specific area at the time that the call or the text message was  
4 placed.

5 Q Okay. And would that have helped you here?

6 A I mean, I think --

7 Q It wouldn't have given -- would it have --

8 A -- it could be overkill. You know, it's like we've  
9 got witnesses that say that everybody was there at this time.  
10 The victim saying it was there. Could I have done it? Sure.  
11 I don't think that it would have changed the facts and  
12 circumstances of the case.

13 Q It wouldn't have really added much to your  
14 investigation.

15 A Yes, ma'am.

16 Q And then finally talking about the videos, she had  
17 indicated that the girl, one or more of the girls were the ones  
18 that were videotaping, correct?

19 A She stated it was one female, yes, ma'am.

20 Q Were you ever able to identify who any of those  
21 females were?

22 A No, ma'am.

23 Q So when you took the phones from the apartment, you  
24 took them, I mean, hoping, but you weren't really expecting to  
25 find any of those videos in the phones in 6300 Lake Mead?

1           A     That's correct.

2           MS. LUZAICH: I have nothing -- oh. Sorry. I can't  
3 read my handwriting. I have nothing further.

4           THE COURT: Mr. Ericsson, anything else?

5           MR. ERICSSON: No. Thank you.

6           THE COURT: Do we have any juror questions for this  
7 witness?

8           All right, Detective, I see no additional questions.  
9 Thank you for your testimony. Please do not discuss your  
10 testimony with any other witnesses. Thank you.

11          THE WITNESS: Thank you, Your Honor.

12          THE COURT: And you are excused.

13          State.

14          MS. LUZAICH: Your Honor, the State rests.

15          THE COURT: All right. Defense.

16          MR. ERICSSON: Your Honor, the defense will not be  
17 calling any additional witnesses.

18          THE COURT: Defense rests?

19          MR. ERICSSON: Yes, Your Honor.

20          THE COURT: All right. Ladies and gentlemen we're  
21 going to go ahead then and take our lunch break. We will be in  
22 recess for the lunch break until 1:15.

23          During the lunch break you're reminded that you're  
24 not to discuss the case or anything relating to the case with  
25 each other or with anyone else. You're not to read, watch or

1 listen to any reports of or commentaries on the case, person or  
2 subject matter relating to the case. Do not do any independent  
3 research by way of the Internet or any other medium. Do not  
4 visit the location at issue. Do not conduct any experiments on  
5 any subject connected with this trial, and please don't form or  
6 express an opinion on the case.

7           Following our lunch break I will be reading to you  
8 the instructions on the law, and that will be followed by the  
9 closing arguments from the attorneys.

10           So if everyone will please place your notepads in  
11 your chairs and follow the bailiff through the double doors.

12                       (Jury recessed 11:48 a.m.)

13           THE COURT: Krystal has printed out two copies of the  
14 jury instructions for you guys. Do you guys want to just  
15 number those now?

16           MS. LUZAICH: That's fine.

17           THE COURT: Are you going to have any objections to  
18 any of them?

19           MR. ERICSSON: No, Your Honor. I've gone through  
20 them. No.

21           THE COURT: All right. So -- or we can go to lunch  
22 and just come back, like, five minutes earlier and do them  
23 then.

24           MS. LUZAICH: Whatever the Court wants.

25           THE COURT: All right. Let's be back then at 1:10.

1           And you have no objection to the verdict form; is  
2 that right?

3           MR. ERICSSON: Your Honor, as long as there hasn't  
4 been any changes to that -- I had seen what --

5           MS. LUZAICH: Here let me --

6           MR. ERICSSON: -- previously, and it was fine.

7           THE COURT: Okay. All right. So, Kenny, go get the  
8 copies of the jury instructions from Krystal.

9           MR. ERICSSON: Yeah. There you go.

10          THE COURT: We'll just hand you each a copy.

11          MR. ERICSSON: Yeah. The last time I saw the verdict  
12 form it was fine.

13          THE COURT: The verdict form normally comes with the  
14 jury instructions. So it should've been printed out just now.  
15 Is that going to give you enough time?

16          MS. LUZAICH: I don't know. I'll see. That's the  
17 problem with working at home is --

18          THE COURT: Right.

19          MS. LUZAICH: -- not everything saves properly.

20          THE COURT: All right. Take your lunch break, and  
21 we'll number them when we get back from the lunch break.  
22 Unless you want to do it now.

23          MS. LUZAICH: After is fine.

24          THE COURT: Okay. All right. Well, see you after.  
25 See you after lunch.

1 MR. ERICSSON: Yeah. Thank you.

2 THE COURT: 1:10.

3 (Proceedings recessed 11:50 a.m. to 1:13 p.m.)

4 THE COURT: -- in the order she wants them. Any  
5 objection, Mr. Ericsson?

6 MR. ERICSSON: Your Honor, not to the order, and I  
7 apologize for the oversight, and I brought this to  
8 Ms. Luzaich's attention shortly after we took the break. One  
9 area that I do have a dispute with the instructions is in the  
10 definition of a deadly weapon, more specifically in the  
11 instructions it indicates that if the jury were to find the use  
12 of a broomstick and/or a belt that that could constitute use of  
13 a deadly weapon, and I don't believe that the broomstick or the  
14 belt, and in the normal course I would also add the alleged  
15 stun gun because I don't think that in the normal course of its  
16 use that it results in death. So I do think that we need to do  
17 some narrowing of the instructions as to the deadly weapon.

18 THE COURT: Do we have an instruction -- are you  
19 asking -- oh, we have it in here. Are you asking for the one  
20 regarding his right not to testify?

21 MS. LUZAICH: It's in there.

22 THE COURT: It is in there.

23 MR. ERICSSON: Yes.

24 THE COURT: And are you requesting it?

25 MR. ERICSSON: Yes, Your Honor. Thank you.

1 THE COURT: Okay. All right. It's already in there.

2 MR. ERICSSON: Thank you.

3 MS. LUZAICH: Yes.

4 THE COURT: Ms. Luzaich, as to -- it might have been  
5 nice if we brought this up earlier.

6 MR. ERICSSON: And I apologize. I did not realize  
7 that in the body of the -- of the counts that those items were  
8 listed as deadly weapons.

9 MS. LUZAICH: I think that that -- oh, I'm sorry.  
10 Were you --

11 THE COURT: No it's your turn.

12 MS. LUZAICH: -- asking for my response?

13 THE COURT: Yeah.

14 MS. LUZAICH: I think that that would be the subject  
15 of a writ, and he could challenge whether or not it's a deadly  
16 weapon by way of a writ. He didn't do that. So I think that  
17 now it's a question of fact for the jury and --

18 THE COURT: Well, except if it's not a deadly weapon  
19 as a matter of law. Then I --

20 MS. LUZAICH: That's what I was getting to.

21 THE COURT: -- shouldn't be instructing them on it.

22 MS. LUZAICH: When we get to -- once the instructions  
23 are numbered, it will be Instruction No. 12, and under the law  
24 a deadly weapon means any instrument which if used in the  
25 ordinary manner contemplated by its design and construction,

1 maybe not, but it also says any weapon, device, instrument,  
2 material or substance which under the circumstances in which it  
3 is used, attempted to be used or threatened to be used is  
4 readily capable of causing substantial bodily harm or death,  
5 and I would suggest that a stun gun and a broom could  
6 definitely --

7 THE COURT: Yeah. I -- I'm --

8 MS. LUZAICH: A belt is on the cusp.

9 THE COURT: Yeah, I'm not sure --

10 MS. LUZAICH: I'm not going to argue that.

11 THE COURT: -- about a belt. I mean, I think the  
12 stun gun and definitely a broom, I mean, handle because, like,  
13 any kind of a wooden -- what's this broom made out of?

14 MS. LUZAICH: Wood.

15 THE COURT: Yeah, any kind of a wooden --

16 MS. LUZAICH: Object.

17 THE COURT: -- pole, if you're beating somebody with  
18 it could cause death.

19 MS. LUZAICH: Beating or inserting. You could  
20 rupture. I actually -- we had a case where an object like that  
21 was inserted into somebody's rectum, and it rupture -- it was a  
22 male. So obviously there was no vagina, but it ruptured, and  
23 he almost bled out. So it is possible.

24 THE COURT: Yeah. I'm just saying, like, beating  
25 somebody with a broom, I think that could cause death. I mean,

1 a wooden stick, which essentially is what a broom handle is.  
2 The belt, I mean, yes, you could kill somebody with a belt.  
3 You could strangle somebody with a belt. You could -- I think  
4 that's getting a little --

5 MS. LUZAICH: I'm not going to argue the belt, just  
6 for the record it's, like, I have it included under deadly  
7 weapon in my PowerPoint. I'm not going to argue it. It is --  
8 and don't get -- in the indictment language, it's and/or,  
9 and/or, and/or. So.

10 THE COURT: Mr. Ericsson.

11 MR. ERICSSON: I would request this for  
12 clarification, especially if the State's not going to argue it  
13 that it not be included in the instructions. I do think that  
14 that --

15 THE COURT: You mean you want to take it out of  
16 the -- out of Instruction 3?

17 MS. LUZAICH: That's the indictment instruction.

18 THE COURT: Right.

19 MS. LUZAICH: Just for his edification.

20 MR. ERICSSON: Yes, it -- yeah, if you're looking at  
21 under Count 2, is that where you're looking at? Page --

22 THE COURT: Well, wherever she's --

23 MS. LUZAICH: Well, all the counts.

24 THE COURT: All the counts where she said and/or.

25 Can we agree then just to take out and/or the belt?



1 MS. LUZAICH: That's fine. I don't care.

2 THE COURT: All right. So No. 1, Members of the  
3 jury.

4 2, If in these instructions.

5 3, An Indictment is but.

6 MS. LUZAICH: And just for the record.

7 THE COURT: Although the way it's pled out, I don't  
8 know that we can really edit it out right now because it's kind  
9 of also not necessarily pled as the deadly weapon. It's pled,  
10 you know, somebody is hitting her with this or that or -- okay.  
11 Because assault with a deadly weapon is the shotgun.

12 MS. LUZAICH: Correct.

13 THE COURT: So we're good with that. Unlawful use of  
14 a stun gun device, we're fine with that. Count 2, First-degree  
15 kidnapping. I think it's fine if Ms. Luzaich just argues that  
16 the deadly weapon is either the broomstick or --

17 MS. LUZAICH: Shotgun or the --

18 THE COURT: -- the stun gun.

19 MS. LUZAICH: Or the shotgun.

20 THE COURT: Or the shotgun, and so I think that's  
21 easier than trying to edit this whole thing right now because  
22 again, I mean, you could've done as a writ or -- and I think if  
23 she argues it, because part of this is pled as, like, the aider  
24 and abettor. You know, somebody's beating her with a belt or  
25 somebody's doing this or that. So it's kind of important for

1 that purpose as well. Does that make sense?

2 MR. ERICSSON: Yes. I --

3 THE COURT: You know what I mean? They're acting in  
4 concert. Maybe somebody has the stun gun and somebody else has  
5 the broom, and so it's --

6 MR. ERICSSON: Right and --

7 THE COURT: They're entitled to plead it as part of  
8 their aiding and abetting language, which is what they've done.

9 MR. ERICSSON: Yes. And I agree with that. It was  
10 just the -- in my mind the confusion that could arise that the  
11 belt and/or --

12 THE COURT: Well, Ms. Luzaich says she's not going to  
13 argue it. So I think if she doesn't argue it --

14 MS. LUZAICH: I'm not.

15 THE COURT: I mean --

16 MS. LUZAICH: If the case comes down to whether or  
17 not they find a leather belt is a deadly weapon, then we've all  
18 done a really bad job here.

19 THE COURT: All right. Right. I mean, there's a --  
20 there's a shotgun alleged.

21 MS. LUZAICH: Right.

22 THE COURT: So. All right. So 3 is, The indictment  
23 is but.

24 4 is --

25 MS. LUZAICH: And just for the record, I did take the

1 ex-felon in possession out of the language both in the heading  
2 and in the count and in the verdict form.

3 THE COURT: 4, A conspiracy is an agreement.

4 5, It is not necessary.

5 6, Each member of.

6 7, Where two or more persons.

7 8, Mere presence.

8 9, Every person who.

9 10, When it is impossible.

10 11, A person who.

11 12, Deadly weapon means.

12 13, In order to use.

13 14, If more than one.

14 15, Assault means.

15 16, It is unlawful.

16 17, Battery means.

17 18, In order for you to find.

18 19, A person who.

19 20, Physical force.

20 21, A person is not.

21 22, Submission is.

22 23, There is no requirement.

23 24, The elements of.

24 25, To constitute the crimes.

25 26, The defendant is presumed.

1                   27, It is a constitutional right.  
2                   28, You are here to determine.  
3                   29, The evidence which.  
4                   30, The flight of.  
5                   31, The credibility or believability.  
6                   32, A witness who.  
7                   33, Although you are to consider.  
8                   34, In your deliberation.  
9                   35, During the course of this trial.  
10                  36, When you retire.  
11                  37, If during your deliberation.  
12                  And 38, Now you will listen.  
13                  All right. If there's nothing else, Kenny can bring  
14 the jury in.  
15                  Just to let you guys know, it may take me till  
16 2:00 o'clock to read these.  
17                  MS. LUZAICH: Yeah.  
18                  THE COURT: If it does, we're going to take -- and I  
19 thought we would finish before lunch on all this. I scheduled  
20 a brief hearing on a TRO on a civil case for 2:00. So if I  
21 finish and it's right at 2:00 and the people are here, I'm  
22 going to take a break then, deal with the civil people, and  
23 then we'll do the closings.  
24                  How long is your opening, closing?  
25                  MS. LUZAICH: I have absolutely no idea, 20, 30.

1 THE COURT: Okay.

2 MS. LUZAICH: Not more than 30.

3 THE COURT: Okay. So then if we start your opening  
4 that's fine, too, and then we'll take a break, and I'll deal  
5 with the civil people.

6 Okay. Kenny, bring them in.

7 MS. LUZAICH: I had said that the defendant's  
8 statement where I highlighted what was to be taken out, I just  
9 ask that this be marked as --

10 THE COURT: A court's --

11 MS. LUZAICH: A court's exhibit, right.

12 THE COURT: Right. That's just a court's exhibit.

13 MS. LUZAICH: Thank you. And I showed it to  
14 Mr. Ericsson, how it was highlighted and what was taken out.

15 THE COURT: And they'll of course have a question if  
16 we could please give them a copy of the statement.

17 (Jury entering 1:24 p.m.)

18 THE COURT: All right. Court is now back in session.  
19 The record should reflect the presence of the State through the  
20 deputy district attorney Ms. Luzaich. The presence of the  
21 defendant Mr. Elam, along with his counsel Mr. Ericsson, the  
22 officers of the court, and the ladies and gentlemen of the  
23 jury.

24 Ladies and gentlemen, as I told you before the lunch  
25 break, both sides in this case have rested, and in a moment I'm

1 going to read to you the instructions on the law. Following  
2 the instructions on the law the attorneys will make their  
3 closing arguments. Because the State has the burden of proof  
4 in this case, they both open and close the closing arguments.

5 It is important that I read these written  
6 instructions to you exactly as they are written. I'm precluded  
7 from trying to expound upon them or clarify them in my own  
8 words in any way. You will have a number of copies of these  
9 written jury instructions back in the jury deliberation room  
10 with you so that you can refer to them throughout your  
11 deliberations. Each instruction has been numbered for ease of  
12 reference.

13 (Reading of the instructions not transcribed.)

14 THE COURT: Ladies and gentlemen, that concludes the  
15 instructions on the law.

16 Ms. Luzaich, are you ready to proceed with your  
17 closing argument?

18 MS. LUZAICH: Yes.

19 Can you put the --

20 THE COURT RECORDER: It should be on.

21 MS. LUZAICH: All right. I can't get it on there.  
22 Do you know how?

23 Kenny, can you get me on the --

24 THE COURT: Oh.

25 MS. LUZAICH: He did it last time.

1 (Opening statement for the State.)

2 MS. LUZAICH: I would first like to thank you all for  
3 your time, your attention, and especially your patience. Being  
4 jurors is absolutely a difficult job. It calls for many  
5 sacrifices, and those of us who are directly involved in this  
6 case find all of our cases to be important, but this case is  
7 important not only to us, but it's important to our criminal  
8 justice system. Without people like yourselves that are  
9 willing to take time out of your life and sit as jurors our  
10 system simply couldn't function. So for that we all thank you.

11 As this is a criminal case, in every criminal case,  
12 in every courtroom in every state in this country, the  
13 prosecutor has to prove to you two things. So there are two  
14 questions that you must answer. One, was a crime or crimes  
15 committed? And two, who committed those crimes?

16 Now, in this particular case, the who isn't all that  
17 difficult. First, Instruction No. 28 tells you -- and  
18 remember, like the Court indicated, you're going to have all of  
19 these instructions back in the deliberation room to go over.  
20 So I'm just going to kind of direct your attention to which  
21 ones that you should definitely look at, all of them, but some  
22 of them we focus on.

23 So Instruction No. 28 tells you that you are only  
24 here to determine the guilt or not guilt of the defendant.  
25 Anybody else is not for you to determine. That may one day

1 happen somewhere else, but today all you are here to do is  
2 determine whether or not the State of Nevada proved the case  
3 against the defendant.

4           So who in this case did it? Clearly if anybody it's  
5 the defendant, and we know that for several reasons. One,  
6 Arrie told you that it was the defendant. He called her into  
7 his apartment. He did these things to her inside his  
8 apartment, but not only that, remember, Annie told you about  
9 how she saw the defendant call Arrie down to his apartment.  
10 Arrie went to his apartment, and after Arrie left his  
11 apartment, Annie found her hogtied, but not only that, Carl  
12 Taylor told you about how he found Annie (sic) kind of rolling  
13 out of the door of the defendant Calvin Elam's apartment. So  
14 who committed whatever crimes are charged here? Clearly it's  
15 the defendant.

16           The other question that you must answer is what  
17 crimes did he commit. The Indictment as you'll see,  
18 Instruction No. 3 tells you all of the charges in the  
19 Indictment. The defendant is charged with conspiracy to commit  
20 kidnapping, first-degree kidnapping with the use of a deadly  
21 weapon, assault with a deadly weapon, unlawful use of an  
22 electronic stun device, battery with intent to commit sexual  
23 assault, sexual assault with use of a deadly weapon, and  
24 attempt sexual assault with use of a deadly weapon.

25           So of course lawyers can never do anything the easy



1 way. So I'm not going to first talk about the conspiracy to  
2 commit kidnapping first. I'm going to talk to you about  
3 first-degree kidnapping with use of a deadly weapon which is  
4 Count 2, and Instruction No. 9 tells you that every person who  
5 basically confines another person for the purpose of committing  
6 sexual assault or for killing or for inflicting substantial  
7 bodily harm is guilty of first-degree kidnapping.

8 We know that Annie was -- or Arrie, sorry, that Arrie  
9 was hogtied. We know that for lots of reasons. We know that  
10 because Arrie told you about it. We know that because Debra  
11 Fox, who was dropping off her baby and came downstairs, saw  
12 Arrie rolling up the alley, and she also was hogtied. We know  
13 because Carl Taylor told you that Arrie when he came -- she  
14 came out of the defendant's apartment and was rolling up the  
15 streets was hogtied. We know that also because Annie told you  
16 that when she saw Arrie in the alley she was hogtied, and, in  
17 fact, Carl and Annie had to help and untie her.

18 Remember we talked a lot during jury selection about  
19 perceptions. So I know you're wondering, well, Arrie said she  
20 was tied with her hands behind her back and her feet behind her  
21 back. Some of the witnesses said hands in front, feet in  
22 front. Does it matter? Does it matter whether her hands were  
23 in front of her or behind her? It doesn't because either way,  
24 the defendant hogtied her. Perceptions -- did they actually  
25 see her hands in front of her or behind her? Like I said, it

1 doesn't matter. We know that she was hogtied. That  
2 demonstrates the kidnapping.

3           We also know because we saw on the photographs -- and  
4 as you were looking at the photographs that day, unfortunately  
5 all this great equipment that between the State of Nevada and  
6 the Court's have, but when you take the pictures in the back,  
7 you'll see both Brad Grover and Arrie talk to you about on her  
8 wrists there were the red marks from being tied. The nurse  
9 Jeri Dermanelian talked about she would have liked to have seen  
10 her that day because she saw indentations on her wrist. You  
11 saw the injuries to her legs. All of this demonstrates the  
12 fact that she was hogtied, kidnapped.

13           So for what purpose? Was it to inflict substantial  
14 bodily harm? To kill her? To sexually assault? You heard the  
15 defendant was angry she said. When he brought her into the  
16 apartment, everything was fine, and then all of a sudden his  
17 body language changed. His demeanor changed. He got loud. He  
18 got mean, and ultimately she was beat. She was beat with a  
19 belt. She was beat with a broom. She was beat with a -- or  
20 she was stunned. She had the shotgun in her mouth. What do  
21 you think the purpose was? The purpose was to either inflict  
22 substantial bodily harm or kill her, and then you heard about  
23 the broomstick. So first -- first-degree kidnapping was met.

24           In order to -- you must also decide whether or not a  
25 deadly weapon was used in the commission of the first-degree

1 kidnapping. You have several to choose from. I mean, I  
2 suggest that the shotgun alone is sufficient. He shoved the  
3 shotgun in her mouth at her face, in her face, whichever. The  
4 kidnapping was accomplished with use of a deadly weapon.

5 Instruction No. -- sorry -- 12 defines for you --  
6 sorry -- we heard about, like I said, the shotgun to her mouth.  
7 We saw evidence of it. We saw the shotgun in the apartment.  
8 We saw the broomstick in the apartment. Instruction No. 12  
9 defines for you what is a deadly weapon, and it tells you --  
10 sorry. There it is. Instruction No. 12 defines for you a  
11 deadly weapon, and it tells you that any instrument which if  
12 used in the ordinary manner contemplated by its design and  
13 construction, so a shotgun, the ordinary manner contemplated by  
14 its design and its construction. If you use a shotgun, clearly  
15 that's a deadly weapon, but it's also likely to cause death or  
16 substantial bodily harm.

17 But Instruction No. 12 also tells you that any  
18 weapon, device, instrument or material which used under the  
19 circumstances in which it is used, attempted to be used or  
20 threatened to be used is capable of causing death or  
21 substantial bodily harm. So like I said -- I'm getting better  
22 at the clicker. Just it's going to take a minute -- we have  
23 the three options. Clearly the shotgun shoved into her mouth.  
24 The shotgun was found. The broomstick was found.

25 A shotgun, like I said, the way it's designed is

1 going to cause death or substantial bodily harm, but the broom,  
2 think about it. You can beat somebody with a broom. You can  
3 cause death or substantial bodily harm. You insert a broom  
4 into a rectum, you can clearly cause death or substantial  
5 bodily harm. Imagine if something is inserted all the way.  
6 Anything can rupture or bleed out, anything along those lines.

7           And Instruction No. 13 tells you that in order to use  
8 a deadly weapon there need -- there doesn't have to be conduct  
9 that actually produces death or substantial bodily harm. It  
10 only has to produce a fear of harm or force in order to use the  
11 deadly weapon. So he doesn't have to kill her. He doesn't  
12 have to shoot her. He doesn't have to beat her to death in  
13 order for the use of a deadly weapon to apply to the charge.

14           Additionally, Instruction No. 1 tells you that if  
15 more than one person commits a crime and one of them uses a  
16 deadly weapon, each person can be convicted of the use of a  
17 deadly weapon, and why is that important? When Arrie sat here,  
18 she described for you that she thought that it was the  
19 defendant who held the stun gun, who beat her and put it up to  
20 her, who held the broom and beat her with the broom. She did  
21 tell the detective that it was the other individual who held  
22 the stun gun who touched her with the stun gun, who beat her  
23 with the broom.

24           But either way because they are both liable for the  
25 crime legally, whichever one of them is holding it, the

1 defendant is still responsible for it. The defendant has still  
2 used it due to the way the defendant is charged, and remember  
3 when you were listening to the charges, both at the beginning  
4 of the trial and today when the Judge was explaining it to you,  
5 it kept saying the defendant is responsible under the following  
6 theories of liability, one, that he did it himself, that he  
7 pushed the shotgun in her mouth, that he hit her with the belt  
8 and broomstick, that he used the stun gun, either that way; or  
9 he is also liable under the aider and abettor theory of  
10 liability; or he's also liable under the conspiracy theory of  
11 liability.

12           And what -- sorry -- Instruction No. 4 tells you is  
13 that a conspiracy is an agreement or an understanding between  
14 two people to commit a crime. The defendant to be guilty of it  
15 must intend for the act and the crime to occur. So if more  
16 than one of -- oops, sorry --

17           Instruction No. 5 tells you that it is not necessary  
18 in proving a conspiracy to show a meeting of the conspirators.  
19 You don't have to show a meeting or the making of a formal  
20 agreement. You don't have to have the two of them sitting down  
21 and saying hey, let's go to the store. We're going to agree to  
22 rob the store owner, take the money and then go and spend it.  
23 You don't have to have an actual meeting. All you have to do  
24 is show by direct or circumstantial evidence that some sort of  
25 agreement occurred.

1           And think about it. The phone call, he calls his  
2 friend, says, I got one of them. Come on over. There is your  
3 conspiracy. The defendant is involved regardless because he's  
4 the one that brings her there, holds her there, ties her up and  
5 begins the whole thing, shotgun in mouth, but once the other  
6 person gets there, the unknown conspirator, who we don't know  
7 who he is yet, once that person gets there, whatever he did,  
8 the defendant is also liable because the defendant and he have  
9 this unspoken agreement. It's the defendant's idea. Come  
10 over. I got one.

11           Each member of a conspiracy, Instruction No. 6 tells  
12 you, is liable for the act of each other. So everything the  
13 other person did the defendant is also liable for. Remember I  
14 told you there were three different theories: That he  
15 personally did everything, that he either conspired with the  
16 other individual or that he aided and abetted.

17           Instruction No. 7 tells you where two or more persons  
18 are accused of committing a crime together -- and it's Arrie.  
19 It doesn't have to be the charging document. Remember, Arrie  
20 accused the two of them of doing this together. Their guilt  
21 may be established without proof that each one personally did  
22 every act constituting the offense charged.

23           So finally, Instruction No. 14 tells you that an  
24 unarmed offender uses -- and like I said, I'm talking about all  
25 of this because although Arrie told you that the defendant did

1 all that, she had told the detective that it was the other  
2 individual that had the stun gun. So an unarmed offender uses  
3 a deadly weapon when the unarmed offender is liable for the  
4 offense, so specifically, you know, the stun gun. The  
5 defendant is liable for the offense. He's the one that brought  
6 her in there, tied her up. The other person is liable for the  
7 offense, is armed with the weapon and uses the weapon. So if  
8 you believe that it was the other person who used the stun gun,  
9 the defendant is still liable for the use of that deadly  
10 weapon.

11 So then just to come back to the conspiracy to commit  
12 kidnapping, there was a conspiracy to commit kidnapping in that  
13 the defendant called up his friend, said, Come on over, I have  
14 one of them. Okay. So that's Counts 1 and 2.

15 Count 3, the assault with a deadly weapon,  
16 Instruction No. 15 defines for you that assault means  
17 intentionally placing another person in immediate bodily harm  
18 or of attempting to use physical force against another person.  
19 What do we have here? We have -- sorry -- he took the shotgun.  
20 He put it in her mouth. He held at her. He threatened her.  
21 He scared her to death. Remember Arrie described for you and  
22 how she was absolutely scared to death while she was sitting on  
23 the ground hogtied, and he breaks out the shotgun. That's an  
24 assault with a deadly weapon.

25 Count 4, unlawful use of an electronic device.

1 Instruction No. 16 describes it -- sorry -- for you, and  
2 basically just the device that emits an electrical charge.  
3 Remember how Arrie described for you that there was a thing,  
4 held it up to her eye for a minute. She could see it through  
5 the pillowcase, and she could see the current going back and  
6 forth. That emits a current, and it's designed to disable a  
7 person permanently or temporarily. We know that anything with  
8 electricity if put up to you can disable you temporarily or  
9 permanently. So guilty of Count 4 for possession of an  
10 electronic device.

11 Now, before you get to the sexual assault, he's  
12 guilty of the kidnapping. He can also be guilty of an  
13 associated offense -- that's what the law calls it -- of sexual  
14 assault if certain conditions are met. In this particular  
15 situation, Instruction No. 18 describes it for you, and it says  
16 that he can be guilty of both the kidnapping and the sexual  
17 assault that occurs during the kidnapping if, and when you look  
18 at No. 4, the victim is physically restrained, and such  
19 restraint substantially increases the risk of harm.

20 So think about it. She's lying on the floor. She's  
21 tied up. She's got something over her head. She can't go  
22 anywhere because he's there. Then before you know it the other  
23 guy and whatever the girls are are there, and they break out  
24 weapons. There's the shotgun there. There's the stun gun.  
25 There's the broom. So she is physically restrained, and the



1 fact that she is physically restrained substantially increases  
2 her risk of potentially death or substantial bodily harm  
3 because she can't get out. There's nowhere she can go while  
4 she's tied up and the thing is over her head while they're  
5 there and all these weapons are there. Therefore, you can find  
6 him guilty of the associated sexual assault as well.

7 And Instruction No. 19 defines for you, Anyone who  
8 subjects another person to sexual penetration against the  
9 person's will is guilty of sexual assault. Instruction 19 goes  
10 on to define sexual penetration for you, and this is again,  
11 this is where we talked a lot about in jury selection what if  
12 you don't agree with the law, are you going to follow the law?

13 You know, everybody thinks that the sexual assault is  
14 where somebody, you know, a guy grabs a girl, throws her down,  
15 tears her clothes off, forces his penis into her vagina. A  
16 broom it can be the object of a sexual assault. Instruction  
17 No. 19 tells you that any object manipulated or inserted into  
18 the genital or anal opening of another is sexual assault. And  
19 I'm sorry.

20 And what Instruction No. 19 tells you is that the  
21 penetration only need be however slight, and that's why when I  
22 was asking the nurse, you know, the difference between legal  
23 penetration and the penetration that anybody else thinks you  
24 would think that an object would need to be inserted all the  
25 way inside for there to be penetration. Legally it need only

1 break the plane, so however slight. When she described how,  
2 you know, between her butt cheeks, legally that is penetration.

3 MR. ERICSSON: I would object to that description of  
4 the legal definition just between the butt cheeks.

5 THE COURT: Well, ladies -- in terms of the legal  
6 instructions, the instructions speak for themselves, and as I  
7 said, I don't expound on them, nor can the lawyers. They can  
8 argue that, you know, the facts fit those legal instructions,  
9 and you can consider her argument for that, but she can't  
10 restate the instructions. As I said, the instructions speak  
11 for themselves.

12 Go on, Ms. Luzaich.

13 MS. LUZAICH: Thank you.

14 And what Arrie described for, maybe not to you here  
15 because it was difficult to get information from her, but she  
16 was very clear when she talked to Detective Ryland, between her  
17 cheeks and up to her anally the hole, right up to the hole. So  
18 you can find legal penetration based on that. But also  
19 everybody thinks that it's all about sex.

20 Sexual assault is not about sex. It's about power  
21 and control, and that's why I asked, whether you agree with the  
22 law or not, every single one of you promised that you were  
23 going to follow the law. So sexual assault doesn't have to be  
24 about sex. It's just about penetration without consent, and  
25 Arrie very clearly said she did not consent to any of that.

1           Instruction No. 20 tells you that physical force is  
2 also not an element of sexual assault. Remember power and  
3 control. It's penetration without consent. There does not  
4 need to be any force. She could have just stood there and  
5 said, no, don't do that, and that is sufficient. There does  
6 not have to be force.

7           Instruction No. 23 tells you that there is no  
8 requirement that the testimony of a sexual assault victim need  
9 be corroborated. If you believe her beyond a reasonable doubt,  
10 that is all you need. So when you heard from the nurse and the  
11 nurse says no, I didn't find any blunt force trauma; I didn't  
12 find lacerations or anything in her rectal, genital, whatever  
13 region; you can still find him guilty of sexual assault. There  
14 does not need to be physical evidence for there to be a sexual  
15 assault. If you believe Arrie beyond a reasonable doubt, that  
16 is all you need is Arrie saying that is what happened. That is  
17 what Instruction No. 23 tells you.

18           Attempt sexual assault, Instruction No. 24 defines  
19 for you, tells you the elements of an attempt are the intent to  
20 commit a crime, the performance of an act towards its  
21 commission and the failure to consummate its commission. So  
22 basically if you don't believe that there was penetration, so  
23 you don't think that between the butt cheeks and right up to  
24 the hole is sufficient for legal penetration, you can find him  
25 guilty of attempt sexual assault because it did not go all the

1 way in, but clearly the broomstick went up to her butt between  
2 her cheeks, up to her cheeks, however you want to describe it.  
3 That is an attempt sexual assault if you're not finding the  
4 actual penetration.

5 And then finally, battery, it's Count 7, battery with  
6 intent to commit sexual assault. Instruction No. 17 defines  
7 for you first that battery is a wilful and unlawful use of  
8 force or violence upon the person of another. So if -- that's  
9 a battery. Unlawful -- well, if that was a person. Unlawful  
10 use of force or violence upon the person of another.

11 Instruction No. 17 continues that anyone who commits  
12 a battery on another with an attempt to commit a sexual assault  
13 commits the crime of battery with intent to commit sexual  
14 assault. So the putting her down, whacking her with the  
15 broomstick and then putting the broomstick up at her butt,  
16 battery with intent to commit a sexual assault.

17 So those are all of the charges. What you have to do  
18 is decide what happened here. And one interesting piece of  
19 evidence that you have and Instruction No. 30 talks to you  
20 about it is the flight of a defendant. If a defendant flees  
21 with the intent to get away, you can use that as evidence of  
22 his guilt. That alone is not enough to convict him beyond a  
23 reasonable doubt Instruction No. 30 says, but you can  
24 absolutely use that as evidence of his guilt.

25 It goes on to say that the essence of the flight is

1 his going away on purpose to get away for the purpose of  
2 avoiding apprehension or prosecution. So think about what we  
3 heard. We heard that after they're able to get Arrie undone  
4 that the defendant is back there, and he's with other  
5 individuals, and he's laughing. He's looking right at them and  
6 laughing is what Annie told you. We know that he left after  
7 that.

8 We know that he left and went to Joanique Mack's  
9 apartment. We know that for a couple of reasons. One, that's  
10 where he's found hours later. We know that Joanique came to  
11 1108, to the area, and we know that because she was interviewed  
12 by Detective Cardenas. Did he send Joanique there to find out  
13 what was going on because there's all these police there for  
14 hours? We know that Detective Cardenas called him on the  
15 phone. He admitted that he knew Arrie. He was offered to come  
16 back and, you know, hey, tell us what happened. He declined  
17 their invitation. Flight, flight to avoid prosecution.

18 So here's the bottom line -- credibility. Who are  
19 you going to believe and why? Instruction No. 31 tells you, it  
20 gives you some things that you can consider. Now, obviously  
21 you can consider anything you (unintelligible), anything you  
22 want. This gives you just a little bit of guidance, and it  
23 tells you that you should look at things like the manner of the  
24 individuals on the stand, their relationship to the parties,  
25 their fears, their motives, interests or feelings -- why are

1 they saying what it is they're saying -- their opportunity to  
2 observe, and the reasonableness of their statements and the  
3 weakness or strength of their recollections.

4           So first, Arrie. First of all -- I'm working on this  
5 clicker -- Arrie describes for you that the shotgun is shoved  
6 in her mouth, and here we see the bruise. Now, the defense  
7 asked the nurse could that have been a crack pipe, a burning  
8 crack pipe. Well, you know, she said there is this little tiny  
9 white line, little tiny white line right there, but all of that  
10 bruise, she said no. All of that is a bruise, and all of that  
11 has nothing to do with a crack pipe. All of that she said is  
12 consistent with, yes, a shotgun being shoved in her mouth or at  
13 her mouth. And look, lo and behold they find the shotgun in  
14 the defendant's apartment. So Arrie is corroborated.

15           Not only that, but we find in the dumpster all the  
16 items, and we heard from Carl and Annie that the defendant  
17 actually picked up those items that they cut off her and threw  
18 them in the dumpster. We found Arrie's shoe. I mean, think  
19 about it. Pretty much everything Arrie tells you is  
20 corroborated not only by independent witnesses, but by physical  
21 evidence.

22           Arrie described for you while she was in the kitchen  
23 that he bound her with the wires. We found the wires, and they  
24 were described to you as, like, the wires from the back of a  
25 TV. So look at the picture back there. That's exactly what it

1 is, the wires from the back of a TV.

2           She described that he shoved the toilet paper or  
3 paper towel or something like that in her mouth. Oh, look,  
4 there it is in the kitchen right next to the packaging tape  
5 that she described he put around her mouth, and that Carl  
6 Taylor and Annie found on her mouth after they took the hood  
7 off of her. She described that she was beat with a belt. Oh,  
8 look, there's a belt. How many people keep a belt on the  
9 counter in the kitchen by the frying pan? There's the broom  
10 that she described. Everything that Arrie described for you is  
11 right there, everything.

12           Think about the people also that you heard from.  
13 Okay. Annie is her friend, but is Annie going to lie for her?  
14 Like, what would Annie have to gain by making any of this up?  
15 And you heard from Annie this morning. She was scared to  
16 death. She thought that Arrie was going to die. She was  
17 gasping for breath. She thought she was going to die. It was  
18 something that you never expect to see, that you would see on  
19 TV or something like that.

20           Carl Taylor -- Carl's not even Arrie's friend. He's  
21 just somebody from the neighborhood. What does he have to gain  
22 by describing all of this or by lying about any of it. So  
23 literally, everything Annie tells you is corroborated.

24           But the big thing, the DNA, how did Annie's --  
25 Arrie's DNA get on the shotgun barrel unless it happened

1 exactly the way she described? And it's not, you know, do we  
2 think maybe it is. One in 16.9 quintillion. I can't even  
3 remember how many zeros she said that was, 12 or 13. I only  
4 gave you 9 here.

5           There is no reason for Annie to make this up.  
6 There's no reason for Carl Taylor to make this up. There's no  
7 reason for Debra Fox to make this up, and truthfully, there's  
8 no reason whatsoever for Arrie to make this up. You don't have  
9 to like Arrie's lifestyle. You don't even have to like Arrie,  
10 but you do need to believe her because everything she told you  
11 is corroborated.

12           We've all heard the adage truth is stranger than  
13 fiction. This case absolutely demonstrates that for you  
14 because everything that you heard from there you get to see,  
15 and based on that, based on the evidence we would ask you to  
16 find the defendant guilty of all the charges.

17           Thank you.

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

19           Mr. Ericsson, are you ready to make your closing  
20 argument?

21           MR. ERICSSON: Your Honor, may we approach?

22           THE COURT: Sure.

23           (Conference at the bench not recorded.)

24           THE COURT: Ladies and gentlemen, we're going to take  
25 a quick break until -- let's go till 2:40.



1           During the brief recess you're reminded that you're  
2 not to discuss the case or anything relating to the case with  
3 each other or with anyone else. You're not to read, watch or  
4 listen to any reports of or commentaries on the case, person or  
5 subject matter relating to the case. Do not do any independent  
6 research by way of the Internet or any other medium, and please  
7 don't form or express an opinion on the trial.

8           Please place your notepads in your chairs. Follow  
9 Officer Hawkes through the double doors.

10                       (Jury recessed 2:25 p.m.)

11           THE COURT: You guys can take him in the back.

12                       (Proceedings recessed 2:26 p.m. to 2:50 p.m.)

13                       (In the presence of the jury.)

14           THE COURT: All right. Court is now back in session.

15           And, Mr. Ericsson, are you ready to proceed with your  
16 closing argument?

17           MR. ERICSSON: Yes, Your Honor. Thank you.

18                       (Closing argument for the defense.)

19           MR. ERICSSON: Ladies and gentlemen, we've come to  
20 the point now where it's almost your turn to start going  
21 through this evidence and reviewing it together. I sincerely  
22 hope that you have been able to hold off from coming to any  
23 decisions until we close here and then you go back and start  
24 deliberating.

25           Now, on behalf of Mr. Elam, I'd like to, as did

1 Ms. Luzaich, want to express our gratitude for you taking the  
2 time to be here. It's obvious to us that you've been paying  
3 attention, and you've been taking this case very seriously.

4 Ms. Luzaich indicated that truth is sometimes  
5 stranger than fiction, and I certainly agree with that, and I  
6 am now going to go through -- and a lot of times questions that  
7 attorneys ask may not -- the significance or relevance of them  
8 may not really be apparent as you're hearing it from the  
9 witnesses, but I want to go back through the evidence as we  
10 know it from what's been presented here.

11 And I think that once we do that it's going to be  
12 clear that Ms. Webster is simply not a credible witness, and  
13 I'm going to go through the things, the physical things that we  
14 are able to match up or not match up with her story as well as  
15 the things that came out from the different times that she  
16 talked to different people, and many, many central  
17 inconsistencies that she had.

18 Now, it was brought up that, you know, it really  
19 doesn't matter whether she was tied in the front or tied in the  
20 back, you know, that overall you should believe her story. I  
21 will suggest after we go through all this evidence that it will  
22 be clear that the reason there are all these variations from  
23 her story is she could not keep it straight.

24 We know from her interview with Detective Ryland, she  
25 told Detective Ryland that she'd been smoking meth, that she'd

1 been doing spice during the approximate time period, I think  
2 she had told Detective Ryland four or five days before that  
3 interview, and then we know from Detective Nelson that he  
4 thought she may have been under the influence of alcohol when  
5 he was doing his interview with her on the day of the alleged  
6 incident, and we also know from the sex assault nurse examiner  
7 that two days later that she did not want to have the  
8 urinalysis done when she was there for the examination.

9           Now, I want to try as best I can to go through  
10 chronologically of the evidence and her story of what happened.  
11 We heard from the -- from the first investigating officer, and  
12 he signed, witnessed down at the bottom patrol Officer  
13 Kroening, that he had Ms. Webster prepare a handwritten  
14 voluntary statement about what had happened, and if you  
15 remember, he verified that in her statement she did not mention  
16 anything about a gun being involved in this statement that she  
17 made allegedly within a couple of hours of this event, no  
18 mention whatsoever of a gun in the first thing that was  
19 provided to that patrol officer.

20           A couple of things that came out from both Detective  
21 Nelson, he verified that when he interviewed her, when he was  
22 trying to ask about injuries and things, that she had told him  
23 AMR had -- she had been seen by the AMR personnel and that they  
24 had seen the injuries from the whippings. She also verified  
25 that through Detective Ryland, the same thing. She said

1 paramedics had seen evidence of the whipping injuries.

2           And again I'm going to go through a lot of minutia, a  
3 lot of detail, but we are in the position as the defense of  
4 trying to as best we can prove a negative, which is almost  
5 impossible to do sometimes. That is why the State has the  
6 burden of proof in a case like this, but I think as we go  
7 through you will see that proving a negative -- excuse me -- is  
8 possible from the evidence that we have.

9           So I want to show you the records from AMR. They  
10 were briefly shown to Detective Nelson. And this is -- you'll  
11 have this back with you. It's the Defense Exhibit A. I want  
12 to show you this section that we had Detective Nelson go  
13 through. It's on the second page, and again this is in context  
14 with her telling the investigating officers that she had shown  
15 the injuries to her rear supposedly to the paramedics. And I  
16 want to go through the narrative in full.

17           EMS called out for female complaining that she had  
18 been tied up and assaulted. On arrival, R43 was speaking with  
19 the female, requested that we enter the ambulance for privacy.  
20 So she went into, according to this, went into the ambulance  
21 with the paramedic personnel. Female states that she was  
22 hogtied and hit and tased multiple times.

23           Again it's important to note she mentions nothing  
24 about having a shotgun placed in her mouth or anything about a  
25 shotgun.

1           Female states that she does not feel that she has any  
2 injury that requires immediately medical attention and will  
3 speak with Metro and have her friend take her later if  
4 necessary. Female states that she is mainly concerned with  
5 Metro catching the guy who did this and him not getting away  
6 with it and retaliating or harming her again. Abrasions to  
7 bilateral knees were the only obvious visible injuries noted.

8           And you can go through and read the rest of that, but  
9 that is consistent with the nurse examiner indicating two days  
10 later on the 12th when she did a full body examination of  
11 Ms. Webster with that special light that helps to determine  
12 whether there are injuries to the body, that she did not see  
13 any injuries consistent with having been, according to what she  
14 had told detectives, whipped in excess of 25 times in the  
15 buttocks area with a belt, and equally important from every  
16 witness you heard up there, no evidence of Taser injuries from  
17 the allegations that she had been tased six or seven times in  
18 her neck, in her back, on her legs, no evidence of that.

19           And again the only thing that we can show is what  
20 these outside witnesses have, but I would ask that you pay  
21 close attention to the paramedics and what on the day of that  
22 examination that was done in privacy in that vehicle what they  
23 found, and that was evidence of injury to -- abrasions to her  
24 knees.

25           I know we spent a lot of time going through questions

1 with the nurse examiner, and I would submit to you that she is  
2 a very thorough, professional individual. She said she had  
3 done in excess of 6,000 examinations in her career, and she was  
4 very clear from her examination that Arrie had reported to her,  
5 quote, she states, That this force -- that this male forced  
6 penis, finger and tongue to her vagina, and that summary was  
7 from the checklist that she went through with Arrie under the  
8 section of penetration.

9 I would suggest to you that at some point when Arrie  
10 is thinking about what she has gotten herself in, the  
11 allegations that she has made against somebody who lives in the  
12 neighborhood she lives in, you heard from Annie that Annie --  
13 it sounded like Annie was somewhat afraid of Mr. Elam when she  
14 was worried about Arrie even going down to talk with him, that  
15 Arrie realized that she had bitten off something very, very  
16 big, and because of that, her allegations increased. It's no  
17 longer that they tapped me on my rear, and I was scooting  
18 around, and I thought that they were going to possibly assault  
19 me with the broomstick. It's now that I was assaulted with a  
20 penis, with a tongue with a finger, that she's telling the  
21 nurse examiner two days later.

22 Very, very important from the findings of the nurse  
23 assault examiner, no physical corroboration whatsoever of  
24 injuries consistent with that type of assault, either an  
25 assault with a broom or an assault with a penis or a finger or

1 a tongue; no evidence of blunt force trauma or other injuries  
2 to either the vaginal or anal area of Ms. Webster was found by  
3 the nurse examiner.

4 The detectives had indicated that they asked the  
5 CSAs, the crime scene analysts to obtain a number of items for  
6 testing, and there's one area that comes back where they think  
7 that they have found a match of DNA, and Ms. Luzaich has gone  
8 through it, and I want to talk about it in quite a bit of  
9 detail, that being the alleged match of Arrie's DNA with the  
10 shotgun. I certainly am no DNA expert, but I wanted to go  
11 through with her, and we'll start with things that didn't  
12 match.

13 From the color-coded chart that was put together for  
14 this case, and it's Exhibit 73, they did the Lab Item 3, the  
15 swabbing from the ridge areas of the grip, ridge areas of the  
16 sides of the shotgun and the trigger on the shotgun. So I  
17 think it's -- a couple of things are very critical from this.  
18 One is that even though they allege that Mr. Elam had put the  
19 shotgun -- had been holding the shotgun, put it in Arrie's  
20 mouth, and Mr. Elam indicated that, yeah, there's a shotgun  
21 there, I've handled that shotgun, there is no match to even him  
22 from what the -- the swabbing that they did on the shotgun.  
23 It's -- it doesn't match alleles. I don't know how much you  
24 followed what she was going through, but those areas under Item  
25 3 did not match either Calvin Elam or Arrie Webster.

1 But critically for an analysis of how accurate this  
2 DNA evidence is that's being presented to you, and we went  
3 through this in some detail with her testimony, but the CSA  
4 indicated that for this testing below 200 RFU unsuitable for  
5 comparison. Now, in the chart that she prepared for the swab  
6 of the end of the barrel, it was Lab Item No. 8, and this is  
7 Exhibit No. 72.

8 I think the State alleges this huge number that  
9 there's no, you know, 1 in 16.9 quintillion I think is the  
10 number that was used, but to get to that, the State has used  
11 numbers, a RFU number below 200, and most importantly it  
12 doesn't even say what the bottom number is that was used, and  
13 if you -- and they highlight the sections under 200 RFU in red,  
14 and when you look at all of the sections that had to be filled  
15 in to get this comparison in red, the vast majority of the  
16 different chromosome points are in red on this sample.

17 I would suggest to you that the State deciding which  
18 ones can be -- have to be above 200, which ones can be below  
19 200 and having such a long list of sections under 200 that we  
20 don't know what they match to is not conclusive that there's a  
21 match in any way to the shotgun.

22 And when I went through the testimony of the  
23 detectives, especially Ryland about when she first interviewed  
24 her in the follow-up of what had happened, when she described  
25 how Annie (sic) told her that she was called over to the house;



1 she went in; Mr. Elam's voice became loud; he told her to get  
2 on her knees, put her hands behind her back; he tied her up,  
3 and he blindfolded her and put something in her mouth, it  
4 wasn't until quite a bit later in that testimony when the  
5 detective goes back and says, well, something to the effect,  
6 well, was there a gun? Oh, yeah. Oh, yeah. There was a gun.

7 That multiple times when she described what had  
8 happened, she goes through the steps that she goes in, his  
9 voice elevates, he tells her to get on her knees; she does; put  
10 your hands behind your back; he ties her up, gags her and  
11 blindfolds her, that is consistent with the handwritten  
12 statement she makes shortly after the incident, doesn't mention  
13 a gun.

14 It seems that at some point the detective is --  
15 Detective Nelson that is -- is quite certain that they have the  
16 right suspect, that being Calvin and decides that he doesn't  
17 need to do follow-up testing on phone records, things like  
18 that, and he indicates that when I asked him questions about  
19 other investigations, don't you get cell phone tower records  
20 from the phone company, things like that so you can identify  
21 timing of when people are where, located with their cell  
22 phones, and he says that they do that in other cases, but he  
23 didn't feel it necessary in this case, and it wasn't done.

24 He verified that he had taken three cell phones into  
25 evidence and had run some type of testing on those cell phones,

1 and I would submit to you that we didn't see records or  
2 timestamps, things like that being presented as far as the cell  
3 phone evidence.

4           The suggestion that Arrie, or Ms. Webster, can come  
5 in here and earlier saying, Oh, yeah, it was Suspect No. 2 that  
6 did this, all of this stuff, various things and then come in  
7 here at trial and say that, no, it was Calvin that did  
8 everything. Calvin did all the tasing. Calvin did all the  
9 beating. Calvin did all the broom threats. I would suggest to  
10 you that that inconsistency is material. It goes to her trying  
11 to hold together a story that she cannot hold together, that  
12 that level of detail is critical to analyze as if her story  
13 holds up.

14           What we do know, and part of this comes from the  
15 interview with Calvin, he agreed to talk to the police  
16 officers. He was in custody. They had arrested him that  
17 night. He's down at the Metro headquarters chained to a bar,  
18 and he agrees to talk to them. After they read him his Miranda  
19 rights, he agrees to tell them what happened, and he  
20 acknowledges that he spoke with Arrie earlier that day.

21           He had a conversation because, yes, it is true he was  
22 upset that his dogs were missing, and he thought that people in  
23 the neighborhood either knew where they were or that somebody  
24 maybe had taken his dogs, and I would submit to you that when  
25 he had that conversation at the doorstep with her that that

1 scared her, and she recognized that he was somebody to be  
2 afraid of and that she comes up with this story.

3 And, to me, the suggestion of being tied in the front  
4 or the back goes to whether Arrie could've tied herself up, and  
5 I would ask you to look through the photographs of what was  
6 collected for her being tied up. There is not very much  
7 material. The amount of material that was found, they say that  
8 there was some found under a barbecue grill, and you'll see  
9 that in the photograph of that, and then there was material  
10 found in the dumpster. Look at how much material there was. I  
11 would suggest to you that that was an amount that Arrie  
12 could've tied herself in the front.

13 If you listen to the very first witness, Ms. Fox, she  
14 testified that she saw Arrie kind of running and yelling when  
15 she first noticed her, and then, you know, she was rolling  
16 around, the others said she was rolling around, and there's no  
17 doubt she scuffed up the front of her legs as she was rolling  
18 around, but I would suggest to you that at some point she  
19 realizes this guy is very scary. I know how I can come up with  
20 a story to put him in jail.

21 What we have, evidence that matches up, are injuries  
22 to her rolling around. We have no evidence matching up with  
23 her being beaten with a belt over 25 times, no evidence  
24 matching up that she was tased 6 to 7 times, no evidence  
25 matching up that she was sexually assaulted. Ladies and

1 gentlemen, truth sometimes is stranger than fiction. Arrie  
2 came up with this story. This little setup that she comes  
3 there with the neighbors, oh, I've been tied up, help me, he  
4 did this, and obviously the police have no reason initially to  
5 disbelieve her and they follow through.

6 But can you imagine what the detectives, what came  
7 into their mind when they realized the reports from the sex  
8 assault examination are that she's telling the nurse examiner  
9 that she was, you know, vaginally penetrated with a penis, the  
10 tongue and the finger? That matches up with nothing, nothing  
11 that she had indicated.

12 Ladies and gentlemen, please review this evidence  
13 very, very closely. Remember one of the things that was  
14 outlined in the instructions are what you can use to evaluate  
15 the credibility of a witness. Remember that -- and I'm not  
16 trying to hold this against her because of her drug habit, but  
17 as far as accuracy, Ms. Webster had told the detectives that  
18 she had been using meth. She'd been using spice. One of the  
19 detectives thought that she was possibly under the influence of  
20 alcohol when she was giving her statement.

21 The State has not met its burden of proof that  
22 Arrie's allegations are true. You have lots of physical  
23 evidence refuting what she told the police officers.

24 Ladies and gentlemen, I would ask that you follow the  
25 oath that each of you took, and that is to apply the law to

1 these facts, and when you do so, you will find that each and  
2 every one of the charges is not guilty.

3 Thank you very much.

4 THE COURT: All right. Thank you, Mr. Ericsson.

5 Ms. Luzaich, rebuttal.

6 (Rebuttal argument for the State.)

7 MS. LUZAICH: There is no evidence that refutes what  
8 Arrie said. There may not be much evidence that corroborates  
9 the sexual assault, but there is nothing that refutes what she  
10 said.

11 Mr. Ericsson is I wouldn't say taking liberties, but  
12 reading more into what some of the witnesses said than you  
13 should. She did not say that she was using drugs that day.  
14 What she said, what Arrie said to Detective Ryland was that  
15 four or five days earlier she had smoked spice or maybe some  
16 meth, but that was four or five days earlier, and two officers  
17 who are very experienced with people who are under the  
18 influence of a controlled substance and dealing with and  
19 recognizing, both who interviewed her, talked to her at length  
20 on the date that this happened said that she was not under the  
21 influence of a controlled substance.

22 Additionally, the detective, Detective Nelson, didn't  
23 say that she was under the influence of alcohol. All he said  
24 was there was an odor of alcohol. So after she comes rolling  
25 out of the apartment and -- the defendant's apartment -- and

1 Annie is able to get her free, remember, Annie had her for a  
2 little while at Annie's apartment, and then Arrie went home,  
3 and then she went and saw her friend Kunta Patterson, and it  
4 was reported. What do you think she was doing at home?  
5 Drinking. Of course. Think about the experience she just went  
6 through.

7 Now, when he talks about the fact that her statement  
8 wasn't the same to each of the individuals that she shared her  
9 statement with, well, of course it wasn't exactly the same.  
10 Look at what she had been through. She was through an  
11 extremely traumatic experience. So she's just jumbling, trying  
12 to get the information out.

13 While she didn't hand write the statement for Officer  
14 Kroening and say that there was a shotgun, she spoke to him  
15 verbally before she handwrote her statement, and she told him  
16 about the shotgun before she ever wrote the statement. So the  
17 very first police officer that she talks to, she tells him  
18 about the shotgun in the mouth. She didn't write it, but she  
19 told him.

20 The next police officer she talks to is Detective  
21 Nelson, and she tells him about the shotgun in the mouth.  
22 Maybe she didn't give a linear statement, and would it be nice  
23 and helpful if she was able to say, no, this happened in this  
24 order, A, B, C, D, E, but she had just been through a horrific  
25 experience. It is not a surprise that she was not able to do

1 that.

2 Now, the paramedics in their report say something  
3 about the only obvious injury was to the knees. Well, we know  
4 that there were injuries to her shins as well because you can  
5 see them in the pictures, but who knows what they actually saw.  
6 We don't know. Did they pull down her pants and look at her  
7 butt? We have no idea, but what we do know in the report is  
8 that on the very back page they fill out a refusal of service.  
9 They have her sign it, and they sign it. So maybe they didn't  
10 do anything other than just a quick visual and send her on her  
11 way because she doesn't want any help.

12 When Jeri Dermanelian, the nurse, she talks about  
13 that there was no blunt force trauma observable to her.  
14 Remember, the nurse saw her 53 hours later. She specifically  
15 told you that had there been, you know, physical penetration of  
16 her rectum or her vagina she would not have expected to see  
17 anything like that, and we know that also because, remember we  
18 saw in the picture Arrie's injury, the contusion inside  
19 Arrie's -- yeah, the contusion inside her mouth, but when the  
20 nurse saw her 53 hours later, that was gone. Her legs, no more  
21 injuries. She healed. So you wouldn't expect to see any  
22 injury to her butt, to her vagina, to whatever.

23 Now, why did she not remember telling or why did she  
24 say she didn't tell Jeri Dermanelian about a vaginal  
25 penetration? Maybe she just didn't want to talk about it. She

1 didn't want to talk about it then. Maybe she didn't want to  
2 talk about it. Who knows, but that's not the issue. The issue  
3 is pretty much everything she says is corroborated. That is  
4 the only thing that is not.

5           Mr. Ericsson talks about the fact that every time she  
6 tells her story her story gets bigger because she's afraid of  
7 the defendant because of how he talked to her. Well, first of  
8 all, Annie it didn't say anything about being afraid of the  
9 defendant. She said she had quite a pleasant contact with him  
10 and his kids earlier. Annie just told you that she had a bad  
11 feeling about Arrie's -- about Arrie going down there. It had  
12 nothing to do with being afraid.

13           When he also talks about the defendant's DNA not  
14 being on the shotgun, I mean, even the defendant himself  
15 expected his DNA to be on the shotgun because he came up with  
16 that story. I mean, listen to his statement again. Go back  
17 through it and think about it in light of Instruction No. 31,  
18 the credibility instruction, where it says, If you believe a  
19 witness has lied about any material fact in the case you can  
20 disregard their entire testimony or any portion that is not  
21 proved by other evidence.

22           The defendant in his statement to the police changed  
23 his story so many times I was getting dizzy going back and  
24 forth to where it was, but the one thing that he hung tough to  
25 was Arrie was never in his apartment. Well, we know that's not



1 possible for several reasons. One, Carl Taylor saw her come  
2 out the door of the defendant's apartment, but also how did her  
3 DNA get on the barrel of the shotgun if she wasn't in there and  
4 the gun wasn't in her mouth?

5           You know, Mr. Ericsson talks about the numbers and  
6 the red and the letters. Cassandra Robertson, she was very  
7 clear about why the in the swab of the shotgun Arrie's DNA  
8 being on it, that the under 200 was okay because that was the  
9 one where there was only one sample. There was only one  
10 profile in that swab. The other one, the shotgun or the -- is  
11 that what it was? The ridge area, the grip of the shotgun, the  
12 under 200 was not okay because it was a mixture. So there were  
13 several different profiles there. It wasn't the defendant.

14           But she also talked to you about the fact that  
15 anybody can touch something and not leave DNA. She talked  
16 about a lot of reasons. You know, are you a shedder? Is there  
17 sweat? Is it hot? What's the environment like? There are  
18 lots of reasons why you can touch something and not leave DNA.

19           But like I said, the defendant himself thought his  
20 DNA was going to be on the shotgun itself because he came up  
21 with that cockamamie story about how, well, he moved it. He  
22 cleaned it. Then, well, he didn't clean it when they tried to  
23 ask him where the items were that he was going to clean it, but  
24 he just kept going back and forth, but he was clear to say,  
25 yeah, he touched it earlier that day, but Arrie was not in his

1 apartment.

2           The defense wants you to believe that Arrie tied  
3 herself up and did all of this. I mean no disrespect to Arrie  
4 when I say this, but do you really think that Arrie is smart  
5 enough to come up with this whole -- concoct this whole story?  
6 If Arrie did this to herself and made all this up, how did her  
7 DNA get on the end of the shotgun barrel? How did Carl Taylor  
8 see her coming out the door? Why did the defendant lie about  
9 Arrie being in his apartment? Because Arrie didn't make it up.  
10 Because it happened just the way she said, and the defendant is  
11 guilty of these charges.

12           Thank you.

13           THE COURT: All right. Thank you.

14           The clerk will now charge the officer to take charge  
15 of the jury.

16                               (Officer sworn.)

17           THE COURT: All right. Ladies and gentlemen, in a  
18 moment I'm going to ask all of you to collect your belongings  
19 and your notepads and follow the bailiff through the rear door.  
20 As you may know, a criminal jury is composed of 12 members.  
21 There are 14 of you. Two of you are the alternates who were  
22 seated in chairs designated prior to jury selection to make the  
23 selection of the alternates somewhat random. Those are Jurors  
24 No. 6 and 7, Ms. Garcia-Hatton and Mr. Meacham.

25           You are the alternates. I'm going to ask you to exit

1 with the other members of the jury. Before you leave, please  
2 provide a member of my staff with phone numbers where you can  
3 be reached today and tomorrow. If, God forbid, one of the  
4 other jurors becomes ill or something like that before a  
5 verdict is reached, you would be called in to deliberate with  
6 the other jurors.

7 For that reason, the prohibition about speaking about  
8 the case or doing anything else relating to the case is still  
9 very much in effect until you have been contacted by someone  
10 from my chambers and told that the jury in this case has  
11 reached a verdict and you are excused.

12 So if all of you would please collect your things and  
13 follow the bailiff through the rear doors.

14 (Jury recessed for deliberation 3:25 p.m.)

15 MS. LUZAICH: Like, I said, there's a clean computer  
16 there if they need it.

17 Would it be your intent to kind of feel them out at  
18 5:00 o'clock and see if they want to stay?

19 / / /

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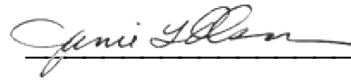
1 THE COURT: Yeah. He'll go in at 5:00 and see if  
2 they want to stay, but if they don't have a verdict by 6:00,  
3 then we excuse them at 6:00. So.

4 (Proceedings recessed for the evening 3:26 p.m.)

5 -oOo-

6 ATTEST: I do hereby certify that I have truly and correctly  
7 transcribed the audio/video proceedings in the above-entitled  
8 case.

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Janie L. Olsen  
Transcriber

1 INST

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

JUN 27 2017

BY,   
JILL M CHAMBERS, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -VS-

10 CALVIN THOMAS ELAM,

11 Defendant.

CASE NO: C-15-305949-1

DEPT NO: XXI

12  
13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

14 MEMBERS OF THE JURY:

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

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

22  
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27 C-15-305949-1  
INST  
Instructions to the Jury  
4661407



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.

An Indictment 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 Indictment that on or about the 10th day of March, 2015, the Defendant committed the offenses of CONSPIRACY TO COMMIT KIDNAPPING; FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON; ASSAULT WITH A DEADLY WEAPON; UNLAWFUL USE OF AN ELECTRONIC STUN DEVICE; BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT; SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON and ATTEMPT SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON.

COUNT 1 - CONSPIRACY TO COMMIT KIDNAPPING

did then and wilfully, unlawfully, and feloniously conspire with an unidentified co-conspirator to commit a kidnapping.

COUNT 2 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

did wilfully, unlawfully, and feloniously, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away ARRIE WEBSTER, a human being, with the intent to hold or detain the said ARRIE WEBSTER against her will, and without her consent, for the purpose of committing substantial bodily harm against her and/or for the purpose of committing a sexual assault and/or to kill the said ARRIE WEBSTER, with use of a deadly weapon, to-wit: a shotgun and/or stun gun and/or broomstick or other unknown object, Defendant being criminally liable under one or more of the following principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by providing counsel and/or encouragement and by entering into a course of conduct whereby Defendant restrained the said ARRIE WEBSTER and Defendant and/or an unidentified co-conspirator beat the said ARRIE WEBSTER with a broomstick or other unknown object and/or leather belt, and/or pointed a shotgun at her and/or used a stun gun on her and/or used the broomstick to sexually assault or attempt to sexually assault ARRIE WEBSTER, and/or

1 (3) pursuant to a conspiracy to commit this crime.

2 COUNT 3 - ASSAULT WITH A DEADLY WEAPON

3 did wilfully, unlawfully, feloniously and intentionally place another person in  
4 reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully  
5 attempt to use physical force against another person, to-wit: ARRIE WEBSTER, with use of  
6 a deadly weapon, to-wit: a shotgun, by pointing said shotgun at the said ARRIE WEBSTER  
7 and/or placing the shotgun in her mouth, Defendant being criminally liable under one or more  
8 of the following principles of criminal liability, to-wit: (1) by directly committing this crime;  
9 and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime  
10 be committed, by providing counsel and/or encouragement and by entering into a course of  
11 conduct whereby Defendant restrained the said ARRIE WEBSTER and Defendant and/or an  
12 unidentified co-conspirator pointed a shotgun at the said ARRIE WEBSTER and/or placed the  
13 shotgun in her mouth, and/or (3) pursuant to a conspiracy to commit this crime.

14 COUNT 4 - UNLAWFUL USE OF AN ELECTRONIC STUN DEVICE

15 did then and there wilfully, unlawfully and feloniously use an electronic stun device on  
16 another person, to-wit: ARRIE WEBSTER, for any purpose other than self-defense, the  
17 Defendant being criminally liable under one or more of the following principles of criminal  
18 liability, to-wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the  
19 commission of this crime, with the intent that this crime be committed, by providing counsel  
20 and/or encouragement and by entering into a course of conduct whereby Defendant restrained  
21 the said ARRIE WEBSTER and Defendant and/or an unidentified co-conspirator used a stun  
22 device about her body; and/or (3) pursuant to a conspiracy to commit this crime.

23 COUNT 5 - BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT

24 did then and there wilfully, unlawfully, and feloniously use force or violence upon the  
25 person of another, to-wit: ARRIE WEBSTER, with intent to commit sexual assault, by beating  
26 her with a broomstick or other unknown object and/or beating her with a leather strap and/or  
27 by using a stun gun on the said ARRIE WEBSTER, the Defendant being criminally liable  
28 under one or more of the following principles of criminal liability, to-wit: (1) by directly



1 committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with  
2 the intent that this crime be committed, by providing counsel and/or encouragement and by  
3 entering into a course of conduct whereby Defendant and/or an unknown co-conspirator  
4 pointed a shotgun at ARRIE WEBSTER and/or beat her with a broomstick or other unknown  
5 object and/or beat her with a leather strap and/or used a stun gun on her, during the course of  
6 which Defendant and/or an unidentified co-conspirator used a broom stick and/or other  
7 unknown object to penetrate or attempt to penetrate the anus of the said ARRIE WEBSTER;  
8 and/or (3) pursuant to a conspiracy to commit this crime.

9 COUNT 6 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

10 did then and there wilfully, unlawfully, and feloniously sexually assault and subject  
11 ARRIE WEBSTER, to sexual penetration, to-wit: by inserting a broomstick or other unknown  
12 object in the anus of the said ARRIE WEBSTER, against her will, or under conditions in which  
13 Defendant knew, or should have known, that ARRIE WEBSTER was mentally or physically  
14 incapable of resisting or understanding the nature of Defendant's conduct, with use of a deadly  
15 weapon, to-wit: a broomstick or other unknown object and/or a leather belt and/or a shotgun  
16 and/or a stun gun, the Defendant being criminally liable under one or more of the following  
17 principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by  
18 aiding or abetting in the commission of this crime, with the intent that this crime be committed,  
19 by providing counsel and/or encouragement and by entering into a course of conduct whereby  
20 Defendant restrained the said ARRIE WEBSTER, Defendant and/or an unknown co-  
21 conspirator pointed a shotgun at ARRIE WEBSTER and/or beat her with a broomstick or other  
22 unknown object and/or beat her with a leather strap and/or used a stun gun on her, during the  
23 course of which Defendant and/or an unidentified co-conspirator used a broomstick and/or  
24 other unknown object to penetrate the anus of the said ARRIE WEBSTER; and/or (3) pursuant  
25 to a conspiracy to commit this crime.

26 COUNT 7 - ATTEMPT SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

27 did then and there wilfully, unlawfully, and feloniously attempt to sexually assault and  
28 subject ARRIE WEBSTER, a female person, to sexual penetration, to-wit: by pulling down

1 the pants of the said ARRIE WEBSTER and/or forcing her to pull down her pants, and  
2 attempting to insert a broom stick or other unknown object into her anus against her will, or  
3 under conditions in which Defendant knew, or should have known, that ARRIE WEBSTER  
4 was mentally or physically incapable of resisting or understanding the nature of Defendant's  
5 conduct, with use of a deadly weapon, to-wit: a broomstick or other unknown object and/or a  
6 leather belt and/or a shotgun and/or a stun gun, the Defendant being criminally liable under  
7 one or more of the following principles of criminal liability, to-wit: (1) by directly committing  
8 this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that  
9 this crime be committed, by providing counsel and/or encouragement and by entering into a  
10 course of conduct whereby Defendant restrained the said ARRIE WEBSTER, Defendant  
11 and/or an unknown co-conspirator pointed a shotgun at ARRIE WEBSTER and/or beat her  
12 with a broomstick or other unknown object and/or beat her with a leather strap and/or used a  
13 stun gun on her, during the course of which Defendant and/or an unidentified co-conspirator  
14 used a broomstick to attempt to penetrate the anus of the said ARRIE WEBSTER; and/or (3)  
15 pursuant to a conspiracy to commit this crime.

16 It is the duty of the jury to apply the rules of law contained in these instructions to the  
17 facts of the case and determine whether or not the Defendant is guilty of one or more of the  
18 offenses charged.  
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2 A conspiracy is an agreement between two or more persons for an unlawful purpose.  
3 To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of,  
4 the specific crime agreed to. The crime is the agreement to do something unlawful; it does not  
5 matter whether it was successful or not.

6 A person who knowingly does any act to further the object of a conspiracy, or otherwise  
7 participates therein, is criminally liable as a conspirator. However, mere knowledge or  
8 approval of, or acquiescence in, the object and purpose of a conspiracy without an agreement  
9 to cooperate in achieving such object or purpose does not make one a party to conspiracy.  
10 Conspiracy is seldom susceptible of direct proof and is usually established by inference from  
11 the conduct of the parties. In particular, a conspiracy may be supported by a coordinated series  
12 of acts, in furtherance of the underlying offense, sufficient to infer the existence of an  
13 agreement.

14 A conspiracy to commit a crime does not end upon the completion of the crime. The  
15 conspiracy continues until the co-conspirators have successfully gotten away and concealed  
16 the crime.  
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It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for a specific intent crime of a co-conspirator so long as the specific intent crime was intended by the Defendant. A conspirator is also legally responsible for a general intent crime that follows as one of the probable and natural consequence of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

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2        Mere presence at the scene of the crime and knowledge that a crime is being committed  
3 are not sufficient to establish that the defendant aided and abetted the crime, unless you find  
4 beyond a reasonable doubt that the defendant is a participant and not merely a knowing  
5 spectator. However, the defendant's presence, companionship, and conduct before, during  
6 and after the crime may be considered in determining whether he is an aider and abettor.  
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Every person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any person by any means whatsoever with the intent to hold or detain, or who holds or detains the person for the purpose of committing sexual assault, or for the purpose of killing the person or inflicting substantial bodily harm upon the person, has committed the crime of First Degree Kidnapping.

The law does not require the person being kidnapped to be carried away for any minimal distance.

The term "inveigle" means to lead astray by tricker or deceitful persuasion.



When it is impossible to commit a particular crime without committing, at the same time and by the same conduct, another offense of lesser grade or degree, the latter is, with respect to the former, a "lesser included offense."

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the offense charged, he may, however, be found guilty of any lesser included offense, if the evidence is sufficient to establish his guilt of such lesser offense beyond a reasonable doubt.

The crime of First Degree Kidnapping necessarily includes the lesser offenses of Second Degree Kidnapping.

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2 A person who willfully and without authority of law seizes, inveigles, takes, carries  
3 away or kidnaps another person with the intent to keep the person secretly imprisoned within  
4 the State, or for the purpose of conveying the person out of the State without authority of law,  
5 or in any manner held to service or detained against the person's will, is guilty of Second  
6 Degree Kidnapping.  
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"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death, or, any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

In order to "use" a deadly weapon, there need not be conduct which actually produces harm but only conduct which produces a fear of harm or force by means or display of the deadly weapon in aiding the commission of the crime.

1  
2 If more than one person commits a crime, and one of them uses a deadly weapon in the  
3 commission of that crime, each may be convicted of using the deadly weapon even though he  
4 did not personally himself use the weapon.

5 An unarmed offender "uses" a deadly weapon when the unarmed offender is liable for  
6 the offense, another person liable for the offense is armed with and uses a deadly weapon in  
7 the commission of the offense, and the unarmed offender had knowledge of the use of the  
8 deadly weapon.  
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“Assault” means intentionally placing another person in reasonable apprehension of immediate bodily harm OR attempting to use physical force against another person.

It is unlawful for a person to use an electronic stun device on another person for any purpose other than self-defense.

"Electronic stun device" means a device that:

(a) Emits an electrical charge or current that is transmitted by projectile, physical contact or other means; and

(b) Is designed to disable a person or animal temporarily or permanently.

INSTRUCTION NO. 17

Battery means any willful and unlawful use of force or violence upon the person of another.

Any person who commits a battery upon another with the specific intent to commit a sexual assault has committed the offense of Battery With Intent to Commit Sexual Assault.



In order for you to find the defendant committed both first-degree kidnapping and an associated offense of sexual assault, you must also find beyond a reasonable doubt either:

- (1) That any movement of the victim was not incidental to the sexual assault;
- (2) That any incidental movement of the victim substantially increased the risk of harm to the victim over and above that necessarily present in the sexual assault;
- (3) That any incidental movement of the victim substantially exceeded that required to complete the sexual assault;
- (4) That the victim was physically restrained and such restraint substantially increased the risk of harm to the victim; or
- (5) The movement or restraint had an independent purpose or significance.

"Physically restrained" includes but is not limited to tying, binding, or taping.

1  
2 A person who subjects another person to sexual penetration against the victim's will or  
3 under conditions in which the perpetrator knows or should know that the victim is mentally or  
4 physically incapable of resisting or understanding the nature of his conduct, has committed the  
5 crime of sexual assault.

6 "Sexual penetration" means any intrusion, however slight, of any part of a person's body  
7 or any object manipulated or inserted by a person into the genital or anal openings of the body  
8 of another.  
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Physical force is not a necessary ingredient in the commission of sexual assault. The crucial question is not whether the victim was physically forced to engage in a sexual assault but whether the act was committed without her consent. There is no consent where the victim is induced to submit to the sexual act through fear of death or serious bodily injury. The victim is not required to do more than her age, strength, surrounding facts and attending circumstances make it reasonable for her to do to manifest her opposition.

A person is not required to do more than his/her age, strength, surrounding facts and attending circumstances make it reasonable for him/her to do to manifest opposition to a sexual assault.

Submission is not the equivalent of consent. While consent inevitably involves submission, submission does not inevitably involve consent. Lack of protest by a victim is simply one among the totality of circumstances to be considered by the jury.

There is no requirement that the testimony of a victim of Sexual Assault be corroborated, and his/her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

The elements of an attempt to commit a crime are:

- 1) the intent to commit the crime;
- 2) performance of some act towards its commission; and
- 3) failure to consummate its commission.

In determining whether or not such an act was done, it is necessary to distinguish between mere preparation, on the one hand, and the actual commencement of the doing of the criminal deed, on the other. Mere preparation, which may consist of planning the offense or of devising, obtaining or arranging the means for its commission, is not sufficient to constitute an attempt; but acts of a person who intends to commit a crime will constitute an attempt where they themselves clearly indicate a certain, unambiguous intent to commit that specific crime, and, in themselves, are an immediate step in the present execution of the criminal design, the progress of which would be completed unless interrupted by some circumstance not intended in the original design.

To constitute the crimes charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.



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2 The Defendant is presumed innocent until the contrary is proved. This presumption  
3 places upon the State the burden of proving beyond a reasonable doubt every element of the  
4 crime charged and that the Defendant is the person who committed the offense.

5 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a  
6 doubt as would govern or control a person in the more weighty affairs of life. If the minds of  
7 the jurors, after the entire comparison and consideration of all the evidence, are in such a  
8 condition that they can say they feel an abiding conviction of the truth of the charge, there is  
9 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or  
10 speculation.

11 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict  
12 of not guilty.  
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2 It is a constitutional right of a defendant in a criminal trial that he may not be compelled  
3 to testify. Thus the decision as to whether he should testify is left to the defendant on the  
4 advice and counsel of his attorney. You must not draw any inference of guilt from the fact  
5 that he does not testify, nor should this fact be discussed by you or enter into your deliberations  
6 in any way.  
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2       You are here to determine the guilt or innocence of the Defendant from the evidence in  
3 the case. You are not called upon to return a verdict as to the guilt or innocence of any other  
4 person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt  
5 of the Defendant, you should so find, even though you may believe one or more persons are  
6 also guilty.  
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The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

The flight of a person after the commission of a crime is not sufficient in itself to establish guilt; however, if flight is proved, it is circumstantial evidence in determining guilt or innocence.

The essence of flight embodies the idea of deliberately going away with consciousness of guilt and for the purpose of avoiding apprehension or prosecution. The weight to which such circumstance is entitled is a matter for the jury to determine.

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

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2 Although you are to consider only the evidence in the case in reaching a verdict, you  
3 must bring to the consideration of the evidence your everyday common sense and judgment  
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as  
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel  
6 are justified in the light of common experience, keeping in mind that such inferences should  
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your  
9 decision should be the product of sincere judgment and sound discretion in accordance with  
10 these rules of law.  
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In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of the guilt or innocence of the Defendant.

During the course of this trial, and your deliberations, you are not to:

- (1) communicate with anyone in any way regarding this case or its merits-either by phone, text, Internet, or other means;
- (2) read, watch, or listen to any news or media accounts or commentary about the case;
- (3) do any research, such as consulting dictionaries, using the Internet, or using reference materials;
- (4) make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case on your own.

When you retire to consider your verdict, you must select one of your member to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

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2 If, during your deliberation, you should desire to be further informed on any point of  
3 law or hear again portions of the testimony, you must reduce your request to writing signed by  
4 the foreperson. The officer will then return you to court where the information sought will be  
5 given you in the presence of, and after notice to, the district attorney and the Defendant and  
6 his/her counsel.

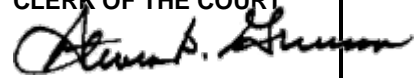
7 Playbacks of testimony are time-consuming and are not encouraged unless you deem it  
8 a necessity. Should you require a playback, you must carefully describe the testimony to be  
9 played back so that the court recorder can arrange his/her notes. Remember, the court is not  
10 at liberty to supplement the evidence.  
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INSTRUCTION NO. 38

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:

Melanie Adams  
DISTRICT JUDGE



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,

Plaintiff,

vs.

CALVIN THOMAS ELAM,

Defendant.

CASE NO. C305949-1  
DEPT NO. XXI

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

TUESDAY, JUNE 27, 2017

**JURY TRIAL - DAY 7**

APPEARANCES:

FOR THE STATE:

ELISSA LUZAICH, ESQ.  
Chief Deputy District Attorney

FOR THE DEFENSE:

THOMAS A. ERICSSON, ESQ.

RECORDED BY: SUSIE SCHOFIELD, COURT RECORDER  
TRANSCRIBED BY: JD REPORTING, INC.

1       **LAS VEGAS, CLARK COUNTY, NEVADA, JUNE 27, 2017, 12:07 P.M.**

2                               \* \* \* \* \*

3                               (Jury entering 12:10 p.m.)

4               THE COURT: All right. Court is now back in session.  
5 The record should reflect the presence of the State through the  
6 deputy district attorney, the presence of the defendant and his  
7 counsel, the officers of the court and the ladies and gentlemen  
8 of the jury.

9               And who is the jury foreperson?

10              All right. Juror No. 5. Mr. Bohac, has the jury in  
11 this matter reached a verdict?

12              JUROR NO. 05: Yes, we have.

13              THE COURT: Would you please hand the forms of  
14 verdict to the bailiff.

15              The clerk will now read the verdict out loud and  
16 inquire if this is the verdict of the jury.

17              THE CLERK: District Court, Clark County, Nevada, the  
18 State of Nevada versus Calvin Elam, Case No. C305949,  
19 Department 21, verdict. We the jury in the above-entitled case  
20 find the defendant Calvin Elam as follows:

21              Count 1, Conspiracy to commit kidnapping, Guilty of  
22 conspiracy to commit kidnapping.

23              Count 2, First-degree kidnapping with use of a deadly  
24 weapon, Guilty of first-degree kidnapping with use of a deadly  
25 weapon.

                              JD Reporting, Inc.  
State vs Elam / 2017-06-27 / Day 7

1 Count 3, Assault with a deadly weapon, Guilty of  
2 assault with a deadly weapon.

3 Count 4, Unlawful use of an electronic stun device,  
4 Not guilty.

5 Count 5, Battery with intent to commit sexual  
6 assault, Guilty of battery with intent to commit sexual  
7 assault.

8 Count 6, Sexual assault with use of a deadly weapon,  
9 Not guilty.

10 Count 7, Attempt sexual assault with use of a deadly  
11 weapon, Not guilty.

12 Dated this 27th day of June, 2017, jury foreperson.

13 Ladies and gentlemen of the jury, are these are  
14 verdicts as read, so say you one so say you all?

15 THE JURY: Yes.

16 THE COURT: All right. Before the verdict is  
17 recorded into the minutes of the court, does either side desire  
18 to have the jury polled?

19 MR. ERICSSON: The defense does, Your Honor.

20 THE COURT: All right. The court clerk will now poll  
21 the ladies and gentlemen of the jury.

22 THE CLERK: Juror No. 1, is this your verdict as  
23 read?

24 JUROR NO. 01: Yes.

25 THE CLERK: Juror No. 2, is this your verdict as



1 read?  
2 JUROR NO. 02: Yes.  
3 THE CLERK: Juror No. 3, is this your verdict as  
4 read?  
5 JUROR NO. 03: Yes.  
6 THE CLERK: Juror No. 4, is this your verdict as  
7 read?  
8 JUROR NO. 04: Yes.  
9 THE CLERK: Juror No. 5, is this your verdict as  
10 read?  
11 JUROR NO. 05: Yes.  
12 THE CLERK: Juror No. 8, is this your verdict as  
13 read?  
14 JUROR NO. 08: Yes.  
15 THE CLERK: Juror No. 9, is this your verdict as  
16 read?  
17 JUROR NO. 09: Yes.  
18 THE CLERK: Juror No. 10, is this your verdict as  
19 read?  
20 JUROR NO. 10: Yes.  
21 THE CLERK: Juror No. 11, is this your verdict as  
22 read?  
23 JUROR NO. 11: Yes.  
24 THE CLERK: Juror No. 12, is this your verdict as  
25 read?

1 JUROR NO. 12: Yes.

2 THE CLERK: Juror No. 13, is this your verdict as  
3 read?

4 JUROR NO. 13: Yes.

5 THE CLERK: Juror No. 14, is this your verdict as  
6 read?

7 JUROR NO. 14: Yes.

8 THE COURT: All right. The clerk will now record the  
9 verdict into the minutes of the court.

10 Ladies and gentlemen, this concludes your service as  
11 jurors. I want to thank you very much for your service and  
12 your attentiveness during the past week and these few days.  
13 The prohibition about speaking about the case is now lifted.  
14 You're free to speak with each other or anyone else you choose.

15 Very often the lawyers like to speak to members of  
16 the jury to get feedback and what not. If one of these  
17 individuals or both wants to speak with you and you're willing,  
18 that's perfectly acceptable. Conversely, if you'd rather not  
19 talk to them, obviously they'll respect your wishes in that  
20 regard.

21 We had ordered lunch for you, which is now here I'm  
22 told. So you're welcome to stay and eat lunch, or you're free  
23 to leave.

24 If all of you would please collect your things and  
25 follow the bailiff through the rear door.

1 (Jury excused 12:14 p.m.)

2 THE COURT: All right. Yes. We'll go ahead and set  
3 an in-custody sentencing date.

4 THE CLERK: That would be August 15th at 9:30.

5 MS. LUZAICH: Thank you. I would also ask the Court,  
6 as the defendant's been convicted of not one at least mandatory  
7 life sentence, several mandatory prison sentences, I would ask  
8 you to remand him without bail.

9 THE COURT: All right. It's pretty academic since  
10 he's been in custody this time, but the Court will remand him  
11 without bail.

12 Oh. Great. Shoot, I forgot about the ex-felon in  
13 possession. Was the State going to go forward with that?

14 MS. LUZAICH: Well, you let them go.

15 THE COURT: We can just scream it right now. They're  
16 in the back. I'm sorry. I didn't --

17 MS. LUZAICH: I didn't bring the file with me.

18 THE COURT: I completely forgot about it. So do you  
19 want to just not proceed on that, or do you want to proceed and  
20 I'll just tell them never mind; we have another charge?

21 MS. LUZAICH: Can I have a minute?

22 THE COURT: Just go tell Kenny to hold them in the  
23 back and not to let them talk.

24 I mean, one thing, Ms. Luzaich, Counsel, is we --

25 MS. LUZAICH: We don't need to go forward. I mean,

1 we can reset.

2 THE COURT: Okay. I was going to say we don't have  
3 to dismiss it with prejudice, and that way if for some reason  
4 his conviction were overturned on appeal, you could reinstate  
5 the ex-felon in possession of firearm if you had to proceed to  
6 trial on these other charges. Let's just say the kidnapping is  
7 overturned or whatever.

8 MS. LUZAICH: That's fine.

9 THE COURT: See what I'm saying?

10 MS. LUZAICH: Yes. That's fine.

11 THE COURT: All right. That's what we'll do.

12 THE CLERK: What are we doing?

13 THE COURT: The State's electing not to proceed on  
14 the ex-felon at this time, but they can proceed against him on  
15 that if for some reason his conviction is overturned on appeal.

16 MS. LUZAICH: What I would ask the Court to do just  
17 for the record is conditionally dismiss it.

18 THE COURT: Right.

19 MS. LUZAICH: Just so long as those words are used,  
20 it's conditionally dismissed, and I can --

21 THE COURT: Right.

22 MS. LUZAICH: -- revive it if necessary.

23 THE COURT: If necessary, if again his conviction is  
24 overturned.

25 Is the minimum parole eligibility on a kidnapping

1 with use, is that 10 years?

2 MS. LUZAICH: No, it's 5.

3 THE COURT: 5 to life. Okay.

4 MS. LUZAICH: The kidnapping with use is potentially  
5 a 5 to 15 or a 5 to life with a consecutive 1 to 20.

6 THE COURT: Right.

7 MS. LUZAICH: But the battery with intent to commit  
8 sexual assault is a 2 to life. It can be more than 2, but it  
9 can't be less than 2, but it can only be life on top.

10 THE COURT: Right.

11 MR. ERICSSON: Your Honor, the date that you had  
12 given for the sentencing, I start a capital trial the day  
13 before that. Is it possible to do it either a week before that  
14 or maybe two weeks after that?

15 MS. LUZAICH: I wouldn't say before. P and P won't  
16 get it done.

17 THE COURT: Right. Because they won't have it done.

18 MS. LUZAICH: But after is fine.

19 THE COURT: That's fine. We can go out two  
20 additional weeks.

21 MR. ERICSSON: That would be great.

22 THE CLERK: Let me look at my calendar.  
23 We said the 15th, correct?

24 MR. ERICSSON: Yes.

25 THE CLERK: Tuesday, the 29th of August.

1 THE COURT: Okay.  
2 MR. ERICSSON: August 29th, and that's at 9:00?  
3 THE CLERK: 9:30.  
4 MR. ERICSSON: 9:30. Okay.  
5 MS. LUZAICH: Thank you.  
6 THE COURT: Okay. Thank you.  
7 MS. LUZAICH: Now, do we know are they eating? Are  
8 they -- I would just like to talk if they can.  
9 THE COURT: I don't know.  
10 MS. LUZAICH: If they choose.  
11 THE COURT: I mean, if -- yeah. I mean, I usually go  
12 back and just thank them.  
13 MS. LUZAICH: You're going to talk to them?  
14 THE COURT: Yeah. And then --  
15 MS. LUZAICH: Send the ones that want out that way.  
16 THE COURT: I'm sure they're not all going to want to  
17 stay.  
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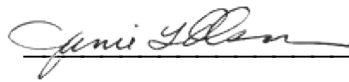
MS. LUZAICH: Yeah.

THE COURT: For fabulous Jason's Deli.

(Proceedings concluded 12:18 p.m.)

-oOo-

ATTEST: I do hereby certify that I have truly and correctly  
transcribed the audio/video proceedings in the above-entitled  
case.



Janie L. Olsen  
Transcriber

1 VER

12:11 PM  
FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

JUN 27 2017

DISTRICT COURT  
CLARK COUNTY, NEVADA

BY *JM Chambers*  
JILL M CHAMBERS, DEPUTY

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 CALVIN THOMAS ELAM,

11 Defendant.

CASE NO: C-15-305949-1

DEPT NO: XXI

12 VERDICT

13 We, the jury in the above entitled case, find the Defendant CALVIN THOMAS ELAM,  
14 as follows:

15 **COUNT 1** – CONSPIRACY TO COMMIT KIDNAPPING

16 *(Please check the appropriate box, select only one)*

17 ☒ Guilty of Conspiracy to Commit Kidnapping

18 ☐ Not Guilty

19 ///

20 ///

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C-15-305949-1  
VER  
Verdict  
4661408





1 We, the jury in the above entitled case, find the Defendant CALVIN THOMAS ELAM,  
2 as follows:

3 **COUNT 2** – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

4 *(Please check the appropriate box, select only one)*

- 5 ☒ Guilty of First Degree Kidnapping  
6 ☒ With Use Of A Deadly Weapon  
7 ☐ Without Use Of A Deadly Weapon  
8 ☐ Guilty of Second Degree Kidnapping  
9 ☐ With Use Of A Deadly Weapon  
10 ☐ Without Use Of A Deadly Weapon  
11 ☐ Not Guilty

12  
13 We, the jury in the above entitled case, find the Defendant CALVIN THOMAS ELAM,  
14 as follows:

15 **COUNT 3** – ASSAULT WITH A DEADLY WEAPON

16 *(Please check the appropriate box, select only one)*

- 17 ☒ Guilty of Assault With A Deadly Weapon  
18 ☐ Not Guilty

19  
20 We, the jury in the above entitled case, find the Defendant CALVIN THOMAS ELAM,  
21 as follows:

22 **COUNT 4** – UNLAWFUL USE OF AN ELECTRONIC STUN DEVICE

23 *(Please check the appropriate box, select only one)*

- 24 ☐ Guilty of Unlawful Use Of An Electronic Stun Device  
25 ☒ Not Guilty

26 ///

27 ///

28 ///

1 We, the jury in the above entitled case, find the Defendant CALVIN THOMAS ELAM,  
2 as follows:

3 **COUNT 5** – BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT

4 *(Please check the appropriate box, select only one)*

- 5 ☒ Guilty of Battery With Intent To Commit Sexual Assault  
6 ☐ Not Guilty

7  
8 **COUNT 6** – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

9 *(Please check the appropriate box, select only one)*

- 10 ☐ Guilty of Sexual Assault With Use Of A Deadly Weapon  
11 ☐ Guilty of Sexual Assault  
12 ☒ Not Guilty

13  
14 **COUNT 7** – ATTEMPT SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

15 *(Please check the appropriate box, select only one)*

- 16 ☐ Guilty of Attempt Sexual Assault With Use Of A Deadly Weapon  
17 ☐ Guilty of Attempt Sexual Assault  
18 ☒ Not Guilty

19  
20 DATED this 27<sup>th</sup> day of June, 2017

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1 RTRAN

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 CALVIN ELAM,

9 Defendant.

)  
) CASE NO. C-15-305949-1

)  
) DEPT. NO. XXI

10  
11 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

12  
13 THURSDAY, OCTOBER 19, 2017

14  
15 **RECORDER'S TRANSCRIPT RE:**  
16 **SENTENCING**

17 APPEARANCES:

18 For the State:

ELISSA LUZAICH  
Chief Deputy District Attorney

19  
20  
21 For the Defendant:

THOMAS A. ERICSSON, ESQ.

22  
23  
24 RECORDED BY: SUSIE SCHOFIELD, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, OCTOBER 19, 2017, 9:39 A.M.

2 \*\*\*\*\*

3 THE COURT: All right. We'll call for Mr. Ericsson.

4 MS. LUZAICH: Thank you, Judge. On Page 8T.

5 THE COURT: All right. State versus Calvin Elam. And he is present in  
6 custody with Mr. Ericsson. This is the time for the rendition of sentence. Are both  
7 sides ready to go forward?

8 MS. LUZAICH: Yes.

9 MR. ERICSSON: Yes, Your Honor.

10 THE COURT: All right. We had previously received a speaker notification.

11 MS. LUZAICH: Arrie is not going to be here.

12 THE COURT: She's not?

13 MS. LUZAICH: We sent the notification just in case. We were hoping she  
14 would but, no, she's not.

15 THE COURT: Okay.

16 All right. This being a jury verdict, State would have the right to argue.

17 MS. LUZAICH: Thank you, Judge. And you heard the whole trial and  
18 motions and stuff so I'm not going to regurgitate everything that happened. I just  
19 want to -- the high points.

20 You know, this all happened because the defendant was out accusing  
21 people of stealing his dogs when, in truth and in fact, Animal Control came and took  
22 the dogs because they were being left outside in the heat and that was unsafe.

23 When you heard the trial, you know, the facts that you hear sound like,  
24 oh, my God, it doesn't sound like this is possible but we know it's possible because  
25 pretty much everything she said was corroborated by independent witnesses who

1 found her afterwards, but we also knew that the defendant did almost the same  
2 thing to two other individuals in his other apartment the day before, accused them of  
3 stealing his dogs, went in, you know, gun in the mouth and beat them up. And one  
4 of those individuals was one of the ones that actually found Arrie.

5 The defendant -- I mean, you're sentencing him not only for what he did  
6 but for the person that he is. We know that he is a violent person based upon his  
7 prior criminal history. He's got three prior convictions for battery constituting  
8 domestic violence. He's got a forth conviction for battery. All he's doing at this point  
9 is escalating.

10 He's also a person who we know doesn't follow any rules because not  
11 only is he breaking all those laws, but back when he was convicted of possession  
12 with intent, he was placed on probation, he violated that probation, his sentence was  
13 imposed, and of his three battery domestic violence convictions, one he got credit  
14 for time served but in the other two, as you know, by statute there are requirements  
15 that you're supposed to do counseling, community service, things like that. In both  
16 of those convictions he was not able to do those and he got the time imposed there  
17 as well.

18 I, for once, I can't believe I'm saying this. I don't necessarily disagree  
19 with P & P's recommendations.

20 THE COURT: Which is nine on the bottom on the first degree kidnapping.

21 MS. LUZAICH: Correct, nine on the bottom and a consecutive two for the  
22 battery with intent to commit SA, so an aggregate eleven. I would ask the Court for  
23 an aggregate 15. What he did is awful. I mean, imagine what it's like to be an  
24 innocent person. I mean, remember she told you she had gone to try and help him  
25 find the dogs because she felt bad.

1 THE COURT: Yeah, we know she didn't take the dog.

2 MS. LUZAICH: And we know she didn't take the dog so she's sitting there  
3 tied up with a shotgun shoved in her mouth. Remember, her DNA is on the edge of  
4 the shotgun that was in her mouth. I mean, what a horrific situation that is. But it  
5 wasn't only that, it was, you know, the broom and all of that.

6 So I would ask for 15 on the bottom and I would submit it.

7 THE COURT: All right, thank you.

8 Mr. Elam, I know this is going to be on appeal I'm assuming. So you  
9 may not want to say anything but you certainly have a right to say something to the  
10 Court before the Court pronounces sentence against you. And obviously, your  
11 lawyer, Mr. Ericsson, will have an opportunity to speak on your behalf. So what, if  
12 anything, would you like to state to the Court before the Court pronounces sentence  
13 against you?

14 THE DEFENDANT: Salaam, Your Honor. I mean that very sincerely and  
15 respectfully. Your Honor, that is. Every time I come before you I'm humbled. I  
16 finally understand the color of law, the rules, regulations, procedures, statutes, and  
17 prosecution, for the great State of Nevada.

18 I'm established. I'm a family man, I have immediate family at home,  
19 children, my woman, my dog, and relatives that depend on me. I've been in custody  
20 since the beginning of 2015 watching my children grow inside a monitor, 57 minutes,  
21 explaining my conditions while I'm parenting. My reality in question is taking a toll  
22 on me under my circumstances. There's a saying in Proverbs, saying, "You can't  
23 have me when I'm gone."

24 I comprehend that wisdom now. Knowing you're a great lawyer, a  
25 powerful judge, an excellent cheerleader for your courtroom, and I pray to you

1 asking (unintelligible) charge of spirit to be lenient in my sentencing for my natural  
2 livin' soul, and free national standards, please.

3 For the record, I am a Moorish American Muslim, not a black. My  
4 nationality declared, a Jewish society to the constitution of foe, a nation within a  
5 nation, whose principles are found that in love, truth, peace, freedom and justice,  
6 and that to this gratitude with District Court XXI by educating on a (unintelligible)  
7 Proverbs and its revelations. Thank you.

8 THE COURT: All right. Mr. Ericsson?

9 MR. ERICSSON: Thank you, Your Honor.

10 Your Honor, to begin with I would request that you not take into  
11 consideration the references to some other event of another break-in. That certainly  
12 isn't anything that I have received discovery on or that has been or was presented at  
13 the trial in this case.

14 This was a hard-fought trial. You know that a number of the counts  
15 were brought against him he was acquitted of. This certainly was a very scary  
16 situation based on the testimony that the victim gave, but as you're aware, the  
17 ultimate injuries that she sustained were relatively minor.

18 I know this would have been very scary for her but the underlying  
19 sentence that's recommended, I would submit, is significantly higher than necessary  
20 for the conduct that he was involved in, being the Count 5 requires a lifetime  
21 sentence where he will certainly be monitored at the time that he is given probation--  
22 excuse me, parole. Whether or not he is eligible for parole is going to be dependent  
23 on how he conducts himself and the opportunities that he takes advantage of while  
24 he's in prison.

25 I will submit or present a number of factors that I think will help him

1 once he is given the opportunity on parole. His fiancé, Joan Mack (phonetic), she is  
2 here today. She has been very involved in this case from the beginning. She had  
3 helped him -- at the time this happened, he was trying to get gainfully employed, he  
4 was enrolled in an electrician program and was headed towards a stable, productive  
5 form of work when this stupid decision on his part was undertaken.

6 He has four children, as you're aware from the testimony. He was  
7 taking care of those children frequently and they were living with him. This is an  
8 individual who -- one of the things that came out was that he was going to pick up  
9 his children at school shortly after all of this took place.

10 The -- as I calculated from the five counts that were found by the jury,  
11 the minimum sentence if everything were to run concurrent, and the  
12 recommendation from P & P is that most of the counts run concurrent, would be an  
13 aggregate of a life sentence with the earliest parole eligibility at 72 months.

14 I would submit that something in that time frame would be appropriate,  
15 and it's obviously going to be up to the Parole Board whether or not he has been  
16 rehabilitated sufficiently to be released and get back to support his family. As you  
17 are aware, he has one prior felony that's for possession with intent to sell, and that  
18 is -- that's the sole felony that he has in his record.

19 Last thing, if you need to hear from his fiancé, she's certainly prepared  
20 to tell you the things that she has done to take care of the children and the family.  
21 She's very stable. She's held her job for 18 years, has a Master's degree. She's  
22 somebody that can provide, I think, good structure once he is released on parole.

23 So we would recommend the minimum sentencing on each of the  
24 counts which as I calculated, on Count 1, it would be a 12-to-36-month sentence.  
25 Count 2 --



1 THE COURT: Would be a five -- I count six on the bottom.

2 MR. LUZAICH: That's what he said, 72 months is six years.

3 MR. ERICSSON: Yeah, 72 months.

4 THE COURT: Oh, right, I'm sorry. I misheard you, I thought you said seven.  
5 All right.

6 I'm not saying I'm going to give that, but I count it the same way you  
7 did.

8 MR. ERICSSON: Okay, yes.

9 THE COURT: So you're asking for the minimum which is essentially the five  
10 plus one on the kidnapping plus concurrent to the life on the battery with intent.

11 MR. ERICSSON: Correct, the one with the use of a deadly weapon.

12 THE COURT: And Ms. Luzaich is asking for 15 years on the bottom which  
13 would envision consecutive time between two counts.

14 MS. LUZAICH: Or three, however you want to structure it.

15 THE COURT: All right.

16 Mr. Elam, by virtue of the jury's verdict you're hereby adjudged guilty of  
17 Count No. 1, conspiracy to commit kidnapping, and Count No. 2, first degree  
18 kidnapping with use of a deadly weapon, and Count 3, assault with a deadly  
19 weapon, and Count 5, battery with intent to commit sexual assault.

20 In addition to the \$25 administrative assessment, the \$150 DNA  
21 analysis fee, the fact that you must submit to a test for genetic marker, and the \$3  
22 DNA administrative assessment, on Count No. 1, conspiracy to commit kidnapping,  
23 you're sentenced to a minimum term of 24 months in the Nevada Department of  
24 Corrections, and a maximum term of 72 months.

25 On Count No. 2, first degree kidnapping with use of a deadly weapon,

1 you're sentenced to a minimum term of, on the kidnapping, five years and a  
2 maximum term of life, meaning life with your parole eligibility beginning in a  
3 minimum of five years has been served. And for the deadly weapon enhancement,  
4 a consecutive term of 60 months in the Nevada Department of Corrections, and a  
5 maximum term of 180 months in the Nevada Department of Corrections.

6 On Count No. -- oh, that is imposed concurrently with the time I gave  
7 you on Count No. 1.

8 On Count No. 3, assault with a deadly weapon, you're sentenced to a  
9 minimum term of 12 months in the Nevada Department of Corrections, and a  
10 maximum term of 72 months. That is imposed consecutively with the time you  
11 received on Count No. 2.

12 And on Count No. 5, battery with intent to commit sexual assault, you're  
13 sentenced to a minimum term of life with the possibility of parole eligibility beginning  
14 after two years has been served. That is imposed consecutively to Count 3.

15 I count an aggregate of 13 years on the bottom, life on the top. Is that  
16 what you all are counting?

17 MS. LUZAICH: Yes.

18 THE COURT: And I calculate -- your calculation was 912 days of time --

19 MS. LUZAICH: No, 928, because it was continued.

20 THE COURT: Right.

21 MS. LUZAICH: Oh, sorry.

22 THE COURT: No, I was going to say 912 plus whatever. So we're doing the  
23 same thing, 928 days of credit for time served.

24 Oh, additionally --

25 MS. LUZAICH: Register and lifetime supervision.

1 THE COURT: Right.

2 Oh, other counts you were found not guilty of so those should be  
3 dismissed. May I see counsel at the bench?

4 **[Bench Conference - Not Transcribed]**

5 THE COURT: -- the not guilty, those counts are dismissed.

6 On Count No. 8, this may have already been done, Ms. Luzaich, but  
7 you did not proceed on Count No. 8, ownership or possession of firearm by a  
8 prohibited person, correct?

9 MS. LUZAICH: That is correct, Judge. And if the Court, I know, is going to  
10 dismiss it right now, I would just ask that if for any reason on appeal it comes back--

11 THE COURT: It'll be dismissed without prejudice so that it --

12 MS. LUZAICH: -- so we can --

13 THE COURT: -- can be resurrected. If for some reason Mr. Elam's conviction  
14 is overturned by the Nevada Supreme Court and the case proceeds to trial again  
15 they could reinstate Count 8. Obviously, jeopardy's attached on Counts 4, 6, and 7,  
16 and those are gone forever.

17 MR. ERICSSON: Your Honor, I apologize. I did not hear as to Count 5, is  
18 that running consecutive or concurrent?

19 MS. LUZAICH: Consecutive.

20 THE COURT: Consecutive. So he gets 13 on the bottom, ten with the  
21 kidnapping plus one, plus two. Is that what -- that's how I intended to do it.

22 MS. LUZAICH: That's how I added it, yes.

23 MR. ERICSSON: Okay.

24 THE COURT: So five plus five, plus one, plus two.

25 MS. LUZAICH: And then register as a sex offender pursuant to --

1 THE COURT: Correct. And additionally, Mr. Elam --  
2 MS. LUZAICH: -- and lifetime supervision.

3 THE COURT: -- I'm including a special sentence of lifetime supervision which  
4 will commence upon any release from probation -- parole, obviously not probation --  
5 parole or imprisonment. And pursuant to NRS 179D.460, you must register as a sex  
6 offender within 48 hours of your release from custody. And that's an ongoing  
7 lifetime obligation.

8 All right, thank you.

9 MS. LUZAICH: Thank you.

10

11

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12

PROCEEDING CONCLUDED AT 10:58 A.M.

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

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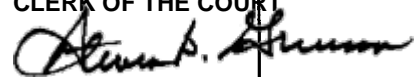
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SUSAN SCHOFIELD  
Court Recorder/Transcriber



JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CALVIN THOMAS ELAM  
#2502165

Defendant.

CASE NO. C-15-305949-1

DEPT. NO. XXI

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT KIDNAPPING (Category B Felony) in violation of NRS 200.310, 200.320, 199.480; COUNT 2 – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.310, 200.320, 193.165; COUNT 3 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT 4 – UNLAWFUL USE OF AN ELECTRONIC STUN DEVICE (Category B Felony) in violation of NRS 202.357; COUNT 5 – BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.400.4; COUNT 6 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

(Category A Felony) in violation of NRS 200.364, 200.366, 193.165; COUNT 7 – ATTEMPT SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.364, 200.366, 193.165, 193.330; and COUNT 8 – OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony) in violation of NRS 202.360; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT KIDNAPPING (Category B Felony) in violation of NRS 200.310, 200.320, 199.480; COUNT 2 – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.310, 200.320, 193.165; COUNT 3 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; and COUNT 5 – BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.400.4; thereafter, on the 19<sup>th</sup> day of October, 2017, the Defendant was present in court for sentencing with counsel THOMAS ERICSSON, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:

**COUNT 1** - a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS; **COUNT 2** – LIFE with the eligibility for parole after serving a MINIMUM of FIVE (5) YEARS plus a CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of SIXTY (60) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 1;



**COUNT 3** - a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole

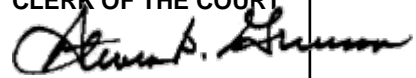
1 Eligibility of TWELVE (12) MONTHS, CONSECUTIVE to COUNT 2; **COUNT 5** - LIFE  
2 with the eligibility for parole after serving a MINIMUM of TWO (2) YEARS,  
3 CONSECUTIVE to COUNT 3; with NINE HUNDRED TWENTY-EIGHT (928) DAYS  
4 credit for time served. COUNTS 4, 6 and 7 DISMISSED. COUNT 8 DISMISSED  
5 WITHOUT PREJUDICE. The AGGREGATE TOTAL sentence is LIFE with ELIGIBILITY  
6 for PAROLE AFTER SERVING a MINIMUM of THIRTEEN (13) YEARS.  
7

8 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION  
9 is imposed to commence upon release from any term of imprisonment, probation or  
10 parole. In addition, before the Defendant is eligible for parole, a panel consisting of  
11 the Administrator of the Mental Health and Development Services of the Department  
12 of Human Resources or his designee; the Director of the Department of corrections or  
13 his designee; and a psychologist licensed to practice in this state; or a psychiatrist  
14 licensed to practice medicine in Nevada must certify that the Defendant does not  
15 represent a high risk to re-offend based on current accepted standards of assessment.  
16  
17

18 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender  
19 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any  
20 release from custody.  
21

22 DATED this 26<sup>th</sup> day of October, 2017.  
23  
24

25   
26 VALERIE P. ADAIR  
27 DISTRICT COURT JUDGE   
28



1 **NOT**  
2 THOMAS A. ERICSSON, ESQ.  
3 Nevada Bar No. 4982  
4 Oronoz & Ericsson, LLC  
5 1050 Indigo Drive, Suite 120  
6 Las Vegas, Nevada 89145  
7 Telephone: (702) 878-2889  
8 Facsimile: (702) 522-1542  
9 tom@oronozlawyers.com  
10 *Attorney for Appellant*

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 CALVIN ELAM,	)	
	)	
11 Appellant,	)	CASE NO. C-15-305949-1
	)	
12 v.	)	DEPT. NO. XXI
	)	
13 THE STATE OF NEVADA,	)	
	)	<b>NOTICE OF APPEAL</b>
14 Respondent.	)	
15 _____	)	

16 NOTICE is hereby given that CALVIN ELAM, Appellant above named, hereby appeals  
17 to the Nevada Supreme Court from District Court's decision rendered in this action, the 31st day  
18 of October, 2017.

19  
20 DATED this 13th day of November, 2017.

21  
22 ORONOZ & ERICSSON, LLC

23  
24 /s/ Thomas A. Ericsson, Esq.  
25 THOMAS A. ERICSSON, ESQ.  
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*Attorney for Appellant*



1 **CSERV**

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10 *Attorney for Appellant*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 CALVIN ELAM,

14 Appellant,

15 v.

16 THE STATE OF NEVADA,

17 Respondent.

CASE NO. C-15-305949-1

DEPT. NO. XXI

18 **CERTIFICATE OF ELECTRONIC SERVICE**

19 The undersigned herby certifies that electronic service was completed via the Odyssey E-  
20 File & Serve System and emailed to the following recipient(s) on this 13th day of November,  
21 2017.

22 STEVEN B. WOLFSON  
23 Clark County District Attorney  
24 PDMotions@clarkcountyda.com

25 /s/ Rachael Stewart

26 An Employee of Oronoz & Ericsson, LLC