

1
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IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER SENA,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

No. 79036

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May 20 2020 01:08 p.m.
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Clerk of Supreme Court

APPELLANT’S APPENDIX VOLUME XII PAGES 2490-2721

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INDEX
CHRISTOPHER SENA
Case No. 79036

PAGE NO.

1		
2		
3	Amended Criminal Complaint filed 10/22/14	7-13
4	Amended Information filed 10/12/16	1202-1246
5	Amended Judgment of Conviction filed 07/08/19	2399-2407
6	Audiovisual Transmission Equipment Appearance Request filed 02/06/19	2162-2164
7	Criminal Complaint filed 09/19/14.....	1-6
8	Defendant's Bench Memorandum Regarding Child Pornography Charges filed 02/15/19	2236-2246
9		
10	Defendant's Memorandum of Points and Authorities Opposing Bindover After Preliminary Hearing filed 09/19/15.....	917-933
11	Defendant's Motion for Juror Questionnaire Date of Hrg: 01/03/18.....	1679-1701
12		
13	Defendant's Motion for Production of Co-Offenders' PSIs and Related Discovery Date of Hrg: 08/22/18.....	1941-1950
14	Defendant's Motion to Continue Trial Date of Hrg: 09/13/17	1529-1545
15		
16	Defendant's Notice of Expert Witnesses filed 12/29/17	1731-1732
17	Defendant's Notice of Expert Witnesses filed 08/13/18	1891-1896
18	Defendant's Notice of Witnesses filed 01/08/18.....	1733-1735
19	Defendant's Proposed Jury Instructions Not Used At Trial filed 02/15/19	2214-2235
20	District Court Minutes from 01/05/16 through 05/28/19	2408-2486
21	Ex Parte Motion and Order to Remand Witness Into Custody filed 02/06/19	2167-2168
22	Ex Parte Motion and Order to Remand Witness Into Custody filed 02/06/19	2169-2170
23		
24	Ex Parte Order for Transcript filed 11/03/17.....	1552-1553
25	Ex Parte Order for Transcript filed 03/09/18.....	1741-1742
26	Ex Parte Order for Transport filed 12/05/17	1675-1676
27	Findings of Fact, Conclusions, of Law and Order Date of Hrg: 10/12/16.....	1251-1301
28	Fourth Amended Information filed 02/13/19	2171-2213

1	Information filed 12/16/15.....	1008-1052
2	Instructions to the Jury filed 02/21/19.....	2264-2358
3	Judgment of Conviction filed 05/31/19.....	2384-2392
4	Justice Court Minutes from 09/19/14 through 12/15/15	77-111
5	Motion for Stay Pending Resolution of Defendant's Petition for Writ of Mandamus/Prohibition	
6	Date of Hrg: 12/11/17.....	1634-1641
7	Motion to Compel Production of Discovery & Brady Material	
8	Date of Hrg: 08/23/17.....	1302-1354
9	Motion to Continue Trial Date	
10	Date of Hrg: 10/26/16.....	1247-1250
11	Motion to Continue Trial Date	
12	Date of Hrg: 01/10/18.....	1736-1739
13	Motion to Dismiss Counts for Violation of Statute of Limitations	
14	Date of Hrg: 08/23/17.....	1390-1454
15	Motion to Sever	
16	Date of Hrg: 12/04/17.....	1554-1583
17	Notice of Appeal filed 06/14/19.....	2393-2398
18	Opposition to Motion to Strike Expert Witness Notice	
19	Date of Hrg: 08/22/18.....	1934-1938
20	Opposition to State's Motion to Amend Criminal Information filed 10/05/16.....	1195-1201
21	Opposition to State's Motion to Clarify and/or Motion to Reconsider	
22	Date of Hrg: 08/22/18.....	1849-1890
23	Order filed 03/31/16	1093-1094
24	Order Denying Defendant's Motions of December 12/11/17	
25	Date of Hrg: 12/11/17.....	1677-1678
26	Order for Production of Inmate filed 07/10/15.....	115-116
27	Order for Production of Inmate filed 08/22/17.....	1524-1525
28	Order for Production of Inmate filed 08/25/17.....	1526-1527
	Order for Production of Inmate filed 02/01/19.....	2158-2159
	Order for Production of Inmate filed 02/04/19.....	2160-2161
	Order for Production of Inmate filed 02/06/19.....	2165-2166

1	Order Granting State’s Motion in Limine to Present the Complete Story of the	
2	Crime and Motion to Admit Evidence of Other Sexual Offenses and or	
3	Evidence of Other Crimes, Wrongs or Acts	
4	Date of Hrg: 09/25/17	1522-1523
5	Order Granting State’s Motion to Strike Expert Witness	
6	Date of Hrg: 08/22/18	1939-1940
7	Order to Show Cause RE: Contempt filed 09/06/18	2011-2039
8	Petition for Writ of Habeas Corpus filed 03/18/16	1053-1092
9	Receipt of Copy filed 08/23/17	1528
10	Receipt of Copy filed 09/13/17	1551
11	Receipt of Copy filed 03/08/18	1740
12	Receipt of Copy filed 09/05/18	2010
13	Receipt of Copy filed 09/18/18	2040
14	Receipt of Copy filed 12/17/18	2045-2046
15	Receipt of Copy filed 01/23/19	2062
16	Reply to State’s Opposition to Motion to Dismiss Counts for	
17	Violation of Statute of Limitations filed 08/28/17	1455-1461
18	Return to Writ of Habeas Corpus	
19	Date of Hrg: 05/16/16	1095-1141
20	Second Amended Criminal Complaint filed 12/18/14	14-33
21	Second Amended Information filed 09/05/18	1959-2001
22	State’s Amended Fourth Supplemental Notice of	
23	Witnesses and/or Expert Witnesses filed 01/22/19	2047-2061
24	State’s Fourth Supplemental Notice of Witnesses and/or	
25	Expert Witnesses filed 12/12/18	2041-2044
26	State’s Memorandum of Points and Authorities in Support of	
27	Bindover After Preliminary Hearing	
28	Date of Hrg: 11/20/15	827-916
29	State’s Motion for Clarification and Supplement to Prior Motion in Limine to	
30	Present the Complete Story of the Crime and Motion to Admit Evidence of Other	
31	Sexual Crimes and/or Evidence of Other Crimes, Wrongs or Acts	
32	Date of Hrg: 08/27/18	1764-1848
33	State’s Motion to Strike Defendant’s Notice of Expert Witnesses	
34	Date of Hrg: 09/05/18	2002-2009

1	State's Notice of Motion and Motion in Limine to Present the Complete	
2	Story of the Crime and Motion to Admit Evidence of Other Sexual	
3	Offenses and/or Evidence of Other Crimes, Wrongs or Acts	
4	Date of Hrg: 08/06/17	1462-1521
5	State's Notice of Motion and Motion to Strike Defendant's Notice of	
6	Expert Witnesses, on an Order Shortening Time	
7	Date of Hrg: 08/15/18	1897-1933
8	State's Notice of Witnesses and/or Expert Witnesses filed 08/08/17	1371-1389
9	State's Opposition to Defendant's Motion for Directed Verdict	
10	Date of Hrg: 02/15/19	2247-2252
11	State's Opposition to Defendant's Motion for Juror Questionnaire	
12	Date of Hrg: 01/03/18	1702-1730
13	State's Opposition to Defendant's Motion for Stay Pending Resolution of	
14	Defendant's Petition for Writ of Mandamus/Prohibition	
15	Date of Hrg: 12/11/17	1642-1674
16	State's Opposition to Defendant's Motion to Compel	
17	Production of Discovery and Brady Material	
18	Date of Hrg: 08/16/17	1355-1370
19	State's Opposition to Defendant's Motion to Continue Trial	
20	Date of Hrg: 09/06/17	1546-1550
21	State's Opposition to Defendant's Motion to Sever	
22	Date of Hrg: 12/04/17	1584-1633
23	State's Second Supplemental Notice of Witnesses and/or	
24	Expert Witnesses filed 08/31/18	1951-1954
25	State's Supplemental Memorandum Points and Authorities	
26	Opposing Bindover After Preliminary Hearing	
27	Date of Hrg: 12/14/15	934-966
28	State's Supplemental Notice of Witnesses and/or	
	Expert Witnesses filed 07/17/18	1743-1763
	State's Third Supplemental Notice of Witnesses and/or	
	Expert Witnesses filed 09/04/18	1955-1958
	State's Trial Memorandum filed 02/15/19	2253-2263
	Stipulation and Order Regarding Discovery of	
	Child Pornographic Materials filed 02/19/15	112-114
	Supplement to State's Return to Writ of Habeas Corpus and	
	Motion to Amend Criminal Information	
	Date of Hrg: 08/10/16	1142-1194
	Third Amended Criminal Complaint filed 12/15/15	34-76

1	Third Amended Information filed 01/23/19	2115-2157
2	Verdict filed 02/21/19.....	2359-2383
3		
4	<u>TRANSCRIPTS</u>	
5	Recorder's Transcript	
6	JURY TRIAL DAY 1	
6	Date of Hrg: 09/05/18.....	2722-3031
7	Recorder's Transcript	
8	JURY TRIAL DAY 2	
8	Date of Hrg: 09/06/18.....	3032-3185
9	Recorder's Transcript	
10	JURY TRIAL DAY 3	
10	Date of Hrg: 09/07/18.....	3186-3213
11	Recorder's Transcript	
12	JURY TRIAL DAY 1	
12	Date of Hrg: 01/28/19.....	3247-3467
13	Recorder's Transcript	
14	JURY TRIAL DAY 2	
14	Date of Hrg: 01/29/19.....	3468-3778
15	Recorder's Transcript	
16	JURY TRIAL DAY 3	
16	Date of Hrg: 01/30/19.....	3779-3988
17	Recorder's Transcript	
18	JURY TRIAL DAY 4	
18	Date of Hrg: 01/31/19.....	3989-4360
19	Recorder's Transcript	
20	JURY TRIAL DAY 5	
20	Date of Hrg: 02/01/19.....	4361-4455
21	Recorder's Transcript	
22	JURY TRIAL DAY 6	
22	Date of Hrg: 02/04/19.....	4456-4641
23	Recorder's Transcript	
24	JURY TRIAL DAY 7	
24	Date of Hrg: 02/05/19.....	4642-4957
25	Recorder's Transcript	
26	JURY TRIAL DAY 8	
26	Date of Hrg: 02/06/19.....	4958-5221
27	Recorder's Transcript	
28	JURY TRIAL DAY 9	
28	Date of Hrg: 02/07/19.....	5222-5385

1	Recorder's Transcript JURY TRIAL DAY 10	
2	Date of Hrg: 02/08/19.....	5386-5699
3	Recorder's Transcript JURY TRIAL DAY 11	
4	Date of Hrg: 02/11/19.....	5700-5979
5	Recorder's Transcript JURY TRIAL DAY 12	
6	Date of Hrg: 02/13/19.....	5980-6200
7	Recorder's Transcript JURY TRIAL DAY 13	
8	Date of Hrg: 02/14/19.....	6201-6399
9	Recorder's Transcript JURY TRIAL DAY 14	
10	Date of Hrg: 02/15/19.....	6400-6432
11	Recorder's Transcript JURY TRIAL DAY 15	
12	Date of Hrg: 02/19/19.....	6433-6676
13	Recorder's Transcript JURY TRIAL DAY 16	
14	Date of Hrg: 02/20/19.....	6677-6682
15	Recorder's Transcript JURY TRIAL DAY 17	
16	Date of Hrg: 02/21/19.....	6683-6711
17	Recorder's Transcript All Pending Motions	
18	Date of Hrg: 08/22/18.....	2621-2690
19	Recorder's Transcript Arraignment	
20	Date of Hrg: 01/20/16.....	2490-2499
21	Recorder's Transcript Calendar Call	
22	Date of Hrg: 08/29/18.....	2691-2721
23	Recorder's Transcript Calendar Call	
24	Date of Hrg: 01/23/19.....	3240-3246
25	Recorder's Transcript Calendar Call and All Pending Motions	
26	Date of Hrg: 09/06/17.....	2549-2561
27	Recorder's Transcript Defendant's Motion for Juror Questionnaire	
28	Date of Hrg: 01/03/18.....	2569-2573

1	Recorder's Transcript	
2	Defendant's Motion to Compel Production of	
	Discovery and Brady Material	
3	Date of Hrg: 08/16/17	2538-2546
4	Recorder's Transcript	
5	Defendant's Motion to Dismiss Counts for	
	Violation of Statute of Limitations	
6	Date of Hrg: 08/23/17	2547-2548
7	Recorder's Transcript	
8	Defendant's Motion to Sever	
9	Date of Hrg: 12/04/17	2562-2565
10	Recorder's Transcript	
11	Defendant's Motion to Stay Pending Resolution of	
12	Defendant's Petition for Writ of Mandamus/Prohibition;	
13	Defendant's Motion to Sever	
14	Date of Hrg: 12/11/17	2566-2568
15	Recorder's Transcript	
16	Defendant's Petition for Writ of Habeas Corpus	
17	Date of Hrg: 04/04/16	2500-2503
18	Recorder's Transcript	
19	Defendant's Petition for Writ of Habeas Corpus	
20	Date of Hrg: 06/06/16	2504-2506
21	Recorder's Transcript	
22	Defendant's Petition for Writ of Habeas Corpus	
23	Date of Hrg: 07/13/16	2507-2510
24	Recorder's Transcript	
25	Further Proceedings: Defendant's Petition for	
26	Writ of Habeas Corpus	
27	Date of Hrg: 10/12/16	2516-2524
28	Recorder's Transcript	
29	Further Proceedings: Defendant's Petition for	
30	Writ of Habeas Corpus-Count 97	
31	Date of Hrg: 08/29/16	2511-2515
32	Recorder's Transcript	
33	Initial Arraignment	
34	Date of Hrg: 01/05/16	2487-2489
35	Recorder's Transcript	
36	Pre-Trial Conference	
37	Date of Hrg: 08/09/17	2528-2537
38	Recorder's Transcript	
39	Pre-Trial Conference	
40	Date of Hrg: 08/01/18	2590-2597

1	Recorder's Transcript	
2	Pre-Trial Conference	
	Date of Hrg: 12/12/18.....	3223-3228
3	Recorder's Transcript	
4	Sentencing	
	Date of Hrg: 04/29/19.....	6712-6723
5	Recorder's Transcript	
6	Sentencing	
	Date of Hrg: 05/28/19.....	6724-6780
7	Recorder's Transcript	
8	Show Cause Hearing	
	Date of Hrg: 09/26/18.....	3214-3222
9	Recorder's Transcript	
10	Status Check: Expert Issues	
	Date of Hrg: 12/19/18.....	3229-3239
11	Recorder's Transcript	
12	Status Check: Juror Questionnaire	
	Date of Hrg: 01/31/18.....	2580-2585
13	Recorder's Transcript	
14	Status Check: Juror Questionnaire	
	Date of Hrg: 08/15/18.....	2598-2620
15	Recorder's Transcript	
16	Status Check: Outstanding Discover/Finalizing Jury Questionnaire	
	Date of Hrg: 03/07/18.....	2586-2589
17	Recorder's Transcript	
18	Status Check: Trial Setting; Defendant's	
19	Motion for Juror Questionnaire	
	Date of Hrg: 01/24/18.....	2574-2579
20	Recorder's Transcript	
21	Status Check: Trial Setting; Defendant's	
	Motion to Continue Trial Date	
	Date of Hrg: 10/26/16.....	2525-2527
22	Reporter's Transcript	
23	Argument and Bindover	
	Date of Hrg: 12/15/15.....	967-1007
24	Reporter's Transcript	
25	Motions	
	Date of Hrg: 07/13/15.....	117-121
26	Reporter's Transcript	
27	Preliminary Hearing Vol. I	
	Date of Hrg: 08/27/15.....	122-223
28		

1	Reporter's Transcript	
2	Preliminary Hearing Vol. II	
2	Date of Hrg: 08/28/15.....	224-557
3	Reporter's Transcript	
4	Preliminary Hearing Vol. III	
4	Date of Hrg: 09/03/15.....	558-705
5	Reporter's Transcript	
6	Preliminary Hearing Vol. IV	
6	Date of Hrg: 09/18/15.....	706-826
7		
8		
9		
10		
11		
12		
13		
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1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 CHRISTOPHER SENA,

10 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
13 WEDNESDAY, JANUARY 20, 2016

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **ARRAIGNMENT CONTINUED**

16
17 APPEARANCES:

18 For the State:

JAMES SWEETIN
Chief Deputy District Attorney

19
20 For the Defendant:

DAVID LOPEZ-NEGRETE
VIOLET RADOSTA
Deputy Public Defender

21
22
23
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25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 20, 2016

2 [Hearing began at 08:39 a.m.]

3 THE COURT: State of Nevada versus Christopher Sena; this is
4 case number C311453. Is Mr. Sena present?

5 MS. RADOSTA: Mr. Sena is present, Your Honor, and with him also
6 is Mr. Lopez-Negrete from my office as well. He's also on this case with
7 me.

8 THE COURT: Okay.

9 MS. RADOSTA: And for the record Violet Radosta from the Public
10 Defender's office; bar number 5747 on behalf of Mr. Sena who's present
11 in custody.

12 THE COURT: Mr. Sena, did you receive a copy of the information in
13 this matter?

14 THE DEFENDANT: Yes.

15 THE COURT: Did you have an opportunity to read through it?

16 THE DEFENDANT: Yes.

17 THE COURT: Was your attorney available to answer any questions
18 you may have had when you were reading through it?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you waive a formal reading of it now?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay; how old are you, sir?

23 THE DEFENDANT: Forty-nine.

24 THE COURT: How far did you go in your education?

25 THE DEFENDANT: Ninth.

1 THE COURT: Do you read and write in the English language?

2 THE DEFENDANT: Yes.

3 THE COURT: When you read this information, on the front page it
4 has the name of Christopher Sena, is it spelled correctly?

5 THE DEFENDANT: Yes.

6 THE COURT: Mr. Sena, I'm not going to go through these
7 individually; however, you understand that the State has alleged on or
8 between May 22nd of 2001 and June 30, 2014 that you committed certain
9 defenses that pertain to conspiracy to commit sexual assault; lewdness
10 with a child under the age of 14; sexual assault with a minor under
11 fourteen years of age; sexual assault with a minor under sixteen years of
12 age; incest; open or gross lewdness; sexual assault; preventing or
13 dissuading witnesses or a victim from reporting a crime or commencing
14 prosecution; child abuse, neglect, or endangerment and sexual abuse;
15 use of a minor in producing pornography; possession of visual
16 presentation depicting sexual conduct of a child; sexual assault; child
17 abuse, neglect or endangerment and sexual exploitation; use of a minor
18 under the age of 14 in producing pornography; and use of a minor under
19 the age of 18 in producing pornography.

20 Do you understand that's --

21 THE DEFENDANT: Yes; I understand.

22 THE COURT: Okay. With respect to conspiracy to commit sexual
23 assault in counts 1, 2, 4 through 5; 7, 9, 10, 12, 13, 15, 17, 18, 20 and 88;
24 90, 92, 107, 108, 109, 110 and -- through 114. How do you plead to that
25 today?

1 THE DEFENDANT: Not guilty.

2 THE COURT: With respect to lewdness with a child under the age
3 of 14 in counts 3, 6, 8, 11, 14 --

4 MS. RADOSTA: Actually, Your Honor, I don't mean to interrupt but
5 those are not, I mean, 3 is not a lewdness count.

6 THE COURT: Okay; you're right. That's -- I'm sorry, your correct.

7 MS. RADOSTA: Yeah. If we're going to go through them all it
8 needs to be --

9 THE COURT: Yeah. I need to do this --

10 MS. RADOSTA: I mean, Your Honor, we're comfortable pleading
11 not guilty en masse to all 124 counts. We're fully aware of them. We
12 had a preliminary hearing that lasted for four days.

13 THE COURT: Okay.

14 THE COURT: He's fully aware of all of the charges that he's facing
15 so we're prepared to enter a not guilty plea to all charges.

16 And if you want to ask Mr. Sena that himself how he pleads to
17 all 124 counts that's fine with the -- myself and Mr. Lopez-Negrete.

18 THE COURT: Mr. Sweetin, are you in agreeance with that?

19 MR. SWEETIN: That's fine, Judge.

20 THE COURT: Okay. Mr. Sena, you're charged as -- in regards to
21 what I've read the different charges, 124 different counts. Your attorney
22 has indicated that you understand those charges and that you're willing
23 to plead to those and you don't want me to go through each one of them.
24 Is that correct?

25 THE DEFENDANT: Correct.

1 THE COURT: How do you plead to the 124 counts that encompass
2 all those different charges?

3 THE DEFENDANT: Not guilty.

4 THE COURT: Okay; are you -- you have a right to a speedy trial in
5 this matter. Are you invoking your right to a speedy trial at this time or
6 waiving that?

7 THE DEFENDANT: I'm going to waive it.

8 THE COURT: Okay. I'm going to set bail though in this matter for
9 the conspiracy to commit sexual assault counts, is 20,000 per count. The
10 lewdness with a child under the age of 14 is 50,000 per count. The
11 sexual assault with a minor under 14 years of age it's a 100,000 per
12 count. The sexual assault with a minor under sixteen years of age is
13 100,000 per count. The incest is 50,000 per count. Open and gross
14 lewdness is 2,000 per count. Sexual assault 100,000 per count.
15 Preventing or dissuading a witness or victim from reporting a crime or
16 commencing prosecution is 20,000 per count. Child abuse, neglect, or
17 endangerment with sexual abuse is 100,000 per count. Use of a minor in
18 producing pornography is 100,000 per count. Possession of visual
19 presentation depicting sexual conduct of a child is 50,000 per count.
20 Sexual assault, 100,000 per count. Child abuse, neglect or
21 endangerment of sexual exploitation, 50,000 per count. Use of a minor
22 under the age of 14 in producing pornography, 100,000 per count; and
23 use of a minor under the age of 18 in producing pornography 100,000 per
24 count.

25 When do you want to do it?

1 MS. RADOSTA: Did you have -- by any chance, Your Honor, do you
2 have a total of the amount of bail?

3 THE COURT: I think it's about 11 million.

4 MS. RADOSTA: All right, your Honor, it seems a bit excessive
5 considering the fact that my client had 1.3 million dollar bail in Justice
6 Court and was unable to make that; but, that being said the Court made
7 that decision sua sponte.

8 At this point, Mr. Sweetin and I had discussed perhaps setting
9 it out into September. We're going to need several weeks, Your Honor,
10 so it kind of needs to be when everybody can accommodate. We're
11 figuring at least three weeks for trial.

12 MR. SWEETIN: I would say probably three weeks would do it.

13 MS. RADOSTA: There are eight independent alleged victims.

14 THE COURT: Yeah.

15 MS. RADOSTA: Not to mention that, of course, all the other, you
16 know, detectives and potential witnesses that the State will call, not to
17 mention Defense witnesses. So --

18 THE COURT: Okay; well, my stack starts on the 5th of September
19 and goes through the first week of October.

20 [COLLOQUY BETWEEN COURT AND COURT CLERK]

21 THE COURT: Did you hear that one?

22 MS. RADOSTA: So starting November 28th and going into
23 December? Is that the --

24 THE COURT: Yeah; I can give you probably the whole first three
25 weeks of December and the last week of November.

1 MS. RADOSTA: We -- the Defense certainly --

2 THE COURT: Do you think you can get it done?

3 MS. RADOSTA: -- has no objection. I do think we're going to have
4 a difficult time finding jurors that are going to be available that time of
5 year for an extended period of time, but I'd rather set it there than into
6 next year that's --

7 THE COURT: Yeah.

8 MS. RADOSTA: -- absolutely ridiculous. So, with that caveat.

9 THE COURT: You know, I'd set it in September, the only problem is
10 is that I have two cases that were set that are -- each one of them is
11 claiming to be two weeks long and we've been doing a lot of litigation on
12 it so --

13 MS. RADOSTA: I understand, Your Honor, I mean it is what it is.
14 So --

15 MR. SWEETIN: When is your next stack into the next year?

16 THE COURT CLERK: It starts February 6th of 2017.

17 MS. RADOSTA: We would rather set it in September than into
18 2017.

19 THE COURT: How quick could you be ready? And the reason I'm
20 asking that is sometimes my civil stacks open up.

21 MS. RADOSTA: At this point, Your Honor, there's no way we could
22 be ready much before September. We have to retain potential experts.
23 We have to --

24 THE COURT: Okay.

25 MS. RADOSTA: There's a 124 counts that I need to address in a

1 writ, not to mention other motion work that needs to be done. So --

2 THE COURT: Well if we get past September and my civil stack
3 opens I -- what I mean is how quick could you be ready if I gave you a
4 call --

5 MS. RADOSTA: Oh.

6 THE COURT: -- and say, okay, you got the whole month of October
7 or something like that?

8 MS. RADOSTA: That's more to Mr. --

9 THE COURT: I know --

10 MS. RADOSTA: -- Sweetin's --

11 THE COURT: Mr. Sweetin getting your witnesses here and stuff
12 so --

13 MR. SWEETIN: It would be difficult just from the stand point that --

14 THE COURT: Okay.

15 MR. SWEETIN: -- I know that, you know, this is a difficult thing for
16 all the witnesses and I'd hate to --

17 THE COURT: Well, okay. Let's try this then. Let me schedule the
18 28th of November and I'll give you the whole -- it would be roughly three
19 weeks and if we had to we could go, you know, I don't want to, but we
20 can go into that third week of December. Just to give you the time frame
21 now, I mean, you know, starting November 28th. Or do you want me to
22 put you in November 13th and there may be -- but we have the
23 Thanksgiving holiday. There'd be a break, they'll have to come back.
24 Would you want to do that with the jury?

25 MR. SWEETIN: I might rather do that then push it so close to

1 Christmas.

2 THE COURT: Okay.

3 MR. SWEETIN: Yeah.

4 MS. RADOSTA: I agree.

5 THE COURT: All right; well --

6 MS. RADOSTA: We all know trials -- if we're saying three weeks --

7 THE COURT: Okay.

8 MS. RADOSTA: We all know what happens with --

9 THE COURT: Well the 24th of November is Thanksgiving.

10 MS. RADOSTA: Okay.

11 THE COURT: So, you know, the 24th and 25th we wouldn't be
12 working. So if I give you the 13th and then we just went until you were
13 done?

14 MS. RADOSTA: Yeah. That would be --

15 THE COURT: Would that work for you, Mr. Sweetin?

16 MR. SWEETIN: That's fine, Judge.

17 THE COURT: Just set it that way and we're not going to set other
18 cases in there.

19 THE COURT CLERK: Okay; the pretrial conference is October 12th
20 at 8:30; calendar call is November 9th at 8:30; jury trial will be November
21 14th at 10:00 a.m.

22 MS. RADOSTA: I'm sorry, the pretrial was October 8th?

23 THE COURT CLERK: October 12th.

24 MS. RADOSTA: October 12th.

25 THE COURT CLERK: At 8:30.

1 MS. RADOSTA: Okay. Thank you. That was the only one I didn't
2 get. Thank you.

3 THE COURT: Okay. Thank you.

4 MR. SWEETIN: Thank you.

5 [Hearing concluded at 08:50 a.m.]

6 * * * * *

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

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11 Christine Erickson,
12 Court Recorder

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1 RTRAN

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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6 THE STATE OF NEVADA,
7 Plaintiff,

8 vs.

9 CHRISTOPHER SENA,
10 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
13 MONDAY, APRIL 04, 2016

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

16
17 APPEARANCES:

18 For the State:

JAMES SWEETIN
Chief Deputy District Attorney

19
20 For the Defendant:

VIOLET R. RADOSTA
Deputy Public Defender

21
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25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 LAS VEGAS, NEVADA, MONDAY, APRIL 04, 2016

2 [Hearing began at 9:07 a.m.]

3 THE COURT: State of Nevada versus Christopher Sena. This is
4 C311453. Defendant's present in custody. It's time set for Defendant's
5 petition for writ of habeas corpus. I didn't get a -- it's a pretrial writ. I
6 didn't get the response, Mr. Sweetin.

7 MR. SWEETIN: And what happened was the State didn't get
8 served. I talked to Defense counsel. I guess it was served on a non-
9 existent DA email.

10 THE COURT: Okay.

11 MR. SWEETIN: And so at any rate I talked to Defense counsel and I
12 believe that Defense counsel requested a date of -- in May, I think of May
13 16th, which is fine with the State. That will give the State time to respond
14 and give the Defense time to respond to our response if they want.

15 THE COURT: Okay. So you want me to set it on for argument on
16 that date?

17 MR. SWEETIN: Yes.

18 MS. RADOSTA: Yes, Your Honor; it should give the State enough
19 time to respond and if I feel the need to do a reply then that would give us
20 enough time.

21 And just so that the Court's aware, my primary secretary was
22 out on and off about two weeks with a pretty bad case of bronchitis so we
23 were using alternate secretaries so that's unfortunately --

24 THE COURT: Oh. I gotcha.

25 MS. RADOSTA: -- just where the --

1 THE COURT: Confusion was?

2 MS. RADOSTA: Yeah. Exactly.

3 THE COURT: Okay.

4 MS. RADOSTA: 'Cause I'm fairly sure the Court got it. It got on
5 calendar, it was just the matter of the State didn't get a copy of it. And
6 Mr. Sweetin called me late last week about a different case and that's
7 when we realized --

8 THE COURT: Okay.

9 MS. RADOSTA: -- the error.

10 THE COURT: All Right. So go ahead and set it.

11 THE COURT CLERK: May 16th at 8:30.

12 MS. RADOSTA: And just so the Court's aware, obviously we're
13 going to want to call it last and trail it to the end of the calendar. So if the
14 Court happens to be in trial that day or something like that.

15 THE COURT: We'll just -- what I'll do is I'll just go ahead and set it
16 for 10 right now.

17 MS. RADOSTA: Okay. 'Cause I'm not sure if the Court's looked at
18 it thus far but my petition is about 45 pages long.

19 THE COURT: Yeah. I know.

20 MS. RADOSTA: It's going to be --

21 THE COURT: I was real surprised --

22 MS. RADOSTA: -- fairly lengthy.

23 THE COURT: -- I didn't see a response to that petition.

24 MS. RADOSTA: You know, I finally, you know, I just convinced him.

25 THE COURT: Okay. All right.

1 MS. RADOSTA: I did.

2 THE COURT: All right. Okay, so we'll just hear it on that day. I'll
3 set it at 10:00 that way we've already got it at the end.

4 THE COURT CLERK: So May 16th at 10 a.m.

5 THE COURT: Okay?

6 MS. RADOSTA: Thank you.

7 MR. SWEETIN: Thank you.

8 [Hearing concluded at 9:09 a.m.]

9 * * * * *

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



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14 Christine Erickson,
Court Recorder

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1 RTRAN

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 CHRISTOPHER SENA,

10 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
13 MONDAY, JUNE 06, 2016

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

16
17 APPEARANCES:

18 For the State:

COLLEEN BAHARAV
Chief Deputy District Attorney

19
20 For the Defendant:

VIOLET R. RADOSTA
Deputy Public Defender

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25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 LAS VEGAS, NEVADA, MONDAY, JUNE 06, 2016

2 [Hearing began at 8:32 a.m.]

3 THE COURT: State of Nevada versus Chris Sena.

4 MS. BAHARAV: Your Honor, this is supposed to be Mr. Sweetin's
5 and Ms. Holthus' case and they're not yet present.

6 THE COURT: Wasn't this moved to --

7 THE COURT CLERK: It was. Unfortunately the email started late
8 Friday afternoon and it was already on the final calendar. So -- but we
9 had already agreed upon a date.

10 THE COURT: What date? July --

11 THE COURT CLERK: I believe it was July 13th is what they agreed
12 upon in the email.

13 [COLLOQUY BETWEEN THE COURT AND COURT CLERK]

14 THE COURT: What's the case number?

15 THE COURT CLERK: It's C311453.

16 THE COURT: Okay. Mr. Sena, go ahead have a seat I'm going to
17 wait for your attorney -- she's right here. Okay.

18 MS. RADOSTA: Sorry, Judge.

19 THE COURT: In case of C311453, State of Nevada versus Chris
20 Sena. It's my understanding there's an agreement that this be moved to
21 July 13th?

22 MS. RADOSTA: Yeah. I think that was the date that we had all --
23 that everybody was agreeing on, Judge.

24 THE COURT: All right. So we'll just set it for July 13th. It's for the
25 argument on the writ.

1 MS. RADOSTA: And that was at Mr. Sweetin's request.

2 THE COURT: Okay. All right.


3 THE COURT CLERK: July 13th at 8:30.

4 MS. RADOSTA: Thank you.

5 [Hearing concluded at 8:33 a.m.]

6 * * * * *

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

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11 Christine Erickson,
12 Court Recorder

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1 TRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
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5 STATE OF NEVADA

6 Plaintiff,

7 vs.

8 CHRISTOPHER SENA,

9 Defendant.
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CASE NO. C-15-311453-1

DEPT. XIX
12

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE
13 WEDNESDAY, JULY 13, 2016
14

15 **RECORDER'S TRANSCRIPT OF HEARING**
16 **DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

17 APPEARANCES:

18 For the State:

JAMES SWEETIN, ESQ.
Chief Deputy District Attorney
19

20 For the Defendant:

VIOLET R. RADOSTA, ESQ.
Deputy Public Defender
21
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25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 Wednesday, July 13, 2016 - 9:20 a.m.

2
3 THE COURT: This is Christopher Sena in Case Number C311453. Let
4 the record reflect the presence of the Defendant, his counsel, Ms. Radosta, and
5 Mr. Sweetin is here on behalf of the State. This is Defendant's motion -- it's
6 basically a pre-trial writ challenging the bindover. I've had an opportunity to review
7 all of the -- you know, I -- would the parties approach.

8 [Bench conference held - not transcribed]

9 THE COURT: Okay. We're back on the record in Case C311453, State of
10 Nevada versus Christopher Sena. Mr. Sena, what I -- your attorney can explain to
11 you what I was discussing at the bench about some of the counts. I'm sure that
12 you've read the -- her petition here challenging the specificity of some of the
13 counts.

14 And Count 97 is the only one I have a question on. The other ones, I
15 think that there is -- for purposes of this hearing here today, there was slight or
16 marginal evidence presented before the trier -- I mean, before the previous court to
17 be sufficient to bind you over on all these counts. 97, though, I had a question with
18 regards to the way it was charged.

19 So what I'm going to do is I'm going to deny your writ with respect to all
20 counts except for 1997 -- not 1997. Separate 97, and I'm going to ask the State,
21 and I welcome the Defense as well, for any additional briefing on the issue that I
22 discussed at the bench with regards to the vicarious liability and the direct -- by the
23 Defendant directly doing these acts.

24 MS. RADOSTA: Okay.

25 THE COURT: How long would you think you would want?

1 MR. SWEETIN: You know, if I could have two weeks and maybe then a
2 week for the Defense to --

3 THE COURT: Okay.

4 MR. SWEETIN: -- do any response, I think that would be sufficient.

5 THE COURT: Okay. And then a week after that for the Court's decision?

6 MS. RADOSTA: Yes.

7 THE COURT: Okay.

8 MS. RADOSTA: Do you want us to be -- do you want us to come back to
9 court for it or do you just want to issue a written decision based on our briefs?

10 THE COURT: I'll have you come back.

11 MS. RADOSTA: Okay.

12 THE COURT: That way it's -- that way Mr. Sena knows, you know --

13 MS. RADOSTA: No problem.

14 THE COURT: -- clearly. I don't anticipate that I need a lot of argument, but
15 I might --

16 MS. RADOSTA: Okay.

17 THE COURT: -- I mean, based on what -- my discussion at the bench
18 here, so -- all right. So that would be my order here, and we'll set it over two weeks
19 for the State, if they choose, a week after that for the Defense, and then a week
20 after that for argument.

21 THE CLERK: The State's additional briefing will be due on September
22 27th. Defense's brief, August 3rd. And the matter will be on calendar for August
23 10th at 8:30.

24 THE COURT: Okay. And the pre-trial conference and the calendar call
25 and the trial date will stand at this time.

1 MR. SWEETIN: Thank you.

2 THE COURT: All right. Thank you.

3 (Proceedings concluded at 9:32 a.m.)
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15 ATTEST: I do hereby certify that I have truly and correctly transcribed the
16 audio-visual recording of the proceeding in the above entitled case to the
17 best of my ability.

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22 Renee Vincent, Court Recorder/Transcriber
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1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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6 THE STATE OF NEVADA,
7 Plaintiff,

8 vs.

9 CHRISTOPHER SENA,
10 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
13 MONDAY, AUGUST 29, 2016

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **FURTHER PROCEEDINGS: DEFENDANT'S PETITION FOR WRIT**
16 **OF HABEAS CORPUS - COUNT 97**

17
18 APPEARANCES:

19 For the State:

JAMES SWEETIN
Chief Deputy District Attorney

20
21 For the Defendant:

VIOLET R. RADOSTA
DAVID LOPEZ-NEGRETE
Deputy Public Defender

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25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 LAS VEGAS, NEVADA, MONDAY, AUGUST 29, 2016

2 [Hearing began at 9:10 a.m.]

3 THE COURT: State of Nevada versus Christopher Sena. This is
4 C311453. Defendant is present. Ms. Radosta's here on behalf of the
5 Defendant and Mr. Sweetin's here on behalf of the State. Did -- I know
6 that you're in trial or something so you needed --

7 MS. RADOSTA: Yes. Mr. Sweetin and I both are starting a trial in --

8 THE COURT: Okay.

9 MS. RADOSTA: -- against each other in about an hour. So in light
10 of the fact that I'm expecting Mr. Sweetin to want to argue this in detail, I
11 think we would need to trail it to the end of the calendar.

12 MR. SWEETIN: I'm not sure the Court wants argument on it but --

13 THE COURT: Were you going to file anything more on it?

14 MS. RADOSTA: I was hoping to Judge and --

15 THE COURT: Okay.

16 MS. RADOSTA: -- I apologize it's just -- the last three weeks I've
17 been in back to back to back trials.

18 THE COURT: Ms. Radosta, I'm going to give you an opportunity
19 that -- I really don't. I was ready to rule on it right now but I didn't see that
20 you added anything. If you want to I'll give you an opportunity to file a
21 supplement --

22 MS. RADOSTA: I would appreciate that, Your Honor.

23 THE COURT: -- or an opposition to the State's supplement.

24 MS. RADOSTA: Just so that there's something on the record, yeah,
25 I would appreciate that.

1 THE COURT: Okay.

2 MS. RADOSTA: Could we -- could I maybe -- I think this trial should
3 be done this week, but just to be safe could we have maybe two weeks
4 and I will get something filed in that amount of time?

5 THE COURT: Yeah, that'd be fine.

6 MS. RADOSTA: Or whatever the Court's --

7 THE COURT CLERK: Two weeks to file or two weeks for the
8 hearing?

9 THE COURT: Why don't we do this. Go ahead and take the two
10 weeks to file it.

11 MS. RADOSTA: Thank you.

12 THE COURT: And then I'll hear everything on the pretrial
13 conference date.

14 I will tell you based on what -- how the State wants to amend
15 that I think it's going to clean it up better and I'm more satisfied with that.
16 But -- so -- but I still have that issue with regards to the incest charge.

17 MS. RADOSTA: Uh-huh.

18 THE COURT: So, but I think the State has clarified it with me, but
19 I'm going to give you a chance to see if there's something else that you
20 want to address with that.

21 MS. RADOSTA: Thank you, Your Honor. And our pretrial
22 conference date is when at this point?

23 THE COURT: October 12th.

24 MS. RADOSTA: October 12th; okay.

25

1 THE COURT CLERK: So your response will be due by September
2 12th. And the matter will be heard on October 12th at 8:30.

3 THE COURT: Will that work?

4 MS. RADOSTA: Yeah. That's fine, Your Honor. Just so that the
5 Court and counsel are aware, at this point in time our trial date is
6 November.

7 THE COURT: Correct.

8 MS. RADOSTA: I haven't even -- because we're still dealing with
9 the charging document at this point and the writ argument, I -- there's no
10 way we're going to be able to go in November. There's still a discovery
11 motion to be filed. There's still other multiple -- other procedural motions
12 that need to be filed just so that the Court's aware because I know you
13 kind of blocked off some time for this trial.

14 THE COURT: Well let's deal with it when we get to it.

15 MR. SWEETIN: Yeah. We were expecting to go in November.

16 THE COURT: Yeah.

17 MR. SWEETIN: I know the Court did block off some time.

18 THE COURT: Yeah. Well we'll see.

19 MS. RADOSTA: I appreciate that.

20 THE COURT: We'll see what Ms. Radosta comes up with. So --
21 okay.

22 MS. RADOSTA: There's multiple other motions.

23 THE COURT: No; I anticipate that. Okay.

24 MS. RADOSTA: Thank you.

25 THE COURT: All right.

1 MS. RADOSTA: And for the record also Mr. Lopez-Negrete was
2 here for Mr. Sena as well.

3 THE COURT: Okay.

4 [Hearing concluded at 9:13 a.m.]

5 * * * * *

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

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Christine Erickson,
Court Recorder

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff,

vs.

CHRISTOPHER SENA,

Defendant.

CASE NO. C-15-311453-1

DEPT. XIX

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE
WEDNESDAY, OCTOBER 12, 2016

**RECORDER'S TRANSCRIPT OF HEARING
FURTHER PROCEEDINGS:
DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

APPEARANCES:

For the State:

JAMES SWEETIN, ESQ.
Chief Deputy District Attorney

For the Defendant:

VIOLET R. RADOSTA, ESQ.
Deputy Public Defender

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 Wednesday, October 12, 2016 - 9:20 a.m.

2
3 THE COURT: State of Nevada versus Christopher Sena -- and it goes to
4 page 8 as well -- in C311453. Ms. Radosta is here on behalf of the Defendant, the
5 Defendant's present in custody, and Mr. Sweetin is here on behalf of the State.

6 I continued this over the -- Ms. Radosta wanted to respond or take a
7 look at and see whether or not she wanted to file an opposition to the State's
8 motion to amend. And I had an opportunity to review those, her motion -- or her
9 opposition.

10 And, Mr. Sweetin, the question I have, I understand, you know, the idea
11 of amending all the way up until jury verdict, but Ms. Radosta raised a pretty good
12 issue as to -- indicating that we're changing -- the changing of theory.

13 MR. SWEETIN: It doesn't -- it doesn't change the theory, Judge. Doesn't
14 change the charge or the theory because previously it was alleging and abetting
15 22 people, and now it's --

16 THE COURT: And it really doesn't matter in aiding and abetting who did
17 more.

18 MR. SWEETIN: Yes.

19 THE COURT: Okay.

20 MR. SWEETIN: Right. And in order to establish guilt with regards to the
21 counts, you have to establish that he was aiding and abetting under that theory,
22 and so that theory is the same and continuing from the previous counts and the
23 current ones.

24 THE COURT: Is there a reason why then you want to -- are you doing
25 something just to clarify it more or -- I mean, by actually omitting it?

1 MR. SWEETIN: For consistency's sake, because we changed the
2 language in that -- in that particular theory, and when it came to the incest count --

3 THE COURT: Uh-huh.

4 MR. SWEETIN: -- when we took away actually him committing it.

5 THE COURT: Right.

6 MR. SWEETIN: And so for that reason, for consistency's sake, we
7 changed them all.

8 THE COURT: Ms. Radosta.

9 MS. RADOSTA: Well, actually, Your Honor, the thing that changed
10 between the time of the preliminary hearing and the time that the State filed the
11 motion to amend was that one of the alleged co-conspirators took a -- took a deal,
12 took a negotiation, and, thereby, now she has become a witness on the State's
13 witness list against Mr. Sena. That changed.

14 Prior to the preliminary hearing, the State was in opposition to both Mr.
15 Sena and Deborah Sena in their prosecution, and they were alleging that
16 separately, in separate cases, they were each individually responsible for their
17 alleged actions.

18 When Deborah Sena took a negotiation, the State's theory changed
19 regarding how the aiding and abetting happened in that it was all Mr. Sena, it was
20 all his actions and that he was the -- if you will, the one in charge and the one -- the
21 ringleader, so to speak.

22 THE COURT: Uh-huh.

23 MS. RADOSTA: But prior to that when they were prosecuting Ms.
24 Deborah Sena and they were set for trial, that was not their theory regarding
25 Deborah Sena. Their theory regarding Deborah Sena was she was acting on her

1 own with help from Mr. Sena, but that it was her own actions, and she was
2 responsible for her actions.

3 So their theory changed when she took a negotiation and has now
4 become a witness for the State. That happened after the preliminary hearing, and I
5 cross-examined witnesses based on the theory that was put forth through the
6 charging document at the preliminary hearing, and that's why I cross-examined all
7 of these witnesses that were relevant to this particular issue.

8 The State's theory has changed now, and I -- at this point I don't think
9 it's proper to allow them to amend.

10 THE COURT: The allegations are still there. It's just as to who -- who --

11 MS. RADOSTA: It's how they were achieved.

12 THE COURT: Uh-huh.

13 MS. RADOSTA: I agree, the allegation is still there, it's aiding and
14 abetting, but it's how the aiding and abetting occurred, which -- when you look at
15 the language of how the State is seeking to amend, it is a significant change. It's a
16 difference between two people acting together and helping each other or the
17 difference between Mr. Sena directing, being in charge, being the person who's
18 doing everything and instructing other people what to do. That's -- that's a
19 significant difference.

20 THE COURT: Yeah, but isn't the theory still -- it's a theory -- just whether
21 or not the evidence is stronger to support a different portion of that theory, but it's
22 still the same theory.

23 MS. RADOSTA: It is -- it is a similar theory, Your Honor, but I wasn't -- I
24 didn't cross-examine on that theory at all at the preliminary hearing.

25 MR. SWEETIN: Well, Judge, the point is that if the Defendant is not aiding

1 and abetting, then he's not culpable under that theory.

2 THE COURT: Uh-huh.

3 MR. SWEETIN: So if the court had done and the Justice Court dependent
4 upon that, it would've had to have found that. That's what this says now. And I
5 would note that this *Pasqual* case, that was a case that went to jury and came all
6 the way up to the jury time. At that point it was pled by beating him with hands and
7 fists, and they were allowed to amend by beating him.

8 THE COURT: Are you talking about Bridgette Pasqual?

9 MR. SWEETIN: I believe so.

10 THE COURT: Yeah.

11 MR. SWEETIN: So --

12 MS. RADOSTA: Are you familiar with the case, Judge?

13 THE COURT: Yeah, I'm real --

14 MS. RADOSTA: That's just not there. That's just not there. The State
15 argued the case that you were part of, Judge.

16 THE COURT: Well, the reason why I thought

17 MS. RADOSTA: You know we knew that.

18 THE COURT: Right. Because I had to argue it in the Supreme Court.
19 That's why -- okay.

20 MS. RADOSTA: Okay.

21 THE COURT: Well, I'm going to grant your motion, Mr. Sweetin, to amend
22 the Information to address the issues that you've already addressed. So it will be
23 granted.

24 MR. SWEETIN: Thank you, Judge.

25 THE COURT: So we have a calendar call for the 9th of November and a

1 trial date for the 14th of November here. Are we -- are we ready to go?

2 MS. RADOSTA: No, Your Honor.

3 THE COURT: Okay.

4 MS. RADOSTA: At this point in time -- and I referenced this the last time
5 we were in front of Your Honor. Given the fact that we are now just firming up the
6 language of the charging document in this particular case --

7 THE COURT: Yeah.

8 MS. RADOSTA: -- I was in a position where I didn't feel like I was -- I could
9 file even a discovery motion until I knew exactly what the State was charging Mr.
10 Sena with theory-wise, so -- and Mr. Sweetin and I discussed this yesterday. I'm
11 not going to be able to announce ready. I would ask the Court at this point to
12 vacate our November trial date and set us out like a ways.

13 There's not been a discovery motion. There's a couple of other motions
14 that I think are important in this particular case to file. I also think that there is
15 discovery in this particular case that's going to be more labor intensive to get a hole
16 dug. And also in light of some of the charges, we're going to need to hire our own
17 expert for the charges involving the computer and things of that nature, and we
18 don't even have the forensic examination report at this point in time.

19 So with all those of things in mind, Your Honor, I think perhaps a trial
20 date of sometime next summer would be something that if we can set it now -- I
21 can't guarantee it because I don't how quickly the State could get me some of the
22 things that I need, but I will do my best to be ready for a trial date sometime next
23 summer.

24 MR. SWEETIN: Well, first of all, Judge, the State certainly is not agreeing
25 to the continuance. I understand the record that has been made, and we'll submit

1 it to the Court's discretion; however, I'm not aware of the discovery issues
2 outstanding. I can talk to Ms. Radosta about that.

3 If we are going to reset it, then what I would ask is that maybe we set it
4 for next week to reset it because I haven't had a chance to talk to Ms. Holsthus in
5 regards to a date. And I can talk to Ms. Radosta and we can -- we can kind of get
6 a date that will work for us. We can talk to your clerk to try to get something. I
7 would expect that this would be at least a couple -- a couple weeks maybe going
8 into a third week.

9 THE COURT: Okay

10 MS. RADOSTA: And that's fine. And if the State would prefer or if the
11 Court would prefer me to do a written motion to continue, I have no problem doing
12 that, Your Honor.

13 THE COURT: I would. I would.

14 MS. RADOSTA: Okay.

15 THE COURT: Just because --

16 MS. RADOSTA: I'll do that. And so if you want -- if we want to put it over
17 till next week, I'll file a written motion to continue --

18 THE COURT: Two weeks. All right?

19 MS. RADOSTA: Okay.

20 THE COURT: I'm going to set it over in two weeks. I'm going to leave the
21 calendar call as it stands now until I see your written motion. Also, make notes in
22 your file that my criminal stack --

23 MS. RADOSTA: Right.

24 THE COURT: -- for next year is February till the middle of March, and then
25 the next one starts in April and goes through the end of May. And then the next

1 one after that is the end of June, goes throughout the whole month of July and then
2 the -- then the whole month of September and then November and December.

3 Okay?

4 MS. RADOSTA: Okay. Thank you, Your Honor.

5 THE COURT: All right. So I'll put it back on in two weeks. The calendar
6 call and the trial date will stand.

7 THE CLERK: October 26th, 8:30.

8 MR. SWEETIN: And, Judge, for the record, I think you denied the writ with
9 the exception of Count 97.

10 THE COURT: 97.

11 MR. SWEETIN: With the amendments. Would the Court be denying the
12 Defense writ in total, just for the record?

13 THE COURT: Except for 97.

14 MR. SWEETIN: And that's been amended at this point with the Amended
15 Information, and I'd ask permission to file that.

16 THE COURT: Let me see it. Let me see it.

17 [Pause]

18 THE COURT: Yes.

19 MR. SWEETIN: Thank you, Judge.

20 THE COURT: All right.

21 THE CLERK: So the petition is denied?

22 THE COURT: Denied, with the amendments. Okay. The amendments are
23 granted, and with that understanding, the petition is denied.

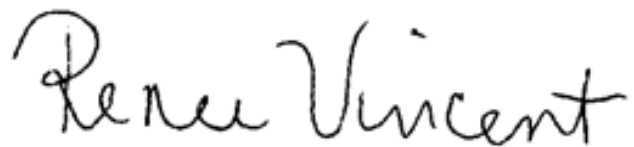
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1 MR. SWEETIN: Thank you, Judge.

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3 (Proceedings concluded at 9:25 a.m.)
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16 ATTEST: I do hereby certify that I have truly and correctly transcribed the
17 audio-visual recording of the proceeding in the above entitled case to the
18 best of my ability.

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22 Renee Vincent, Court Recorder/Transcriber
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1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,
7 Plaintiff,

8 vs.

9 CHRISTOPHER SENA,
10 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

11
12
13 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
14 HEARD BEFORE THE HONORABLE JOSEPH T. BONAVENTURE
15 WEDNESDAY, OCTOBER 26, 2016

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **STATUS CHECK: TRIAL SETTING; DEFENDANT'S MOTION**
18 **TO CONTINUE TRIAL DATE**

19 APPEARANCES:

20 For the State:

ALEXANDER CHEN
Chief Deputy District Attorney

22 For the Defendant:

VIOLET R. RADOSTA
DAVID LOPEZ-NEGRETE
Deputy Public Defender

24
25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 26, 2016

2 [Hearing began at 8:53 a.m.]

3 THE COURT: Christopher Sena.

4 MR. CHEN: Good morning, Alex Chen for the State.

5 MS. RADOSTA: Good morning, Your Honor, Violent Radosta and
6 David Lopez-Negrete for the Defendant, Mr. Sena, who's present in
7 custody.

8 THE COURT: This just says a status check trial date.

9 MS. RADOSTA: Yes.

10 THE COURT: Do we have a trial date on it?

11 MS. RADOSTA: Yes, Your Honor, currently we're currently set for
12 trial in October of -- or I'm sorry, in November of this year. I believe our
13 trial date currently is November --

14 THE COURT: What's it?

15 MS. RADOSTA: 14th currently.

16 THE COURT: All right.

17 MS. RADOSTA: But at this point in time I already announced and I
18 filed a written motion to continue the trial date at Judge Kephart's
19 request.

20 Mr. Sweetin who's the assigned prosecutor on this case saw it
21 yesterday and agreed that we need to reset this one, Judge. With the
22 Court's permission we -- this is a 124 counts.

23 THE COURT: Any objection by the State?

24 MR. CHEN: No objection; I think we're looking at September.

25 THE COURT: All right.

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MS. RADOSTA: Yes.

THE COURT: We'll vacate and reset.

THE COURT CLERK: The pretrial conference is August 9th of 2017
at 8:30; calendar call is September 6th at 8:30; and the jury trial
September 11th at 10 am.

THE COURT: All right.

MS. RADOSTA: Thank you.

[Hearing concluded at 8:55 a.m.]

* * * * *

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.



Christine Erickson,
Court Recorder



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff,

vs.

CHRISTOPHER SENA,

Defendant.

CASE NO. C-15-311453-1

DEPT. XIX

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE
WEDNESDAY, AUGUST 9, 2017

**RECORDER'S TRANSCRIPT OF HEARING
PRE-TRIAL CONFERENCE**

APPEARANCES:

For the State:

JAMES SWEETIN, ESQ.
Chief Deputy District Attorney

For the Defendant:

VIOLET R. RADOSTA, ESQ.
Deputy Public Defender

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 Wednesday, August 9, 2018 - 8:43 a.m.

2
3 THE COURT: Page 2, State of Nevada versus Christopher Sena,
4 Case 3 -- a continuance of that case in C311453. Mr. Sena is present in custody.
5 This is on today for a pre-trial conference. Where we at on it, Ms. Radosta?

6 MS. RADOSTA: Judge, at this point in time, I don't expect to be able to
7 announce ready for our September 11th trial date. I had just recently filed a
8 discovery motion. I had -- I was under the impression that I'd be getting additional
9 discovery from the State since our last time we were in court. There was -- there
10 were some things that I felt that were outstanding. That never occurred.

11 So I started to really dig through my file in the last week or two to see
12 exactly what discovery I felt was missing, and I filed a discovery motion that is 53
13 pages long, granted a lot of that is case law and the factual scenario, but there are
14 many, many things that I believe that I'm entitled to that the State has not provided
15 to me.

16 THE COURT: Have you asked them for it?

17 MS. RADOSTA: Well, it --

18 THE COURT: I mean, something that you think you know about and said,
19 you know, Mr. Sweetin, I think this is out there. Do you guys have this? Have you
20 done that?

21 MS. RADOSTA: Not prior to our conversation yesterday, Your Honor --

22 THE COURT: Okay.

23 MS. RADOSTA: -- in all honesty, and when I did ask him for certain things
24 such as the proffer from the -- the transcribed proffer from Deborah Fennell, who is
25 a co-defendant, who is listed as a potential witness against my client -- they said,

1 well, they didn't audiotape it. When I said I've only received one arrest report in
2 this case that involved 124 counts, in my opinion, there's probably more police
3 reports out there than that. He said, nope, that's all that there is. That's all that
4 there would be in a case like this. It's a really straightforward case.

5 So we're just at a bit of impasse as to whether or not certain discovery
6 exits or not. Then there are other things beyond that, Judge, that I know Mr.
7 Sweetin and I are going to argue about as to whether or not you will decide I'm
8 entitled to those things.

9 THE COURT: Okay. So you've filed your motion?

10 MS. RADOSTA: Yes, I did file my motion. I believe I filed it Monday of this
11 week. I'm not quite sure when the date is. Additional --

12 THE COURT: Tia just indicated it's scheduled for the 23rd of August --

13 MS. RADOSTA: Okay.

14 THE COURT: -- is when it's on the calendar.

15 THE CLERK: In two weeks.

16 MS. RADOSTA: Okay.

17 THE COURT: So what I'll do is I'll see you back in two weeks to look at
18 that. Have you filed an opposition yet?

19 MR. SWEETIN: I haven't even seen it yet, Judge.

20 THE COURT: Oh, you haven't got it? Okay.

21 MR. SWEETIN: But I'll look at it. Just to make a record here, I mean, this
22 case has been around since 2014.

23 THE COURT: Yeah.

24 MR. SWEETIN: All the discovery has been provided, the State would
25 submit. I talked to Ms. Radosta yesterday about this, and -- and I'm in the process

1 of arranging for my detective to meet with her and me this Thursday, so she can be
2 assured that she has all the discovery that exists in the case, and we'll respond to
3 the motion.

4 THE COURT: All right.

5 MR. SWEETIN: But the State expects -- you know, there's no reason why
6 this case shouldn't be ready to go to trial. We still have five weeks, and we've --
7 and this is a 2014 case.

8 THE COURT: I want to look at this motion to see if there's something in
9 there that will potentially cause it to lag.

10 MS. RADOSTA: Additionally, Your Honor, there's other motion work that's
11 going to be done by both the Defense and -- I talked to Mr. Sweetin yesterday that
12 he's intending -- he's think it's just -- he's going to ask you for a ruling on some
13 motion -- on some pieces of information, pieces of evidence that are going to come
14 in. In my opinion,, it's a motion for bad acts, and it's an exemptive one. So I'm
15 just --

16 THE COURT: Until I see it.

17 MS. RADOSTA: Fair enough, Judge.

18 THE COURT: I'll tell you right now, if that's being served on the Court --
19 you know, we're coming up on a calendar call of September 6th, and this case has
20 been around a long time. It's up in the front of my case -- of my calendar, so --

21 MS. RADOSTA: Actually, Your Honor, it really hasn't been around that
22 long in terms of being in District Court. We've had one prior trial date setting.

23 THE COURT: This is -- yeah, this is the second trial setting.

24 MS. RADOSTA: This is the trial -- the second trial setting. It's 124 counts.
25 It's an alleged victim. This is not -- you know, even for these types of cases,

1 Judge, this is complex, despite what Mr. Sweetin thinks.

2 Additionally for the record, Your Honor, they filed a witness list
3 yesterday that lists approximately six to eight different Child Protective Services or
4 DFS workers. I have not received any Child Protective Services' records, and the
5 State has not submitted an order to Your Honor for release of those records. So in
6 light of that, Your Honor, I think I might be submitting an order to the Court for
7 those records, so --

8 THE COURT: All right. Well, like I said, we're coming up on the calendar
9 call, so make sure you get this done, so we can -- I don't know, it may cause a
10 continuance. I don't know, so -- all right. So we'll see you back in -- what day was
11 the hearing?

12 MS. RADOSTA: The 23rd.

13 THE CLERK: August 23rd.

14 THE COURT: All right. I'll see you back on that date. Okay?

15 MS. RADOSTA: Actually, could -- there's a possibility I might be out of
16 town on the 23rd, Your Honor. Could we --

17 THE COURT: What's that?

18 MS. RADOSTA: There's a possibility that I may --

19 THE COURT: Well, it's your motion.

20 MS. RADOSTA: I appreciate that, Judge. We'd just submit it and -- could
21 we push it to the next available court date? I'm hoping to go see the solar eclipse,
22 so -- you know, it's one of those things that happens once every -- you know.

23 THE COURT: What day is that?

24 MS. RADOSTA: It's a Wednesday. Could we push it to the following
25 Monday?

1 THE CLERK: Do you want it on the 28th?

2 THE COURT: The 28th.

3 MR. SWEETIN: We can go backwards if you want. I think I can get my
4 response in --

5 THE COURT: Do you want to go a week earlier?

6 MS. RADOSTA: Yes. That -- that's 7-16?

7 THE COURT: Okay.

8 THE CLERK: That's the 16th.

9 THE COURT: Yeah.

10 THE CLERK: Okay.

11 MS. RADOSTA: All right. Thank you for the accommodation.

12 THE CLERK: That will be August 16th, next Wednesday at 8:30.

13 MS. RADOSTA: Thank you.

14 THE COURT: Okay.

15 MR. SWEETIN: And, Judge, you know, just to be clear, as far as the CPS
16 records are concerned, I don't think there's anything exculpatory in the records. I
17 think that the Court, you know, in regards to that, if Defense counsel is alleging that
18 they -- they want to have that reviewed in camera, I think that that's appropriate for
19 the Court. If that's the Court's wish, I can get that produced to the Court for an in
20 camera review to speed things along.

21 THE COURT: Well, what typically is happening with that, I'm getting
22 stacks and stacks of CPS records, and then they're asking me to look through
23 every page. When I want to know anything, I have to read through them
24 individually. What I've been doing is I go through them cursory, and then I have
25 you all sit down together, and she can mark whatever one she thinks is appropriate

1 and then I'll look at to see whether or not it would something that would be
2 considered exculpatory for purposes of this. That's what I've been doing.

3 MS. RADOSTA: And in this particular situation, Judge, I believe all of the
4 CPS contact in this case has to do with this allegation. So I appreciate the State
5 doesn't think that that's exculpatory, but it's the whole entire case, so --

6 MR. SWEETIN: Well, I can't --

7 THE COURT: Yeah, but if it has nothing to -- I mean, contact is one thing,
8 but to actually have something in there that -- I mean, it says, well, I met him, and I
9 didn't see anything wrong with him or anything like that, how's that exculpatory?

10 MS. RADOSTA: If that's what -- actually, that is very exculpatory. If the
11 CPS workers meet these individuals and make their assessment that they didn't
12 see anything out of the ordinary, that is an exculpatory, you know.

13 THE COURT: Okay. All right. What I'll do is I'll be willing to, like I said,
14 have you sit down together. You take a little tablet like this in there and mark every
15 page that you think -- that you need, and then I'll look at it because --

16 MS. RADOSTA: All right.

17 THE COURT: Unless it's not something so extensive of -- I mean, the last
18 one I got was close to 600 pages long.

19 MS. RADOSTA: And I would guess that this would -- I would guess -- I
20 don't know for a fact -- but given the extent of the allegations and the number of
21 people involved in this case, I'm guessing it's fairly extensive.

22 MR. SWEETIN: It's less than a hundred pages.

23 THE COURT: Less than a hundred?

24 MR. SWEETIN: Yeah.

25 THE COURT: Okay. All right. Well, if you want to submit it to me, I'll take

1 a look at them, and then -- and then, like I said, what I typically do is have you sit
2 down together and put you right in the jury commission room here and have you
3 guys decide -- or you can do at his office.

4 MS. RADOSTA: No, I'd rather do it -- no, thank you.

5 THE COURT: No thank you to his office?

6 MS. RADOSTA: No thank you to --

7 THE COURT: It's a nice office.

8 MS. RADOSTA: I appreciate that, Your Honor, but he and I -- we're not
9 going to agree. We're just not going to agree on what -- just for the sake of
10 argument --

11 THE COURT: Okay. All right. That's fine.

12 MS. RADOSTA: -- he apparently has the CPS records and hasn't turned
13 them over.

14 THE COURT: I'll get them -- you don't even know. That is -- that is so
15 crazy. You don't even know what it is yet and you're already telling me you won't
16 agree. So you're just not agreeing just not to agree?

17 MS. RADOSTA: No. No, Your Honor.

18 THE COURT: Well, that's what it sounds like.

19 MS. RADOSTA: No.

20 THE COURT: But I don't care. I'll have you come down. Submit it to me,
21 Mr. Sweetin. Whatever date you guys want to do it at, I'll take a look at it. I'll get
22 you down here. You can go into the jury deliberation room and sit there and go
23 through it, and he doesn't even to agree --

24 MS. RADOSTA: Okay.

25 THE COURT: -- and you don't have to. All you've got to do is put a tab on

1 what you think you need.

2 MS. RADOSTA: Okay.

3 THE COURT: Okay?

4 MS. RADOSTA: And I'm not -- honestly, Your Honor, I'm not trying to be
5 difficult,. It's just Mr. Sweetin and I have had many contacts and things that I think
6 are so very obviously things I'm entitled to, he doesn't. It's not -- we don't argue.
7 We don't yell and scream at each other. We just have a real difference of opinion.

8 THE COURT: Okay.

9 MS. RADOSTA: That's all.

10 THE COURT: All right. That's fine. That's --

11 MS. RADOSTA: I'm sure you had the same experience with some
12 defense attorneys, Judge, when you were a prosecutor.

13 THE COURT: I'm sure I probably did.

14 MS. RADOSTA: Just -- just, you know, a genuine difference of opinion.

15 THE COURT: And then I'm having them now. No, no --

16 MS. RADOSTA: With me?

17 THE COURT: No, no, no, no. And I'm not necessarily saying with defense
18 counsel. I've had them with both, the prosecution and --

19 MS. RADOSTA: Got to work on the poker face.

20 THE COURT: It's a different situation.

21 MS. RADOSTA: Got to work on the poker face, Judge.

22 THE COURT: Okay. All right.

23 MS. RADOSTA: Thank you.

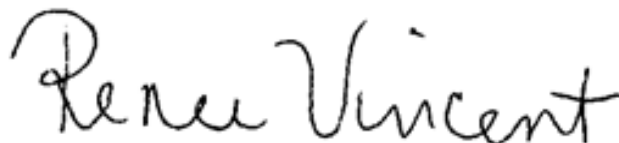
24 THE COURT: Thank you. All right. So we'll see you back next
25 Wednesday. Okay?

1 MS. RADOSTA: Thank you.

2 THE COURT: All right. Thank you.

3 (Proceedings concluded at 8:52 a.m.)
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18 ATTEST: I do hereby certify that I have truly and correctly transcribed the
19 audio-visual recording of the proceeding in the above entitled case to the
20 best of my ability.
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Renee Vincent, Court Recorder/Transcriber



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff,

vs.

CHRISTOPHER SENA,

Defendant.

CASE NO. C-15-311453-1

DEPT. XIX

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE
WEDNESDAY, AUGUST 16, 2017

**RECORDER'S TRANSCRIPT OF HEARING
DEFENDANT'S MOTION TO COMPEL PRODUCTION OF DISCOVERY
AND BRADY MATERIAL**

APPEARANCES:

For the State:

JAMES SWEETIN, ESQ.
Chief Deputy District Attorney

For the Defendant:

VIOLET R. RADOSTA, ESQ.
Deputy Public Defender

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 Wednesday, August 16, 2017 - 9:13 a.m.

2
3 THE COURT: Page 7 and 8, State of Nevada versus Christopher Sena in
4 C311453. Mr. Sena is present in custody. He's represented by Ms. Radosta; the
5 State is represented by Mr. Sweetin. There's -- I have -- what's on the calendar
6 today is Defendant's motion to compel production of discovery and *Brady* material.
7 And then there's a -- on the 23rd is Defendant's motion to dismiss ** counts for
8 violation of statute of limitations. What -- will the parties approach. Would you turn
9 this over.

10 [Bench conference held - not transcribed]

11 THE COURT: All right. We're back on the record in the case of State of
12 Nevada versus Christopher Sena in Case Number C311453. There is -- what we
13 were discussing at the bench basically was my questions that has to do with a
14 motion that's set for August 23rd, 2017. It is the motion to dismiss certain counts
15 for violation of statute of limitations. I basically was just talking to the State about
16 the motion, if they've reviewed it, getting a feel for their position on it. So I know
17 Mr. Sweetin wants to file an opposition to it, so I'll wait and see, and it's back on
18 the 23rd.

19 Now turning to the Defense motion to compel production of discovery
20 and *Brady* material, at this point in time -- and we discussed it at the bench -- I can
21 tell this is pretty heated. I want the record clear -- to be clear on that because there
22 is a substantial disagreement, to say the least, between the State and the Defense
23 in this matter.

24 The problem is that the -- my position is that the Defense has asked the
25 Court to compel production of discovery and *Brady* material in this matter, and I'm

1 not clear as to what has been requested and not provided, and so I'm not in a
2 position to make a finding that the State has not complied with their statutory
3 obligations under 174.235 as well as the *Brady* and this prodigy.

4 I informed Ms. Radosta -- and Ms. Radosta is a little upset with the
5 Court from the bench because her motion is very extensive, in some regards very
6 detailed, and I believe her frustration is that she feels that the Court is not as
7 prepared on it, on the motion.

8 MS. RADOSTA: Oh, no, no, no, not at all, Your Honor. No, no, no --

9 THE COURT: Okay.

10 MS. RADOSTA: -- not at all. It's just --

11 THE COURT: So with that aside, what I have indicated that my position
12 would be here today is I'm not ruling on this motion until the Defense can show the
13 Court that certain things that they've asked for that they believe is discoverable has
14 not been provided has -- or the State has refused to provide those items.

15 MS. RADOSTA: Okay.

16 THE COURT: And so I'm not -- I'm just not in a position at this point to rule
17 on a motion to compel when --

18 MS. RADOSTA: Okay.

19 THE COURT: Like I said, I don't see where the Defense has shown the
20 Court that the State has not complied with their statutory obligations.

21 MS. RADOSTA: All right, Your Honor.

22 THE COURT: Okay?

23 MS. RADOSTA: So I will in some way, shape or form make a formal
24 request to the DA about the items that I feel that they should be turning over in
25 discovery.

1 THE COURT: Right. And if they say --

2 MS. RADOSTA: Okay.

3 THE COURT: -- this is discoverable, this is not, then that would be the
4 basis of your motion.

5 MS. RADOSTA: All right.

6 MR. SWEETIN: And just for the record, Judge, the State has offered to
7 allow Defense counsel to come over and meet with the case detective and ask
8 whatever questions she might have in regards to the reports that are available, to
9 look at the case file that that detective has which contains all the reports that have
10 been generated by the Las Vegas Metropolitan Police in regards to this case, and
11 it appears she's indicated she doesn't want to have that file review.

12 MS. RADOSTA: No, not even -- not even close to the truth. Not close at
13 all. We had a meeting set up last week, and then the detective became
14 unavailable because of other work obligations, and that's fine, but I was not -- I
15 don't know when this meeting today at 11:00 o'clock was set up because I wasn't
16 consulted. I'm not available at 11:00 o'clock today, but I am more than willing to
17 come and look at the detective's file. I just would like to be consulted as to the
18 timeframe as to when the meeting would be. That's all. It's a meeting I need to
19 participate in.

20 MR. SWEETIN: Well, I'm glad that Defense counsel would like to review
21 the file. I'll talk to her about a time that would meet with her -- her calendar, and I
22 can arrange that.

23 MS. RADOSTA: Okay.

24 THE COURT: Okay. All right. Well, we have a trial date scheduled on
25 this.

1 MS. RADOSTA: And I'm once again informing the Court that at this point in
2 time, I don't anticipate -- I mean, I'm not going to be ready for that December 11th
3 trial date. There's just no way at this point in time, but we're going to be ready.
4 There is -- as we were stating up at the bench there, there is a dispute as to
5 whether or not the State has provided sufficient evidence to the Defense for us to
6 do our own analysis of the computer analysis in this case.

7 THE COURT: Uh-huh.

8 MS. RADOSTA: They're telling me the four-page report is everything. Our
9 people that we've consulted with just -- what's the word I'm looking for? Just in the
10 beginning, like we're looking for somebody to help us, they said that's not all the
11 information. That can't possibly be all of the information.

12 THE COURT: Well --

13 MS. RADOSTA: So we have not even been able to retain our own expert
14 on the -- excuse me, on the analysis of the computer.

15 THE COURT: Okay. All right. Well, it appeared from the discussion at the
16 bench that the State had indicated that they have a four-page report, that a
17 forensic expert had reduced its findings to this report and that the Defense was not
18 satisfied with that report because they believe that they needed the expert's
19 analysis and what they did and the finding in order to get to the report included in a
20 report. So, basically, I opened up the computer on May 23rd by this manner, this is
21 how I did it, this is how I got through with it, and this is what I found.

22 MS. RADOSTA: This is -- this is the program that I used to access the
23 computer.

24 THE COURT: Right.

25 MS. RADOSTA: This is -- all of that.

1 THE COURT: I understand that, but is that -- I --

2 MS. RADOSTA: Yeah.

3 THE COURT: I don't know whether or not that's something that's reduced
4 to a report. My god, can you imagine how big your reports would be if you were
5 looking at every time a forensic analysis would be done?

6 MS. RADOSTA: But --

7 MR. SWEETIN: Judge --

8 THE COURT: The report is just the -- is basically the compilation of
9 everything that resolved in the result. It was --

10 MS. RADOSTA: Right, but this is no different than a DNA case, Judge,
11 where they take the DNA and do the analysis --

12 THE COURT: Yeah, but the report --

13 MS. RADOSTA: -- and when we requested the full DNA file, we'd get the
14 full -- did we get how they got to their answer? They showed their work, basically.

15 THE COURT: No, I understand what you're saying there, but there's a
16 difference between the manner in which they found it versus the report, and right
17 now the argument that seemed to be at the bench that you weren't satisfied with
18 the report and --

19 MS. RADOSTA: And maybe I miss -- maybe I wasn't making myself clear.
20 I just don't feel that we have been provided with enough evidence -- the entirety of
21 the work done so that we can hire our own expert.

22 THE COURT: Okay.

23 MS. RADOSTA: The summary of the report doesn't do my -- doesn't do my
24 expert any good. They have to know what was done to get to the end result, so --

25 MR. SWEETIN: And just on that point, Ms. Radosta and myself have done

1 a lot of cases in which there is forensic evidence like this available. There's always
2 a report. If they hire an expert, the expert comes in and examines the actual
3 apparatus themselves, and that certainly can be provided for if that's what they
4 want.

5 MS. RADOSTA: I --

6 MR. SWEETIN: But there's no -- no stepping beyond the final report that
7 I've ever been aware of.

8 MS. RADOSTA: Just for the record, I've never had that happen in a case,
9 but if that's -- if that's a possibility, I'll speak to my expert and see. I mean,
10 honestly, that's the first I've ever heard of that being done. I don't disagree --

11 THE COURT: They do maintain it.

12 MS. RADOSTA: Yeah. I don't disagree with Mr. Sweetin. I just never had
13 that offered or I've never been -- I've never participated in a case where that has
14 been done, so --

15 THE COURT: Well, maybe that might be something that you can look at
16 here.

17 MS. RADOSTA: Possibly, possibly.

18 THE COURT: Okay.

19 MS. RADOSTA: But in lieu of our impending trial date, Judge, it's not
20 going to get done before December 11th.

21 MR. SWEETIN: The evidence has been the evidence since 2014, Judge.

22 MS. RADOSTA: That's great.

23 THE COURT: Okay.

24 MS. RADOSTA: It's not going to get done before December 11th, Judge.
25 There's no --

1 THE COURT: Why?

2 MS. RADOSTA: My -- because --

3 THE COURT: I mean, that's -- I understand the State's argument there with
4 that.

5 MS. RADOSTA: Because my expert -- first of all, we haven't retained
6 anybody yet, Judge, because my --

7 THE COURT: Well, why not?

8 MS. RADOSTA: Because the people that we were talking to said we didn't
9 even have the requisite evidence, so I can't even get a quote as to what it's going
10 to take to review, to submit to my office, to then -- I just don't hire somebody on the
11 fly, Judge. I need to know --

12 THE COURT: I know, but we're talking about --

13 MS. RADOSTA: -- what I'm looking into.

14 THE COURT: -- three years.

15 MS. RADOSTA: No, we're not talking about three years, Judge.

16 THE COURT: We are.

17 MS. RADOSTA: No, we are not. We do not hire experts during the
18 preliminary hearing process, Judge. We have been in District Court since our --
19 since this time last year, and we were arguing the petition for writ of habeas corpus
20 for approximately eight months, Judge, before we got to the point where we were
21 even dealing with discovery.

22 I appreciate the violation data in this case, Judge, but in terms of the
23 process that happens, until certain things -- until A, B and C happens, D doesn't
24 happen, and the motion for -- the petition for writ of habeas corpus was an
25 extensive motion that I was asking for multiple counts, including all of the charges

1 involving the video evidence potentially to be dismissed. I don't hire an expert if
2 those charges are going to be dismissed, Judge.

3 So once the petition for writ of habeas corpus was ultimately denied,
4 which I think happened in October of last year, Judge, that's when we start looking
5 at other things. I don't hire experts when I'm at the preliminary hearing level.

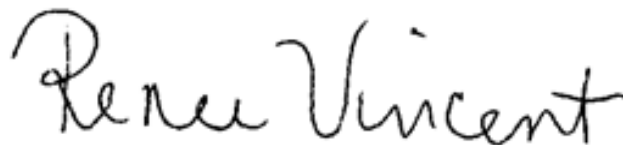
6 THE COURT: That's seven, eight, nine, ten months? Almost a year?
7 All right. Okay. I'll have it -- well, at this point in time, I'll see you back on the 23rd
8 of August for the motion. Okay?

9 MS. RADOSTA: Thank you.

10 THE COURT: All right.

11 (Proceedings concluded at 9:33 a.m.)
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17 ATTEST: I do hereby certify that I have truly and correctly transcribed the
18 audio-visual recording of the proceeding in the above entitled case to the
19 best of my ability.
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24 _____
Renee Vincent, Court Recorder/Transcriber
25



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,
7 Plaintiff,

8 vs.

9 CHRISTOPHER SENA,
10 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
13 WEDNESDAY, AUGUST 23, 2017

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **DEFENDANT'S MOTION TO DISMISS COUNTS FOR**
16 **VIOLATION OF STATUTE OF LIMITATIONS**

17
18 APPEARANCES:

19 For the State: None present

20
21 For the Defendant: None present

22 Defendant: Christopher Sena

23
24
25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

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LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 23, 2017

[Hearing began at 10:43 a.m.]

THE COURT: State of Nevada versus Christopher Sena. The Defendant is present; he's in custody.

Mr. Sena, this is a motion -- I was going to address the motion by the -- your attorney to strike a number of counts. The State had responded and your attorney contacted our office and asked for additional time to reply to the State's response. So I'm putting this on for next Wednesday, August 30th. Okay? All right.

[Hearing concluded at 10:43 a.m.]

* * * * *

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.



Christine Erickson,
Court Recorder



1 TRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

5 STATE OF NEVADA

6 Plaintiff,

7 vs.

8 CHRISTOPHER SENA,

9 Defendant.

CASE NO. C-15-311453-1

DEPT. XIX

12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE
13 WEDNESDAY, SEPTEMBER 6, 2017

14 **RECORDER'S TRANSCRIPT OF HEARING**
15 **CALENDAR CALL AND ALL PENDING MOTIONS**

16 APPEARANCES:

18 For the State:

JAMES SWEETIN, ESQ.
Chief Deputy District Attorney

20 For the Defendant:

VIOLET R. RADOSTA, ESQ.
Deputy Public Defender
DAVID E. LOPEZ-NEGRETE, ESQ.
Deputy Public Defender

24 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER
25

1 Wednesday, September 6, 2017 - 9:07 a.m.

2
3 THE COURT: This is Christopher Sena. This is C311453. Mr. Sena is
4 present in custody. This is the time set for a calendar call. Also, there's a number
5 of motions filed, a motion in limine to present some prior bad acts and also
6 Defendant's motion to continue the trial. Which one do you want to do first?

7 MR. SWEETIN: I don't care, Judge.

8 THE COURT: Okay. Well, let me address the one, the motion to continue
9 the trial. Ms. Radosta, based on a motion here and based on the -- what's
10 happened with regards to this case, it was specifically given a date that it has now
11 a year ago --

12 MS. RADOSTA: Uh-huh.

13 THE COURT: -- for purposes of accommodating the Defense in this
14 matter.

15 MS. RADOSTA: Okay.

16 THE COURT: And so for that reason, I'm denying the motion.

17 MS. RADOSTA: Judge, Judge, with all due respect, I'm in the middle of
18 evidentiary hearings right now for a trial that is starting in Judge Smith's on
19 Monday. There's absolutely no way I can be here -- there's just no way.

20 I've been working exclusively on that other case for the last three
21 weeks. That other case was set to go August 28th. Judge Smith was not available
22 on August 28th. It was his -- his unavailability that did not allow that trial to go.
23 That trial is over --

24 THE COURT: So that's something different than what's in this motion,
25 right?

1 MS. RADOSTA: Right. Well --

2 THE COURT: Okay. All right.

3 MS. RADOSTA: Well, I mean, we --

4 THE COURT: Because the one in the motion you're talking about the one
5 in front of Judge Bell.

6 MS. RADOSTA: No.

7 THE COURT: Yeah.

8 MS. RADOSTA: Judge Smith. I apologize. If it's -- I apologize if the -- if
9 the --

10 THE COURT: Yeah, Department 8.

11 MS. RADOSTA: Department 8, that's Judge Smith, Doug Smith.

12 THE CLERK: Judge Bell's 7.

13 THE COURT: Oh, Bell's 7? Okay. All right.

14 MS. RADOSTA: Yeah.

15 THE COURT: How is it --

16 MS. RADOSTA: And just so that the Court's aware, this is what happened
17 in the other case. The other case, first and foremost, it's Leonard -- or it's Richard
18 Malusky [phonetic throughout]. It is a C-13 case number, Judge.

19 THE COURT: Okay.

20 MS. RADOSTA: It has been in the system for four years. I've announced
21 ready on the last three calendar call dates on Mr. Malusky's case and have not
22 been able to go forward on that on three consecutive occasions because of the
23 State's motions or unavailability of the court. The last trial date was set August
24 28th. We were fully -- the defense and the prosecution were both ready to go and
25 Judge Smith simply did not have availability. Had that trial gone on the 28th,

1 Judge, it was still going to cause a problem for Mr. Sena's case because it is a two-
2 week long trial. I literally would've been ending that trial the day before we
3 would've been starting Mr. Sena's trial.

4 But beyond that, Judge Smith walked in on our calendar call date and
5 said, I've rearranged my entire civil calendar for you guys; I've continued civil trials
6 so that you guys can start on September 11th. There was no inquiry about our
7 availability. He had already made all of the arrangements when he walked onto
8 the bench, Your Honor. I certainly wasn't comfortable to tell him I had another trial
9 setting in another courtroom that I wasn't ready for that was going to -- that I was
10 going to ask for him to not go forward on an older case number that I was ready
11 on. It just didn't make any sense, Judge. I --

12 THE COURT: Hold on.

13 [Court and Clerk confer]

14 THE COURT: Would the parties approach.

15 [Bench conference held - not transcribed]

16 THE COURT: All right. Based on the discussion at the bench and my
17 misunderstanding of the Defense motion to continue, I'm going to grant her motion.
18 I'm going to continue the trial until my February stack. I'll give you the whole stack.
19 I'm setting it as a firm set. You'll need to make accommodations with your other
20 trials as you discussed at the bench, speak to the other judges, and we'll see
21 where we can go from there. Okay? Here your date.

22 THE CLERK: It's January 3rd, 2018, at 8:30 for a pre-trial conference.
23 Calendar call is January 31st at 8:30, and the firm trial date is February 5th at
24 10:00 a.m.

25 THE COURT: Okay. Then let me turn now to the attention to the State's

1 motion in limine to present the complete story of the crime, motion to admit
2 evidence of other sexual offenses, evidence of other crimes, wrongs or acts. It's --
3 short of actually breaking it down for purposes of a hearing here today, I do
4 recognize that there's a different set of bad acts throughout, over an extended
5 period of time.

6 The one concern I have of any of them, Mr. Sweetin, is the one
7 involving BS and RS when they were three and five years old. Just prejudicial
8 issues. I understand the one with BS for purposes of the threats, kind of -- they
9 kind of are tied in with that. I'm not really understanding the one with the five-year-
10 old because I wasn't clear if there's some kind of threat with that as well.

11 So I am going to grant a *Petrocelli* hearing on this. I think that there's --
12 I'm not -- I'm not really too convinced that there's so much of a story of the crime. I
13 think this does fit within 48.0453 and under the section for other bad acts. I do -- I
14 believe that there's some issue with intent, motive, too, and that goes all with the
15 threats type of fact.

16 The threats themselves -- you know, I'm going to break your legs or I'm
17 going to kill you or whatever the children are talking about -- that clearly fits under a
18 motive or intent or whatever, so but -- so I'm going to give you an opportunity to
19 see whether or not you can overcome your burden by clear and convincing
20 evidence to establish it and overcome -- I wanted to look at the prejudice value of
21 those two, so you've got -- I'm just letting you know that's where I'm looking at.
22 Okay?

23 MR. SWEETIN: That's fine, Judge.

24 THE COURT: So we need to set a hearing for that. When do you want to
25 do that, Ms. Radosta?

1 MS. RADOSTA: Well, this trial that I'm in that's -- I'm doing evidentiary
2 hearings this week. The trial is going to last two weeks --

3 THE COURT: Okay.

4 MS. RADOSTA: -- will be my guess, in front of Judge Smith. I then -- at
5 this point, I have another trial the week of the 25th, another trial the week of the
6 9th. At this point --

7 THE COURT: Okay.

8 MS. RADOSTA: -- I don't know what's going to go, Judge --

9 THE COURT: All right. Can you --

10 MS. RADOSTA: -- so we can set it, and I'll keep your --

11 THE COURT: Okay. Can you -- would it accommodate you if we did it on
12 the 16th? That's a Thursday, 16th of November.

13 MS. RADOSTA: Uh --

14 THE COURT: And that gives you at least three months ahead of time,
15 depending on my ruling, as to what you need to do with that.

16 MS. RADOSTA: Well, I mean, I can -- at this point, Judge, we could set it
17 that day. I know I already have a trial that week as well. That's my trial
18 schedule --

19 THE COURT: You do?

20 MS. RADOSTA: Yeah, I do. The whole month of November for me is
21 almost one right after another.

22 THE COURT: Okay.

23 MS. RADOSTA: I actually would probably suggest -- I'm sorry, just let me
24 look for a second here. Sorry, I was looking at the wrong year.

25 THE COURT: Two weeks later?

1 MS. RADOSTA: I would say -- actually, Your Honor, maybe either the
2 week of September 25th or the week of October 2nd.

3 THE COURT: Oh, okay.

4 MS. RADOSTA: I would say sooner rather than later. Let's just get this
5 taken care of.

6 [Court and Clerk confer]

7 MS. RADOSTA: And if I end up in trial, I'll let Your Honor know as soon as
8 possible.

9 THE COURT: I'm going to be in Oregon the first week of October.

10 MS. RADOSTA: Okay.

11 THE COURT: So I can't do it then. And then I'm supposed to be --

12 MS. RADOSTA: Could we do it the week of the 25th?

13 THE COURT: No, I'm supposed to be in Laughlin for -- giving a seminar.

14 MS. RADOSTA: Okay. Then --

15 [Court and Clerk confer]

16 THE COURT: How about the afternoon of the 25th? Monday, the 25th,
17 the afternoon?

18 MS. RADOSTA: For right now that that -- presuming I'm done with this
19 current trial, that should work.

20 THE COURT: Okay.

21 [Court and Clerk confer]

22 THE COURT: Yeah. 11:00 o'clock, and I'll give you the whole day after
23 that?

24 THE CLERK: So September 25th at 11:00 a.m.

25 [Court and Clerk confer]

1 THE COURT: Okay.

2 MR. SWEETIN: And just to clarify, Judge, I know -- we're going to bring
3 some of these in under our three different theories, so if we're having a *Petrocelli*
4 hearing in regards to 48.045, paragraph 2, and you're allowing -- would you allow
5 me to continue argument in regards to paragraphs 3 in the whole story until after
6 the time of the *Petrocelli*.

7 THE COURT: Yeah, there's still a -- there's still a prejudice issue that I've
8 got to deal with.

9 MR. SWEETIN: And I can argue that --

10 THE COURT: I will tell you that you can make all argument you want to
11 with the complete story --

12 MR. SWEETIN: Yeah.

13 THE COURT: -- it's just I believe that your arguments are best, the other
14 two.

15 MR. SWEETIN: Uh-huh.

16 THE COURT: The complete story, I don't know whether or not actually
17 any -- I mean, because -- I mean, if the kids are saying that, he's threatening me,
18 threatening them or whatever, then that fits under the bad acts with regards to the
19 with intent or motive, but -- I mean, I'll hear you out. It's your motion, and, you
20 know, I'm just telling you that from reading, and I'm not really convinced that the
21 complete story doctrine is really what's going to figure, but I see your point, though,
22 because it's -- it's almost like a modus type of argument --

23 MR. SWEETIN: Yeah.

24 THE COURT: -- to fit your complete, so -- I'm not -- you know, I'll tell you
25 straight -- straight out, too, I'm not too comfortable with the way our Supreme Court

1 really recognizes the modus -- I mean, it's almost to a point I think the case that
2 they've -- the one case that they worked on, they almost have done away with that,
3 in my opinion.

4 MS. RADOSTA: In these types of cases, I believe -- I agree with Your
5 Honor.

6 THE COURT: No, that's how I'm seeing it.

7 MR. SWEETIN: I'd love the opportunity to argue, yeah.

8 THE COURT: I mean, I'm really familiar with one of them because I was
9 part of it, and it -- and so -- but I think the other, the mimicking on the intent, all
10 that's really strong law there, so -- so that's what I'm looking at, Mr. Sweetin.

11 MR. SWEETIN: Thank you, Judge.

12 MS. RADOSTA: Additionally, regard to the fourth of the things that they've
13 cited to in their motion, the emails --

14 THE COURT: Yeah.

15 MS. RADOSTA: -- I haven't seen the actual -- I mean, there's this
16 allegation that he was sending an email and sending photos that were -- that's part
17 of the State's motion.

18 THE COURT: Right.

19 MS. RADOSTA: I haven't seen the photo that they're referring to or the -- I
20 think I know --

21 THE COURT: Well, that was a threat, and whether or not that's -- whether
22 or not that's even out there remains to be seen because, I mean, if someone tells
23 me something, hey, I have a video of you, Judge, you know, doing certain things or
24 whatever, that's a threat. Doesn't necessarily mean there's an actual video.

25 MS. RADOSTA: Actually, my understanding from the State's motion is

1 that --

2 THE COURT: There is a video?

3 MS. RADOSTA: That he did send -- they're alleging he did send the video.

4 THE COURT: Oh. Is this the one to Cox?

5 MS. RADOSTA: Yes.

6 THE COURT: Okay.

7 MS. RADOSTA: And I haven't seen --

8 THE COURT: If they have it --

9 MS. RADOSTA: Right.

10 THE COURT: -- and they intend to use it, they certainly need to --

11 MS. RADOSTA: Right.

12 THE COURT: -- reveal that.

13 MR. SWEETIN: Judge, just for the record, all of the text messages -- or,
14 rather, the emails were provided in original discovery, and I made a complete copy
15 of the detective's file, which also contains the copy that was provided to Ms.
16 Radosta. Just to make a complete record, if I could.

17 I attempted after our last court proceeding -- and the Court said, you
18 know, you need to talk to the DA and look at their file before you file a discovery
19 motion. I attempted for Ms. Radosta to come over and look at the file. She wasn't
20 able to get there. I had some calendar issues. We set that for, I believe, the
21 afternoon of August 31st that she was going to come by.

22 I talked to her on that day. In preparation of that, I made a complete
23 copy of the detective's file. Not all the statements, but just all of the paperwork in
24 the detective's file, which was -- it was lengthy. It was probably somewhere in the
25 area of, I think, close to 500 pages. I provided that to her. All that had been

1 provided previously --

2 MS. RADOSTA: No.

3 MR. SWEETIN: -- to my knowledge. On that particular day, I had the
4 detective available for her to come over and talk to, ask any questions she wanted.
5 She was too busy to come over on that day. I've attempted to reschedule that
6 date. Ms. Radosta hasn't gotten back to me in that regard.

7 THE COURT: Okay. All right.

8 MS. RADOSTA: I do have -- just so that we're clear, I have a hard copy of
9 an email. The hard copy does not tell me what was attached to the email. I need
10 the -- you know what I'm saying?

11 THE COURT: Uh-huh.

12 MS. RADOSTA: Sure, I have -- I have a hard copy supposedly of an email
13 that was sent to Cox, but I don't know what was there. The signal -- the evidence
14 on the page that there was something attached, but I don't have the actual --

15 THE COURT: You don't have the attachment?

16 MS. RADOSTA: -- email. Yeah, that's -- that's what I'm referring to.

17 MR. SWEETIN: Okay. If I could make --

18 THE COURT: Okay.

19 MS. RADOSTA: I do have --

20 MR. SWEETIN: -- a complete record, Judge.

21 THE COURT: Okay.

22 MR. SWEETIN: I've had discussions with Ms. Radosta about this in the
23 past. What they're referring to is an individual having sex with the dog. That has
24 previously been provided to Ms. Radosta. As a matter of fact, I pointed this
25 specifically out to her in review of the discovery that's been provided. So that has

1 been provided to Ms. Radosta.

2 MS. RADOSTA: I have -- I have a video. The State is offering that that
3 video was sent to Cox. I don't have that. I don't have the actual email with the
4 attachment that was sent to Cox. I have a hard copy of an email that purports to
5 have an attachment to it, and I have --

6 THE COURT: Okay. So wouldn't that then necessarily go to the weight of
7 it? I mean, if they don't have it and they keep saying, hey, it was sent over and
8 they can't produce it and you've never seen it --

9 MS. RADOSTA: If they -- that's fine. If they -- if they --

10 THE COURT: He's saying he's given you everything, Ms. Radosta.

11 MS. RADOSTA: He's -- this -- sure, there's a video that I have and then
12 there's a hard copy, but they're seeking to admit a hard -- an email with an
13 attachment that has not been provided as a bad act. Not the entirety of the email
14 with the attachment. I'm not disagreeing with him that I have a hard copy and that I
15 have a video, but what I don't have is anything that shows that that email had that
16 attachment with it and that it was sent to anybody. And that's what they're offering
17 in their bad acts.

18 MR. SWEETIN: And we'll elicit testimony from the custodian of records
19 from Cox to lay all that out for the Court, but I believe she has all of the discovery.

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

21 MR. SWEETIN: Thank you, Judge.

22 THE COURT: Next case.

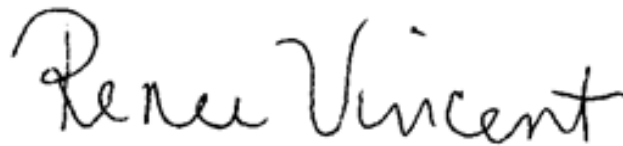
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(Proceedings concluded at 9:29 a.m.)

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

A handwritten signature in cursive script that reads "Renee Vincent". The signature is written in dark ink and is positioned above a horizontal line.

Renee Vincent, Court Recorder/Transcriber



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 CHRISTOPHER SENA,

10 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
13 MONDAY, DECEMBER 04, 2017

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **DEFENDANT'S MOTION TO SEVER**

16
17 APPEARANCES:

18 For the State:

JAMES SWEETIN
Chief Deputy District Attorney

19
20 For the Defendant:

VIOLET R. RADOSTA
Deputy Public Defender

21
22
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25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 LAS VEGAS, NEVADA, MONDAY, DECEMBER 04, 2017

2 [Hearing began at 9:30 a.m.]

3 THE COURT: State of Nevada versus Christopher Sena in
4 C311453.

5 MS. RADOSTA: We need Mr. Sweetin on this one, Your Honor.

6 THE COURT: Yeah. I saw he was here.

7 MS. RADOSTA: Yeah. He -- I just texted -- I've been texting back
8 and forth with him.

9 THE COURT: Okay. All right.

10 MS. RADOSTA: He went to another department. Just so that the
11 Court's aware. I didn't receive the State's opposition on this so I'm going
12 to be asking for an opportunity to review it. Did the Court get it?

13 THE COURT: Yeah.

14 MS. RADOSTA: Okay. When was it filed if you don't mind me
15 asking you?

16 THE COURT: Let me see. Friday.

17 MS. RADOSTA: Yeah?

18 THE COURT: Yeah.

19 MS. RADOSTA: I think we have other motions on for --

20 THE COURT: There was -- I got an opposition to the motion to
21 sever as well as the motion to stay.

22 MS. RADOSTA: Okay. The motion to stay is on a week from today
23 for argument I believe so. We'll just wait for Mr. Sweetin.

24 THE COURT: I was going to go ahead because he did file an
25 opposition to it. I'll give you an opportunity to reply to the motion to stay

1 but I was going to go ahead and address it today.

2 MS. RADOSTA: Okay; I haven't seen either of the oppositions --

3 THE COURT: Okay. All right.

4 MS. RADOSTA: -- though, Judge, so I'm at a little bit of a
5 disadvantage.

6 THE COURT: All right. Why don't we do this -- why don't I do this
7 right now. I'll just go ahead and give you an opportunity to respond to it.
8 I'll put it on for next Wednesday.

9 MS. RADOSTA: Okay. I think we're already are on Monday next
10 week, Judge, for the motion to stay?

11 THE COURT: Okay. I'll do it on Monday then.

12 MS. RADOSTA: I believe.

13 THE COURT: I was trying to give you an extra two days, but --

14 MS. RADOSTA: I appreciate that, Judge, it's just --

15 THE COURT: Okay. Monday. Next Monday. Go ahead --

16 THE COURT CLERK: So December 11th at 8:30.

17 THE COURT: Go ahead and -- would you go ahead and reach out
18 to --

19 MS. RADOSTA: Mr. Sweetin?

20 THE COURT: -- Mr. Sweetin and just tell him he doesn't need to
21 come down?

22 MS. RADOSTA: I appreciate it, Judge.

23 THE COURT: All right.

24 MS. RADOSTA: Thanks for the opportunity.

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THE COURT: Okay. All right.

[Hearing concluded at 9:32 a.m.]

* * * * *

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.



Christine Erickson,
Court Recorder



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,
7 Plaintiff,

8 vs.

9 CHRISTOPHER SENA,
10 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
13 MONDAY, DECEMBER 11, 2017

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **DEFENDANT'S MOTION FOR STAY PENDING RESOLUTION OF**
16 **DEFENDANT'S PETITION FOR WRIT OF MANDAMUS/PROHIBITION;**
17 **DEFENDANT'S MOTION TO SEVER**

18
19 APPEARANCES:

20 For the State:

JAMES SWEETIN
MARY KAY HOLTHUS
Chief Deputy District Attorney

22 For the Defendant:

VIOLET R. RADOSTA
Deputy Public Defender

23
24
25 RECORDED BY: TRISHA GARCIA, COURT RECORDER

1 LAS VEGAS, NEVADA, MONDAY, DECEMBER 11, 2017

2 [Hearing began at 9:03 a.m.]

3 THE COURT: State of Nevada versus Christopher Sena. This is
4 case number C311453. Mr. Sena's present in custody. He's
5 represented by Ms. Radosta. Mr. Sweetin's here on behalf of the State.

6 This is Defendant's motion for stay pending resolution of a
7 petition for writ of mandamus and Defendant's motion to sever.

8 Did you want to address the Court any further? I've read all
9 the moving papers.

10 MS. RADOSTA: No, Your Honor, just regarding the motion to sever,
11 I feel I can just submit it on my briefs after having had the opportunity to
12 review the State's opposition. They don't -- they didn't feel that there was
13 anything in the opposition that I specifically needed to respond to. Same
14 goes for the motion to stay.

15 I mean in the end I their argument for -- to deny the stay is
16 they're right and I'm wrong, and even if I'm right they'd still seek to admit
17 all of the evidence via a bad acts motion. They don't necessarily think
18 that that particular point is relevant to whether or not a stay should be
19 granted, but I think I addressed all those issues in my initial filing so I'll
20 submit it.

21 THE COURT: Mr. Sweetin?

22 MR. SWEETIN: Well, just briefly, I mean the reason that that's
23 relevant is because that's one of the considerations in regards to granting
24 a stay is prejudice to the Defense.

25 In this case there'd be no prejudice to the Defense because either

1 way, whether or not they prevailed on their writ, or not, in front of the
2 Supreme Court, the evidence could still come in.

3 THE COURT: Okay. With regards to your motion to sever, I'm
4 going to deny the motion.

5 With regards to your motion to stay pending resolution of
6 Defendant's petition for writ of mandamus/prohibition, I'm denying that as
7 well.

8 We have a trial scheduled for January 16th; calendar call
9 scheduled for the 10th. Those dates will stand.

10 MR. SWEETIN: Thank you.

11 MS. RADOSTA: Thank you.

12 THE COURT: Thank you.

13 [Hearing concluded at 9:05 a.m.]

14 * * * * *

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

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18 _____
19 Christine Erickson,
20 Court Recorder
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1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,
7 Plaintiff,

8 vs.

9 CHRISTOPHER SENA,
10 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
13 WEDNESDAY, JANUARY 03, 2018

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **DEFENDANT'S MOTION FOR JUROR QUESTIONNAIRE**

16
17 APPEARANCES:

18 For the State:

JAMES SWEETIN
Chief Deputy District Attorney

19
20 For the Defendant:

ANNA CLARK
SHANA BROUWERS
Deputy Public Defender

21
22
23
24
25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 03, 2018

2 [Hearing began at 10:27 a.m.]

3 THE COURT: State versus Christopher Sena.

4 MR. SWEETIN: Judge, I think Ms. Hojjat's --

5 MS. BROUWERS: Let me just step out and see if she's in the
6 hallway.

7 MR. SWEETIN: Maybe if we could just trail it, Judge?

8 THE COURT: I think we're -- this is it.

9 THE COURT CLERK: This is the last one.

10 MR. SWEETIN: It is?

11 THE COURT: That's our last one so --

12 [COLLOQUY BETWEEN THE COURT AND CORRECTIONS OFFICER]

13 THE COURT: Have you heard at all from Ms. Radosta?

14 MR. SWEETIN: Judge, I think --

15 MS. BROUWERS: I just texted Ms. Hojjat to come back. She was
16 here earlier.

17 THE COURT: Okay.

18 MS. BROUWERS: I'm seeing if I can make representations --

19 THE COURT: Well here, Ms. Brouwer's, I'm going to push you in on
20 this. Here's what it is anyhow.

21 MS. BROUWERS: I talked to Ms. Hojjat.

22 MR. SWEETIN: Well, just so you know, Judge, just to be completely
23 -- I know Violet Radosta's sick today. She's talked to Ms. Hojjat. Ms.
24 Hojjat was making an appearance for her to ask to trail this till Monday.
25 That's what she's going to do today.

1 THE COURT: Well here's the problem regardless. To bring the
2 Public Defender who's here up to speed.

3 MS. CLARK: Yeah.

4 THE COURT: Ms. Radosta had filed a motion for a jury
5 questionnaire.

6 MS. CLARK: Okay. The problem is is the timing of when she filed it
7 is that it doesn't give the jury commissioner enough time even if I
8 approved it the date that it was filed. There's not enough time to
9 accommodate with getting the individuals in here. Getting the jury
10 questionnaire prepared and all that stuff. And reading the questionnaire,
11 I don't know if I see any really objections for questions at the point of --
12 during voir dire. So my position would be that I just don't -- we just don't
13 have the time.

14 MS. CLARK: Okay.

15 THE COURT: So I was going to deny it.

16 MS. CLARK: Okay.

17 THE COURT: But I wanted Ms. Radosta --

18 MS. CLARK: Sure.

19 THE COURT: -- to understand that I'm not seeing necessarily any
20 objectionable requests in her questionnaire.

21 MS. CLARK: Okay.

22 THE COURT: The problem is is timing. Being able to get --

23 MS. CLARK: Sure.

24 THE COURT: It just wouldn't work. There are a few in here that are
25 -- I believe that the State may object to and we'd have to address it at the

1 time that they were asked.

2 MS. CLARK: Okay.

3 THE COURT: So --

4 MS. CLARK: So here's, I guess, maybe my suggestion. Because I
5 know Ms. Radosta wants to be here, and should be here and is terribly ill.
6 The request was going to put it on Monday. I know that --

7 THE COURT: I'll do that.

8 MS. CLARK: Mr. Sweetin --

9 THE COURT: I'm just telling you now even with doing it Monday it
10 pushes it back even further.

11 THE COURT: I understand.

12 THE COURT CLERK: Calendar call is that Wednesday; it's on the
13 10th.

14 THE COURT: So just put it on Wednesday.

15 MS. CLARK: Okay. Well we can do it on Wednesday then. And I
16 know Ms. Hojjat mentioned this morning that Mr. Sweetin had said there
17 may be some additional discovery as well they're making copies of right
18 now in which --

19 MR. SWEETIN: Can we approach, Judge?

20 THE COURT: Sure.

21 MS. CLARK: Okay.

22 [BENCH CONFERENCE - NOT RECORDED]

23 THE COURT: Mr. Sena. The two Public Defenders that are here
24 are going to be communicating with Ms. Radosta what we discussed
25 here at the bench and so she'll come over and talk to you.

1 I'll see you back here next Wednesday because that's the
2 calendar call date.

3 And I think you understand -- basically the request that she's
4 asking me for are -- is a list of written questions that I don't necessarily
5 see any type of objection for, and at this point that she could ask the jury
6 when we're impaneling the jury. Okay? So I'll see you back on
7 Wednesday; okay?

8 THE DEFENDANT: All right.

9 THE COURT CLERK: January 10th at 8:30.

10 [Hearing concluded at 10:33 a.m.]

11 * * * * *

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

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16 Christine Erickson,
17 Court Recorder
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1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 CHRISTOPHER SENA,

10 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
13 WEDNESDAY, JANUARY 24, 2018

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **STATUS CHECK: TRIAL SETTING; DEFENDANT'S MOTION**
16 **FOR JUROR QUESTIONNAIRE**

17
18 APPEARANCES:

19 For the State:

JAMES SWEETIN
Chief Deputy District Attorney

20
21 For the Defendant:

VIOLET R. RADOSTA
Deputy Public Defender

22
23
24
25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 24, 2018

2 [Hearing began at 09:13 a.m.]

3 THE COURT: State versus Christopher Sena. This is C311453; Mr.
4 Sena's present in custody. He's represented by Ms. Radosta. State's
5 represented by Mr. Sweetin.
6

7 This is time set for status check on trial setting and also you
8 had filed a motion for a juror questionnaire. I did receive the opposition
9 by the State so -- do you want to argue it any further?

10 MS. RADOSTA: I'm prepared to just submit it, Judge, on the motion.

11 MR. SWEETIN: And, Judge, our argument is essentially that
12 everything's that requested in the jury questionnaire can be handled in
13 voir dire.

14 I think that these cases are a little bit different than other
15 cases because there's a shock value initially when potential jurors hear
16 the charges or see some of the facts, they immediately want to walk
17 away from it. And it's my experience in jury questionnaire's they answer
18 questions in such a way to try to avoid that.

19 In voir dire we're able to sort of come back and get specifically
20 to the crux of the issues. I mean no one wants to sit on this jury because
21 of the subject matter. I think that a jury questionnaire would be
22 counterproductive in this. I think it would certainly prejudice the State.

23 THE COURT: Okay. I understand your argument, Mr. Sweetin, I do.
24 I -- you know I had a different attitude about them when I was in the
25 district attorney's office. And then as I grew in the district attorney's office
I, in some regards, gained a respect for them. Then when I got on the

1 bench and heard the arguments in civil matters that use them and even
2 arguments in -- by the State and the defense, I've had the State agree to
3 them some times and the State oppose it.

4 I understand your position, Mr. Sweetin, but I liked -- in certain
5 cases I like as much information that we can get from them. And, yes,
6 you can ask, I said this before, Ms. Radosta could ask every one of these
7 questions I thought. There's a couple of them that are kind of
8 questionable.

9 MR. SWEETIN: And, Judge, if the Court is inclined to give one I
10 actually have a proposed jury questionnaire.

11 THE COURT: Okay. Well I am. I'm willing to grant the motion. But
12 before I grant it full heartedly with just whatever is asked I -- this is what I
13 was going to ask for, as I wanted to look into them because there needs
14 to be some type of factual scenario and -- okay -- I'll take a look at this
15 and make a determination by next Wednesday. I'm going to put this back
16 on next Wednesday.

17 Also, when we were in chambers discussing continuance in
18 this, I had then informed the parties that I wanted to do this in June. And
19 because of the length of it, and now with the jury questionnaire, I might
20 even make it go longer. It might spill over into July and I was informed
21 this morning that that may have a problem with one of the counsels.

22 MS. RADOSTA: Well, actually, Your Honor, we were, what I recall
23 in chambers is that we were given late June -- the late June stack into
24 July, --

25 THE COURT: Yeah.

1 MS. RADOSTA: -- the September stack, or the November stack,
2 and that the counsels, we were supposed to get together and decide
3 which one worked for both of us.

4 THE COURT: Okay.

5 MS. RADOSTA: Myself and Mr. Lopez-Negrete are unavailable for
6 the July stack so we were preferring September. And it's my
7 understanding that September works better for the State as well.

8 THE COURT: You want to do it in September?

9 MR. SWEETIN: It works for the State, Judge.

10 THE COURT: All right. Okay. So put this back on next week. We'll
11 go ahead and set trial dates now for September. Okay?

12 THE COURT CLERK: So January 31st at 8:30 for the status check
13 as to questionnaire. The pretrial conference date is going to be August
14 1st at 8:30; calendar call is going to be August 29th at 8:30, and the trial
15 date will be September 5th at 10:00 a.m.

16 And just noting that's a Wednesday start so it's only three
17 days that week.

18 MS. RADOSTA: Okay.

19 [COLLOQUY BETWEEN THE COURT AND THE COURT CLERK]

20 THE COURT: What I'm talking to Tia about is I'm going to -- I'm
21 going to give the parties from September 5th at least until the 21st. That's
22 two and a half weeks to do this trial. And I'm not going to set anything
23 else on those dates. So I guess it's about as firm as I can get, you know,
24 without -- okay? I mean, obviously, if it spills over, that just happens, but
25 I'm not going to set anything for those three weeks.

1 MS. RADOSTA: Okay.

2 THE COURT: The reason I'm letting you know this is I don't want to
3 be back, you know? And let me know way ahead of time if something's
4 happening that there's -- that you can't go. I don't want to wait till the end
5 and then ruin three weeks like it happened here. It already happened in
6 this case. I set everything out and now I'm sitting, I'm doing overflow
7 trials and stuff. No, I know, it's irrespective of who --

8 MS. RADOSTA: Yes.

9 THE COURT: If there's any fault here. I'm not levying any fault on
10 anybody.

11 MS. RADOSTA: No. I mean it is what it is.

12 THE COURT: I'm just saying it's just -- I want to know as soon as
13 possible --

14 MS. RADOSTA: Sure.

15 THE COURT: -- if somethings --

16 MS. RADOSTA: And --

17 THE COURT: And I guess that might have happened here as soon
18 as possible, but --

19 MS. RADOSTA: Yeah. I think it kind of did, Judge --

20 THE COURT: All right.

21 MS. RADOSTA: But, and so --

22 THE COURT: Okay.

23 MS. RADOSTA: -- on that point, Your Honor. Mr. Sweetin just
24 informed me this morning that they're still in the process of copying and
25 getting us the discovery that we were discussing caused the continuance

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this last time.

THE COURT: Okay.

MS. RADOSTA: Hopefully maybe by the 31st --

THE COURT: All right.

MS. RADOSTA: -- we'll have that new discovery.

THE COURT: Okay.

MR. SWEETIN: Thank you, Judge.

MS. RADOSTA: Thank you, Judge.

THE COURT: All right. We'll see you Wednesday. Okay?

[Hearing concluded at 09:19 a.m.]

* * * * *

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.



Christine Erickson,
Court Recorder



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,
7 Plaintiff,

8 vs.

9 CHRISTOPHER SENA,
10 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
13 WEDNESDAY, JANUARY 31, 2018

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **STATUS CHECK: JURY QUESTIONNAIRE**

16
17 APPEARANCES:

18 For the State:

JAMES SWEETIN
Chief Deputy District Attorney

19
20 For the Defendant:

VIOLET R. RADOSTA
Deputy Public Defender

21
22
23
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25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 31, 2018

2 [Hearing began at 09:15 a.m.]

3 THE COURT: State versus Christopher Sen in C311453. This was
4 on for a status check on jury questionnaire. I'm going to grant the motion
5 obviously if I haven't already made it clear. I've reviewed the
6 questionnaires. I'm going to use the one that the State has prepared, but
7 it does -- I'm not telling you that that's going to stop you from asking
8 questions of the jury.

9 MS. RADOSTA: Okay.

10 THE COURT: I'm just telling you -- I mean I'm not limit -- I'm not
11 saying you can't ask these questions, I just think that for purposes of the
12 questionnaire are basic questions, that one's clear to me.

13 MS. RADOSTA: Okay. And if I could then -- a couple things
14 regarding the case synopsis. I think there's some inaccuracies in the
15 State's --

16 THE COURT: Okay.

17 MS. RADOSTA: -- case synopsis. It's nothing that we need to get
18 into in detail today, but just some of the details of the familia relationships
19 and things like that are in my opinion inaccurate.

20 THE COURT: Okay. What I'd ask you to do is go through that and
21 send it to me.

22 MS. RADOSTA: Okay.

23 THE COURT: And I'll look at it. But I need it -- I don't need it -- I
24 need it in a way that's been provided to me with something in there just
25 pointing out, you know, because there's no lines that I could refer to.

1 MS. RADOSTA: Okay.

2 THE COURT: So --

3 MS. RADOSTA: Maybe -- I'll figure out a way, Judge. Maybe I'll just
4 cut and -- I don't know, I'll figure out a way.

5 THE COURT: Well, talk to the State first. Maybe you'll agree to it.

6 MS. RADOSTA: And, yeah, it's possible. I'll try to say a full
7 sentence now, Judge.

8 THE COURT: Great.

9 MS. RADOSTA: It's possible when I explain to Mr. Sweetin what I
10 think is inaccurate.

11 THE COURT: Well, it's -- I read through it. I thought pretty clear.
12 And based on all the motions and stuff we had I -- that's why I said I'm
13 okay with it.

14 MS. RADOSTA: Well, like I said, it's like the description of the
15 familia relationships.

16 THE COURT: Okay.

17 MS. RADOSTA: It's described as -- actually could we approach,
18 Your Honor?

19 THE COURT: Yes.

20 [BENCH CONFERENCE - NOT RECORDED]

21 THE COURT: Here's the one last hang up with this. This has to be
22 concluded, prepared, and submitted to the Court by August 1st.

23 MS. RADOSTA: Okay.

24 THE COURT: I have to have it by then. If you don't get it to me by
25 then, then I'm not going to use it.

1 [COLLOQUY BETWEEN THE COURT AND THE COURT CLERK]

2 THE COURT: Okay?

3 MS. RADOSTA: No problem, Judge.

4 THE COURT: All right.

5 MS. RADOSTA: I will -- I'll try to get on it right away rather than
6 delay.

7 THE COURT: And that's the pretrial conference date so we --

8 MS. RADOSTA: Okay.

9 THE COURT: -- ought to be able to get that by then.

10 MS. RADOSTA: Okay. The only other thing that's separate from
11 this issue that I would ask is we still haven't received any of the
12 outstanding discovery that causes a continuance of the last court date.

13 What I would suggest so that we don't have the situation
14 happen again is maybe just a status check date in 30 days?

15 THE COURT: All right that's fair.

16 MS. RADOSTA: I know Mr. Sweetin's --

17 THE COURT: No. That's fair.

18 MS. RADOSTA: -- working on it.

19 THE COURT: No, Ms. Radosta, that's fair. I -- but -- I mean you
20 understand my point from our discussion in chambers as to whether or
21 not I was even going to allow to use it. It's just a -- it's at the point though
22 the State then said that they'd continue it because they had some issues
23 of whether or not -- and I always wanted you to have to see whether or
24 not there was any exculpatory nature in it.

25 MS. RADOSTA: Right.

1 THE COURT: So -- but --

2 MS. RADOSTA: Well and the allegation at one point was that there
3 was a whole new potential charge.

4 THE COURT: Right.

5 MS. RADOSTA: So that's the one obviously we are the most
6 concerned with.

7 THE COURT: Okay. I got you.

8 MS. RADOSTA: So --

9 THE COURT: Mr. Sweetin, 30 days?

10 MR. SWEETIN: That's fine, Judge. I would expect that we already
11 have it but it's not completely done. So --

12 THE COURT: Okay.

13 THE COURT CLERK: Then do you want to also status check it for
14 any objections to the questionnaire for that date?

15 THE COURT: Do it on that. Can you do it in 30 days? Yeah, that's
16 fair.

17 MS. RADOSTA: That's fine. Thank you.

18 THE COURT: Okay.

19 THE COURT CLERK: March 7th at 8:30.

20 THE COURT: Okay. You guys done?

21 MS. RADOSTA: Yup. That's it, Judge, thank you.

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THE COURT: All right.

[Hearing concluded at 09:20 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.



Christine Erickson,
Court Recorder



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,
7 Plaintiff,

8 vs.

9 CHRISTOPHER SENA,
10 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
13 WEDNESDAY, MARCH 07, 2018

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **STATUS CHECK: OUTSTANDING DISCOVERY/FINALIZING**
16 **JURY QUESTIONNAIRE**

17
18 APPEARANCES:

19 For the State:

JAMES SWEETIN
Chief Deputy District Attorney

20
21 For the Defendant:

VIOLET R. RADOSTA
Deputy Public Defender

22
23
24
25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, MARCH 07, 2018

2 [Hearing began at 09:56 a.m.]

3 THE COURT: State of Nevada versus Christopher Sena in case
4 number C311453. Defendant is present; he's in custody. This is on for a
5 status check with regards to some outstanding discovery and then
6 finalizing of the jury questionnaire. Okay?

7 MR. SWEETIN: And in regards to the discovery, as you'll recall,
8 there was a number of videotapes that had to be converted over to discs.
9 That's been done. I received that actually yesterday. I told Ms. Radosta
10 we're copying it -- we're in the midst of copying that right now and it should
11 be done by noon today and we'll have it at that time.

12 THE COURT: Okay. And with regards to the jury questionnaire?

13 MS. RADOSTA: I'm sorry, Judge, I thought that -- I forgot that it was
14 on for the jury questionnaire today. I was just here -- I was just -- my
15 mind was just on the --

16 THE COURT: Well I --

17 MS. RADOSTA: status check and discovery. I think it was more for
18 if I had anything that I wanted to add to it.

19 THE COURT: Well last time we were here --

20 MS. RADOSTA: Yes.

21 THE COURT: -- and I indicated that I was going to use the one the
22 State proposed.

23 MS. RADOSTA: Right.

24 THE COURT: And you indicated that you believe there may be
25 some factual discrepancies --

1 MS. RADOSTA: Yes.

2 THE COURT: -- in the factual synopsis and you wanted --

3 MS. RADOSTA: Yes.

4 THE COURT: -- to address that.

5 MS. RADOSTA: And my apologies. I meant to reach out to Mr.

6 Sweetin about that. There were just some specifics of how people were

7 defined in the family in the -- in the factual --

8 THE COURT: We had this kind of a discussion --

9 MS. RADOSTA: Yeah.

10 THE COURT: -- in the hall, all of us out -- and I think Mr. Sweetin
11 said that he didn't think that he'd have a problem with that.

12 MS. RADOSTA: Right.

13 THE COURT: He just needed to see what you wanted.

14 MS. RADOSTA: So if I can just -- and I apologize, Your Honor, I
15 obviously just spaced that part of this. I was just thinking about the
16 discovery issue. If we could just -- I'll reach out to Mr. Sweetin and give
17 him and -- take what he's already written, change what I think needs to
18 be changed.

19 THE COURT: Okay.

20 MS. RADOSTA: And if we can come to an agreement we'll let the
21 Court know and if not then we'll put it back on calendar.

22 THE COURT: Okay. That's fair.

23 MS. RADOSTA: Thank you.

24 THE COURT: All right. And then -- yeah, well if you get it -- and you
25 get it resolved and everything then I can get it right over to the jury

1 commissioner and get started on it.

2 Okay. So if there's nothing further, then we won't see this until
3 back on August 1st.

4 MS. RADOSTA: That's our pretrial.

5 THE COURT: Pretrial conference.

6 MS. RADOSTA: Great.

7 THE COURT: All right. Thank you.

8 MS. RADOSTA: Thank you.

9 THE COURT: All right.

10 [Hearing concluded at 09:58 a.m.]

11 * * * * *

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

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Christine Erickson,
Court Recorder



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,
7 Plaintiff,

8 vs.

9 CHRISTOPHER SENA,
10 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
13 WEDNESDAY, AUGUST 01, 2018

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **PRETRIAL CONFERENCE**

16
17 APPEARANCES:

18 For the State:

JAMES SWEETIN
Chief Deputy District Attorney

19
20 For the Defendant:

VIOLET R. RADOSTA
Deputy Public Defender

21
22
23
24
25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 01, 2018

2 [Hearing began at 08:36 a.m.]

3 THE COURT: State of Nevada versus Christopher Sena; this is
4 C311453. Mr. Sena is present in custody. This is time set for pretrial
5 conference. Are we ready to go?

6 MS. RADOSTA: I believe we'll be ready to go, Judge --

7 THE COURT: Okay.

8 MS. RADOSTA: -- on the September 5th trial date.

9 THE COURT: Okay.

10 MS. RADOSTA: Just for the record the State did provide me,
11 several months ago, with approximately 30 DVD's that were somewhat in
12 relation to the basis for the last need for a continuance back in January.
13 There was some statements, I don't recall if they were actually on the
14 record or not, that the State thought that they had found additional --

15 THE COURT: Right.

16 MS. RADOSTA: -- video in this case. Additionally, maybe an
17 additional victim that -- and, so based on that they gave me all of the
18 video, or I think they were video tapes that were then transferred to DVD
19 for me. They gave me everything.

20 In that I didn't find anything consistent with an additional
21 allegation and additional victim.

22 THE COURT: Okay.

23 MS. RADOSTA: So it's my understanding that the State didn't, or
24 isn't at this point in time, going to be filing any additional charges, having
25 any additional victims at this point and time.

1 THE COURT: Okay.

2 MS. RADOSTA: So -- and I did review all 30 of those DVD's and so
3 based on that there's one or two things outstanding in discovery that I
4 think the State has that they haven't yet turned over. I will let Mr. Sweetin
5 know. I can say that on the record right now I think there was probably
6 body cam footage of when they served the search warrant that hasn't
7 been provided. It's nothing that's going to potentially delay but it's
8 something I think we need to have.

9 THE COURT: Okay.

10 MS. RADOSTA: This was a pretty full out service of a search
11 warrant. They had SWAT involved. They had I think, I don't know,
12 somewhere between 10 and 15 officers involved. I'm sure there was
13 body cam footage given Metro's current policy on that.

14 The only other thing that I can think of off the top of my head is
15 the alleged victim AS testified. I believe she testified at preliminary
16 hearing or she had previously stated in one of her statements that she
17 actually was interviewed more than once by Metro. We have one
18 statement from her from Metro.

19 She said she was interviewed more than once. And the other
20 time that she was interviewed, and I do recall this from preliminary
21 hearing testimony, she was audiotaped and videotaped. I appreciate that
22 she may have misstated that she may have misremembered but I would
23 just ask that Mr. Sweetin double check on that as at this point in time
24 she's under oath saying that she was interviewed more than once by
25 Metro.

1 THE COURT: Okay.

2 MS. RADOSTA: And we only have one statement from her --

3 THE COURT: Okay.

4 MS. RADOSTA: -- that was not videotaped, only audiotaped.

5 THE COURT: Okay. I have this set up. We're going to start the jury
6 trial -- actually I'm going to start selection of the jurors on the 4th.

7 MS. RADOSTA: Oh okay. I recall --

8 THE COURT: So it would be -- that's a Tuesday.

9 MS. RADOSTA: Okay. I recall you had said the 5th and I always
10 thought that was an odd --

11 THE COURT: No; the 5th is the date that I put on. I did.

12 MS. RADOSTA: Okay.

13 THE COURT: But we can start on the 4th. I'll be able to give you the
14 full day. We'll start at 9:00. I don't have a civil calendar that day.

15 Here's what I have -- what we've done. We have the jury
16 questionnaires. They've been prepared. The potential jurors are coming
17 in today to go through them. I anticipate by the end of the week we
18 should have those back. I want to set this on in two weeks on August
19 15th. Just for -- I'd like, before that date, if the parties could get together
20 on stipulation of to excuse individuals.

21 I'm sending out 250 questionnaires. Hopefully that's enough.
22 And if there's a number of them in there that you can all stipulate that,
23 yeah, we agree to let them off then we can do that. That will tell me by
24 August 15th whether or not I need to do another packet for them so we
25 can get started by the 4th.

1 Also, the information is 120 some counts. And typically when
2 we do a jury trial, before we start, I have my clerk read the information to
3 the jury. I'm -- I'll continue to do that but I'm asking the parties to see if
4 they can agree on maybe providing a copy to the jury and -- of all the
5 counts and then place it in the record at that period of time that the jury
6 has that copy and if they need me to read it to them.

7 MS. RADOSTA: So you're looking for potential options other than
8 having your --

9 THE COURT: Right.

10 MS. RADOSTA: -- court clerk read it in its entirety to the jury.

11 THE COURT: Right.

12 MS. RADOSTA: Okay.

13 THE COURT: Okay? So I'm up for, yeah, any kind of suggestion in
14 that.

15 MS. RADOSTA: Okay.

16 THE COURT: All right. So, Mr. Sweetin, is there anything that you
17 need to address at all with regards to what's been put on the record so
18 far?

19 MR. SWEETIN: I don't believe so. As far as the body cam's
20 concerned, I mean, this was -- this is an old case at this point. I mean
21 this was 2014. I'm not aware of any body cam footage --

22 THE COURT: Okay.

23 MR. SWEETIN: -- in this case. I would have it be noted on the top
24 of my files. As the Court probably knows, if there's body cam footage
25 that's normally denoted there. So I don't know that there's going to be

1 any but I will double check.

2 And as far as that second statement I think that we addressed
3 that -- I think we've addressed that a few times that there's no second
4 statement but I'll double check on that as well.

5 Ms. Radosta indicated that out of an abundance of caution
6 maybe it's a good idea for the two of us to get together and we can go
7 through the file again so we're going to do that just to make sure that
8 there's -- that everybody has everything and that if anything can be
9 addressed early if there's any issues.

10 THE COURT: All right. Okay. Anything else?

11 MS. RADOSTA: No. So we're status checking on the 15th?

12 THE COURT: Yeah. We'll be back here on August 15th at 8:30.
13 And it's only for -- but before then hopefully you guys can get together on
14 agreeing. Hopefully by maybe Friday we can get -- maybe this Friday?

15 THE COURT CLERK: I anticipate that I should have the
16 questionnaires back some time tomorrow or by Friday to be able to get
17 you guys copied -- get you your copies so you can start reading them.

18 THE COURT: So you guys can go through them --

19 THE COURT CLERK: So you'll have them for two weeks before the
20 status check date.

21 MS. RADOSTA: Okay. Are we getting hard copies or do we get
22 them on like discs?

23 THE COURT CLERK: Hard copies.

24 THE COURT: No. We'll give you a stack so you guys can read
25 through them all.

1 MS. RADOSTA: So I get to --

2 THE COURT CLERK: They'll go to the county copier today once
3 they're done.

4 MS. RADOSTA: Okay. Awesome.

5 THE COURT: I don't even know but is -- are you -- is it preferable
6 for a disc? 'Cause I don't even know if they do that?

7 THE COURT CLERK: No. They don't do that.

8 MR. SWEETIN: I'd rather have a hard copy.

9 THE COURT: Yeah. Okay.

10 MS. RADOSTA: Yeah. I just --

11 THE COURT: And you can write on them and stuff.

12 MS. RADOSTA: Right.

13 THE COURT: So -- yeah, so hopefully -- I'm asking you to get
14 together before the 15th.

15 MR. SWEETIN: Yeah.

16 THE COURT: One of the reasons is for this; to see if there's some
17 that you -- I know there's going to be something that you guys can agree
18 to probably release --

19 MR. SWEETIN: Yeah.

20 THE COURT: -- and I'm hopeful that this case doesn't scare a lot of
21 them away based on the time frame that we're looking at. But, we'll see.
22 Okay? All right. Okay, so I'll see you back on the 15th at 8:30.

23 MS. RADOSTA: All right.

24 THE COURT: If there's anything else that comes up I'm asking you
25 To keep the Court informed.

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MS. RADOSTA: Sure.

THE COURT: I'll be open to anything during that time frame if
somethings happening with this case. Okay?

MS. RADOSTA: No problem, Judge. Thanks.

MR. SWEETIN: Thank you.

THE COURT: Thanks guys.

[Hearing concluded at 08:43 a.m.]

* * * * *

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.



Christine Erickson,
Court Recorder



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,) CASE#: C-15-311453-1
9 Plaintiff,) DEPT. XIX
10 vs.)
11 CHRISTOPHER SENA,)
12 Defendant,)

13 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE
14 WEDNESDAY, AUGUST 15, 2018

15 **RECORDER'S TRANSCRIPT OF HEARING:**
16 **STATUS CHECK: JURY QUESTIONNAIRE**

17 APPEARANCES:

18 For the State: MARY KAY HOLTHUS, ESQ.
19 JAMES R. SWEETIN, ESQ.
20 Chief Deputy District Attorneys

21 For the Defendant: VIOLET R. RADOSTA, ESQ.
22 DAVID E. LOPEZ-NEGRETE
23 Deputy Public Defenders
24

25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

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Las Vegas, Nevada, Wednesday, August 15, 2018

[Hearing began at 9:26 a.m.]

THE COURT: State of Nevada versus Christopher Sena.

This is C311453. All right. So this is time set for pretrial conference.

We have a matter set for trial. This matter is set for trial on August 29th.

We went through 250 jury questionnaires were asked. Apparently 42 of them the parties have agreed to excuse. That leaves 158 jurors remain.

So I'm going to ask for an additional 200 jury questionnaires to be completed. I just don't know whether or not based on what -- what I've been reading of them whether or not there's going to be -- whether -- let's put it this way, whether or not the jury is going to be up to this. So that's why I need to -- I need to have more of a pool; --

MS. HOLTHUS: I hear you.

THE COURT: -- so --

MR. SWEETIN: That's fine, Judge. I mean, we've never been a big fan of jury --

THE COURT: But I do agree that --

MR. SWEETIN: -- yeah, we're not a big fan of jury questionnaire.

THE COURT: -- yeah, under the circumstances of this case, you know, I do agree that -- that -- and I read the case that you sent. The case you sent to me is an actual case we actually discussed in one of our seminars.

MS. RADOSTA: Mm-hmm.

1 THE COURT: So I'm very aware of that.

2 MS. RADOSTA: Yeah.

3 MR. LOPEZ-NEGRETE: Great.

4 MS. RADOSTA: Yeah.

5 THE COURT: And so -- but --

6 MS. HOLTHUS: Our concern is really -- the only thing --

7 THE COURT: What's that?

8 MS. HOLTHUS: -- the only thing really at this point that the
9 questionnaires have given us to me are everybody feels exactly --

10 THE COURT: Oh I know.

11 MS. HOLTHUS: -- like we figured they'd feel. So the only real
12 value for us so far has been who has a vacation, who has prepaid --

13 THE COURT: Right.

14 MS. HOLTHUS: -- who's in college.

15 THE COURT: Well I think that -- I think that was a sentiment
16 represented by -- I know Mr. Sweetin represented that previously when
17 basically he was telling the Court we don't need a jury questionnaire but
18 -- but that -- you know what this also does though I think -- and I was
19 kind of suspicious with some of them I was looking at is that -- is that
20 because of the nature of the case, I think we've had more reasons
21 expanded by the jury to not be here. So, you know, if that's true, I don't
22 want them as jurors because then, you know, we're just causing
23 problems with that. So let's get rid of them now. So I appreciate you all
24 getting together and looking at this and -- but -- so -- but what I need to
25 do is -- is -- is I'm going to have 200 more jury questionnaires --

1 MS. HOLTHUS: Okay.

2 THE COURT: -- prepared for -- get distributed to them; okay.
3 And we'll get it out -- we'll probably -- we kind of told them yesterday we
4 were going to do it, so they put -- they were putting them together to get
5 them out to people, so.

6 THE CLERK: I'll reach out to the jury commissioner today.

7 THE COURT: Okay.

8 THE CLERK: And then ask the parties what's --

9 THE COURT: Hopefully you can get them back my Monday
10 or something.

11 THE CLERK: Probably. And then ask the parties that once
12 we do that they -- they meet again and see if there's anybody they'll
13 stipulate to. And that when they do so please provide their names and
14 I'll again like I did --

15 THE COURT: Okay.

16 THE CLERK: -- previously send you the jury list of the
17 potential jurors with their badge numbers and names so that we can give
18 it to the Judge in that clear format.

19 MS. RADOSTA: As I -- as I just mentioned to your Clerk prior
20 to the calendar today, we had -- we had created an excel spreadsheet
21 for all of these without the names. So for us to go back and insert the
22 names on all of the ones that we --

23 THE COURT: Mm-hmm.

24 MS. RADOSTA: -- had a problem with which was
25 considerably more than the State did was just going to be way too time

1 consuming for us at that point. 'cause we already --

2 THE COURT: Well, what do you expect me to do? Do your
3 work?

4 MS. RADOSTA: Well, no. But we listed the badge numbers,
5 Your Honor. We listed the badge numbers. We felt that that was --

6 THE COURT: Okay.

7 MS. RADOSTA: -- sufficient. Had we known -- and this isn't
8 on anybody, but had we known in the beginning that we were going to
9 need badges and -- and names when submitting anything to the Court --

10 THE COURT: Okay. All right.

11 MS. RADOSTA: That's all.

12 THE COURT: Well that's behind us now.

13 MS. RADOSTA: Yeah.

14 THE COURT: Okay. All right. So that's what we'll expect in
15 the future.

16 MR. SWEETIN: And, Judge, just to that point. I think that the
17 Court's instruction to us was just to meet together as to what we could
18 agree on --

19 THE COURT: Mm-hmm.

20 MR. SWEETIN: -- to excuse.

21 THE COURT: Right.

22 MR. SWEETIN: Because obviously, you know, a lot of these
23 folks are saying hey we can't be fair. But obviously the Court knows --

24 THE COURT: Mm-hmm.

25 MR. SWEETIN: -- in jury voir dire, you know, when everything

1 is laid in context many times that changes when they really understand
2 the total.

3 THE COURT: Right. No. No. No. I understand that. I do.

4 MR. SWEETIN: So -- so, we're keeping those. In our defense
5 is asking to release all of those people.

6 THE COURT: Mm-hmm.

7 MR. SWEETIN: I mean, in the last jury I calculated 70 percent
8 of the jury panel they're requesting to be released.

9 THE COURT: Mm-hmm.

10 MR. SWEETIN: So, I don't know that it's -- it's -- it's
11 productive. I don't know a record needs to be made as to those jurors
12 that -- that they want off or we want off that we can't agree on.

13 THE COURT: Well the ones that you can agree on they're
14 coming in. And we'll have to deal with them here. That's how I'm going
15 to deal with it.

16 MR. SWEETIN: Okay.

17 THE COURT: I would venture to say that many of them will
18 probably based on question of the Court on that will probably just
19 reiterate, you know, we -- we're disgusted by this or something and we
20 don't want to go forward with it. I don't know. I would venture that that's
21 what they would be saying. But -- but I also think that beyond that they
22 could also be saying that we can be fair even though we recognize this
23 as would be one that we don't want to be here on.

24 So I got to look at that and see whether or not and I'm going to
25 weigh it in a way that our Supreme Court's addressing that issue now.

1 And see whether or not there's something that we get around that. So
2 that -- but that -- don't need to go.

3 Okay. So, all right. So, I'm going to do 200 more jury
4 questionnaires. We'll hopefully we'll get them back by you by Monday.
5 And so can we put this back on maybe -- if you get them by Monday
6 would be next Wednesday be enough time for you all to -- to -- why?

7 MS. RADOSTA: Because we have to read through them all,
8 Judge. It took us --

9 MS. HOLTHUS: Here's what I would suggest --

10 THE COURT: Well you take hundred and you take hundred.

11 MR. LOPEZ-NEGRETTE: That's what we did.

12 MS. RADOSTA: That's what we did.

13 MS. HOLTHUS: That's how -- that's how we divided up.

14 What I would suggest --

15 THE COURT: Okay.

16 MS. HOLTHUS: -- is that Jim -- Mr. Sweetin and I will do ours.
17 We're only doing the ones we agree on.

18 THE COURT: Right.

19 MS. HOLTHUS: So that'll narrow it down to which ones they
20 have to look at. We're -- they're not -- we're not looking for full
21 challenges for cause.

22 THE COURT: Well no --

23 MS. HOLTHUS: All they're looking at --

24 THE COURT: -- they're going to want to look at them all.

25 MS. RADOSTA: Right.

1 THE COURT: I understand that. But -- and to see whether or
2 not they can agree or not agree.

3 MS. HOLTHUS: But what I'm telling you is for example, I
4 think, what do we have 41 here today?

5 THE COURT: Oh okay. You're saying basically in your
6 opinion is --

7 MS. HOLTHUS: You're not getting them.

8 THE COURT: Okay.

9 MS. HOLTHUS: They're not going to get anybody else off.
10 So --

11 MR. SWEETIN: Yeah. Essentially I think they want
12 everybody off the panel.

13 THE COURT: Okay. All right.

14 MR. SWEETIN: So, I think it's just the ones that we would
15 agree to.

16 MS. HOLTHUS: But they only get what we want. So if we
17 haven't agreed --

18 THE COURT: Okay. Well let's try -- let's start with that.

19 MS. HOLTHUS: At least they could get it started.

20 THE COURT: Okay. Could you -- would next Wednesday be
21 enough time --

22 MR. SWEETIN: Yeah. That's fine.

23 THE COURT: -- do you think if you were able to get them by
24 at least by Monday?

25 MS. HOLTHUS: We'll make it -- we'll make it work.

1 THE COURT: Hopefully we can get it to you by Friday. I don't
2 know if we can or not but --

3 MS. HOLTHUS: I'm -- I'm not here Friday, so.

4 [Colloquy between the Court and the Clerk]

5 THE COURT: Let's just put it back on for that Wednesday.
6 Now I have another motion that was placed on -- I have it but it's the --
7 have you received a copy of it, Ms. Radosta?

8 MS. RADOSTA: Yes. Yesterday afternoon.

9 THE COURT: Okay.

10 MS. RADOSTA: We would ask for an opportunity to respond
11 in writing.

12 THE COURT: Okay. All right. Can you do that by next
13 Wednesday?

14 MS. RADOSTA: Sure. No problem.

15 THE COURT: Okay.

16 MS. HOLTHUS: Okay.

17 THE COURT: All right. So --

18 MS. HOLTHUS: Can --

19 THE COURT: -- we'll have it -- we'll have that on by next
20 Wednesday. We'll have it back on for status check on the jury
21 questionnaire. Hopefully we can get an additional 200 put in. And we'll
22 note for the record the 42 matters that are going to be excused.

23 Now, some of these I excused based on medical -- some
24 medical. I get -- I get requests that you all don't get.

25 MS. HOLTHUS: Okay.

1 THE COURT: I'll let you know which ones they are.

2 MS. RADOSTA: Okay.

3 THE COURT: But I had some -- a number of them request --
4 they had medical issues and a -- maybe seven or eight of them that had
5 actually preplanned vacations and they sent me proof of their tickets and
6 all that, so. Okay. So, we'll provide that to you as well.

7 So, hopefully by -- hopefully by next Wednesday I can at least
8 give you a full number of the -- of the jurors that we're going to call in off
9 of this first list, okay.

10 MS. HOLTHUS: Okay.

11 THE COURT: A full list. All right.

12 MS. HOLTHUS: Also, Judge, we have the State's motion for
13 clarification and the supplement to the motion in limine that's currently
14 set for the 27th.

15 THE COURT: Okay.

16 MS. HOLTHUS: I don't know if we can move that up any
17 sooner or not.

18 MS. RADOSTA: I would prefer to just keep it on the date that
19 it is.

20 THE COURT: Well --

21 MS. RADOSTA: This is not the only case on my desk, Judge.
22 So I mean I've -- I need to do --

23 [Colloquy between the Court and the Clerk]

24 MS. HOLTHUS: That's fine. I just -- I just --

25 MS. RADOSTA: I mean, I guess if we want to do that I can try

1 -- I can try to get a written response on that one by the beginning of next
2 week. I can try.

3 MS. HOLTHUS: Our motion's super fat, but it's essentially
4 just the motion we've had before. We're just asking for a little
5 clarification on the ruling. Literally with respect to the one photograph of
6 the dog, and then we're also now seeking to introduce the video tape as
7 well. And so, I think sooner is better than later just from the standpoint
8 of knowing what we're dealing with. I don't think it's a surprise either
9 way. I don't know how much it would impact Ms. Radosta's preparation
10 of the case. But I wanted to offer her the opportunity to have it ruled on
11 earlier.

12 And also, obviously have not attached a copy of the video for
13 you to review, but I would request that we deliver that to your chambers
14 so that you -- before you rule on this I'd like you to see the video to
15 understand kind of what we're talking about in terms of direction and
16 control and --

17 THE COURT: Okay. All right. Well why couldn't I just leave it
18 that one on for the 27th?

19 MS. HOLTHUS: That's fine. But it's close to calendar call.
20 And I don't want -- if defense feels like that would make a difference in
21 their preparation for trial. We're trying to do everything we can to keep
22 this trial date.

23 THE COURT: No. I know.

24 MS. HOLTHUS: And so --

25 THE COURT: And I am too. So --

1 MS. HOLTHUS: I'm just offering them --
2 THE COURT: Yeah.
3 MS. HOLTHUS: -- the opportunity --
4 THE COURT: All right. Well, okay.
5 MS. HOLTHUS: -- to get ruled on earlier.
6 MS. RADOSTA: We can -- we can do it, Judge. We can -- I'll
7 do my best.
8 THE COURT: You want to do it next Wednesday?
9 MS. RADOSTA: We might as well, Judge.
10 THE COURT: All right. Okay.
11 MS. RADOSTA: To do them all at the --
12 THE COURT: All right.
13 MS. RADOSTA: -- rather than come in here on next
14 Wednesday and then on the following Monday --
15 THE COURT: The following Wednesday.
16 MS. RADOSTA: -- and then on the following Wednesday.
17 THE COURT: Okay.
18 MS. RADOSTA: You know.
19 THE COURT: That's fine. Okay.
20 MS. RADOSTA: So.
21 THE COURT: All right. We'll do that then. Put it all on next
22 Wednesday. So we'll move the motion for clarification with regards to
23 the original order involving the photograph and -- can you get me a copy
24 of that --
25 MS. HOLTHUS: Yeah.

1 THE COURT: -- before next month?

2 MS. HOLTHUS: I'll -- we'll have it -- we have it ready we're
3 just waiting to deliver it to your chambers.

4 THE COURT: Okay. All right. She has a copy?

5 MS. HOLTHUS: She has everything.

6 THE COURT: Okay.

7 MS. HOLTHUS: We just isolated it for you.

8 THE COURT: All right.

9 MS. RADOSTA: The only other thing, Your Honor, there were
10 just a couple quick housekeeping matters. We would ask that the State
11 -- and I emailed both Ms. Holthus and Mr. Sweetin this morning, ask that
12 they provide us with contact information for all the lay witnesses.

13 THE COURT: Mm-hmm.

14 MS. RADOSTA: The current witness list just says in care of
15 the DA's office.

16 THE COURT: Okay.

17 MS. RADOSTA: We would ask for phone numbers so that we
18 can make an attempt to reach out to the lay witnesses.

19 THE COURT: Are you talking about the victims in this matter?

20 MS. RADOSTA: Yes.

21 THE COURT: Through the -- I'm -- I'm --

22 MS. RADOSTA: We certainly have an obligation to try to
23 contact them, Your Honor, so.

24 THE COURT: No. I understand that. Contact the DA's office
25 and --

1 MS. RADOSTA: Their current notice of witnesses says --

2 THE COURT: Is to contact them.

3 MS. RADOSTA: -- in care of the DA's office; so.

4 THE COURT: All right; so. I -- that -- that is more than likely -

5 - I mean, more of concern with regards to the victims in this matter. Is

6 there -- is there any other ones that are all -- that are saying care of the

7 DA's office as well?

8 MS. RADOSTA: Court's indulgence.

9 THE COURT: That are somebody other than a victim in this
10 matter?

11 MS. RADOSTA: It appears that it is just the alleged victims in
12 the case that are listed in that manner. So, yeah.

13 THE COURT: Okay.

14 MS. RADOSTA: I mean, this is the way we look at it, Judge.
15 The State sometimes doesn't want to give us a phone number. They
16 prefer to just give us an address on these particular people. We feel that
17 it's actually less intrusive to call somebody on the phone --

18 THE COURT: Mm-hmm.

19 MS. RADOSTA: -- than to come knocking at their door. If
20 they don't --

21 THE COURT: Well, hey is that what they're saying here?

22 MS. RADOSTA: No.

23 THE COURT: Is that -- okay.

24 MS. RADOSTA: Just for the sake of argument. In past cases
25 that's what we've been --

1 THE COURT: Mm-hmm.

2 MS. RADOSTA: -- given or that's what the argument comes
3 down to is phone number versus address. I honestly feel that if I call
4 somebody on the phone it's less intrusive for that person. And in this
5 particular case some of these people may not want to speak to us.

6 THE COURT: Mm-hmm.

7 MS. RADOSTA: They can just say, you know what, no. I'm
8 done and hang up the phone. As opposed to us --

9 THE COURT: Okay.

10 MS. RADOSTA: -- standing in front of their door knocking on
11 their door.

12 THE COURT: I got you.

13 MS. RADOSTA: It seems more -- more intrusive, so.

14 THE COURT: Okay.

15 MS. RADOSTA: It's addition -- additionally I'm not sure if all of
16 the alleged victims are here locally. Some of them --

17 THE COURT: Okay. Is there -- is there any issue with that?
18 That you could give them the phone number or I mean -- I mean --

19 MR. SWEETIN: Yeah. I mean, what I normally tell the
20 defense is that if -- if they want the phone number I'll contact the victim --

21 THE COURT: Mm-hmm.

22 MR. SWEETIN: -- and let them -- and ask them if they want
23 me to give them their personal phone number.

24 THE COURT: Okay.

25 MR. SWEETIN: Because under the statute of course we're

1 only required to provide the address.

2 THE COURT: Mm-hmm.

3 MR. SWEETIN: And certainly I would be willing to provide the
4 contact information.

5 MS. RADOSTA: Mm-hmm.

6 MR. SWEETIN: And if in fact they -- they want to specifically
7 make telephonic contact I'd be happy to call them and see if they want to
8 talk to defense counsel.

9 THE COURT: Okay.

10 MR. SWEETIN: But, you know, I think that that's --

11 THE COURT: Are you satisfied with that?

12 MS. RADOSTA: Not particularly, Your Honor.

13 THE COURT: So you just want the number when --

14 MS. RADOSTA: It's just -- it's just -- it's just easier. No
15 offense to --

16 THE COURT: I know, but if they're calling and saying we
17 don't want to talk to them --

18 MS. RADOSTA: Then --

19 THE COURT: -- then why would you waste your time --

20 MS. RADOSTA: -- but --

21 THE COURT: -- in trying to make a phone call?

22 MS. RADOSTA: -- but how is that any difference than giving
23 us the address and having us show up at their door and them saying
24 they don't want us to talk? I mean, I don't understand how that -- how
25 that alleviates that problem.

1 THE COURT: Well --

2 MS. RADOSTA: I mean, we still have an obligation. We have
3 an obligation to try to reach out to these people.

4 THE COURT: Mm-hmm.

5 MS. RADOSTA: I -- but on potentially for the sake --

6 THE COURT: Well you're making a record now.

7 MS. RADOSTA: -- for the sake of argument.

8 THE COURT: Uh-huh.

9 MS. RADOSTA: On PCR if it comes out that we did not make
10 an attempt, but Mr. Sweetin he called them on our behalf and they said
11 they didn't want to talk to us and that turns out not to be the case.
12 Where does that --

13 THE COURT: Well, so you're saying -- you're saying that the
14 -- that if the -- if it turns out the State was lying to you; is that what you're
15 saying?

16 MS. RADOSTA: No.

17 THE COURT: Okay.

18 MS. RADOSTA: Not necessarily lying to -- but the way they
19 present it to the person versus us talking to the person on the phone.
20 It's just -- it -- there shouldn't be a middle man of the DA's Office
21 between the defense and a potential witness.

22 THE COURT: Well --

23 MS. RADOSTA: That just should not be the case.

24 THE COURT: Well there's a difference in this case. This isn't
25 a potential witness. This not only a potential witness, it's a victim in this

1 matter.

2 MS. RADOSTA: It's a potential alleged victim.

3 THE COURT: Okay.

4 MS. RADOSTA: As it is in every single one of the cases that
5 we deal with. There's always a potential alleged victim that we are trying
6 to reach out to that we are trying to contact.

7 THE COURT: All right. Well this is what I'm going to do is I'm
8 going to require the State to contact the victims. Indicate whether or not
9 they wish to talk to them. If they do, then give them the phone numbers.
10 If they tell you they don't, then notify Ms. Radosta that they wish not to
11 talk to them on the phone and give them their addresses. Okay.

12 MR. SWEETIN: Thank you, Judge.

13 MS. RADOSTA: That's fine.

14 THE COURT: All right. Okay.

15 MS. RADOSTA: The only other thing, Your Honor, is Your
16 Honor had requested or had suggested that we do a September 4th start
17 --

18 THE COURT: Mm-hmm.

19 MS. RADOSTA: -- on this trial instead of the original 5th that
20 we had originally had set.

21 THE COURT: Mm-hmm.

22 MS. RADOSTA: I would ask, Your Honor, that we just go
23 ahead and keep the 5th date for a couple different reasons. One, I and
24 Mr. Negrete both have morning court on the 4th, so we wouldn't even be
25 available 'til the afternoon. And our jury questionnaire is incorrect, it

1 says the 5th on it not the 4th for the 250 questionnaires that we already
2 sent out, so.

3 THE COURT: All right, fine. You'll have that extra day.

4 MS. RADOSTA: I mean, it's not --

5 THE COURT: Okay.

6 MS. RADOSTA: -- it's not --

7 THE COURT: It's -- no. I'm just trying to give additional time.

8 MS. RADOSTA: Absolutely.

9 THE COURT: And something came open, I said I can do it
10 that day.

11 MS. RADOSTA: Yeah.

12 THE COURT: But -- but --

13 MS. RADOSTA: I --

14 THE COURT: -- an extra day. All right.

15 MS. RADOSTA: It's not that, Your Honor.

16 THE COURT: Okay.

17 MS. RADOSTA: It's that we just wouldn't be available 'til the
18 afternoon anyway.

19 THE COURT: I'm just going to leave it. I'm going to leave it.

20 MS. RADOSTA: So I'm not --

21 THE COURT: The 5th. Anything else?

22 MS. HOLTHUS: Just one thing.

23 THE COURT: Okay.

24 MS. HOLTHUS: We're -- on the 22nd next Wednesday when
25 we're in here --

1 THE COURT: Mm-hmm.

2 MS. HOLTHUS: -- I have a prelim calendar. Could we just
3 set it like at 10 o'clock so that we have an --

4 THE COURT: Sure.

5 MS. HOLTHUS: -- well or at 8 -- I just I have to have
6 somebody come down and cover.

7 [Colloquy between the Court and the Clerk]

8 MS. HOLTHUS: Or at 9:30 if the calendar's --

9 THE COURT: Let's do it at 1. We'll set it at 1.

10 [Colloquy between the Court and the Clerk]

11 MS. HOLTHUS: Well and that was my other question. If
12 we're going to do the other bad act -- can we approach?

13 [Bench conference - not transcribed]

14 THE COURT: Okay. So we -- our next Wednesday calendar
15 what I'm going to do is this will be on. You'll -- Mr. Sena, you're going to
16 be on my calendar, it starts at 8:30, but we're not going to hear this case
17 until 11; do you understand? Okay. He's thumbing up. How about you,
18 Ms. Radosta? Can I get a thumbs up?

19 MS. RADOSTA: Yeah. That's fine, Judge. That's fine.

20 THE COURT: Okay.

21 MS. RADOSTA: The -- you had by the way had requested
22 that we come up with possible suggestions for not reading the
23 information --

24 THE COURT: Mm-hmm.

25 MS. RADOSTA: -- in it's entirety --

1 THE COURT: Right.

2 MS. RADOSTA: -- to the jury. At this point in time I'm not

3 seeing a problem with just --

4 THE COURT: Giving them a copy.

5 MS. RADOSTA: -- giving them a copy.

6 MS. HOLTHUS: We haven't confirmed with appellate. It's on

7 our list.

8 MS. RADOSTA: Yeah.

9 MS. HOLTHUS: We'll do that.

10 MS. RADOSTA: I mean, I ran it by Mr. Brooks and a couple --

11 THE COURT: Okay.

12 MS. RADOSTA: -- other people on our appellate this morning,

13 but I'm not seeing a problem with it.

14 THE COURT: If you waive that -- if both parties waive that.

15 And then the jury has a copy of it

16 MS. HOLTHUS: Yeah. I just don't --

17 THE COURT: Then you'll be fine.

18 MS. HOLTHUS: We just --

19 MR. SWEETIN: We haven't researched yet or talked to

20 appeals.

21 THE COURT: Mm-hmm.

22 MR. SWEETIN: So if we could just have that opportunity we

23 can -- sure we can tell you next Wednesday.

24 THE COURT: Well I don't -- I don't need to know --

25 MR. SWEETIN: Yeah.

1 THE COURT: -- until we start.

2 MR. SWEETIN: Right.

3 THE COURT: I mean, it's just -- it's just to be honest with you

4 it's just the convenience for my Clerk. It really is. I mean, I can read it.

5 It's -- I mean it doesn't matter. It's just -- but -- that's all it's for is if -- if --

6 MS. HOLTHUS: No, I understand but the --

7 THE COURT: Okay. Yeah.

8 MS. HOLTHUS: I get it --

9 MS. RADOSTA: I guess --

10 THE COURT: Because we can make it -- in a -- in a -- you

11 know, put it as reference to it and so -- but -- but we'll see. I mean, if

12 anyone objects we'll read it. And so if you are both are waiving it then --

13 then I won't. We'll just get --

14 MS. RADOSTA: All right.

15 THE COURT: Yeah. We'll have to start on the 4th just to read

16 it.

17 MS. HOLTHUS: You could do that. You can start without --

18 MS. RADOSTA: We could -- yeah.

19 MS. HOLTHUS: -- us on the 4th.

20 THE COURT: All right.

21 MS. RADOSTA: We could do that in the afternoon on the 4th,

22 Judge. That would be fine.

23 THE COURT: Okay. All right.

24 MS. RADOSTA: All right.

25 THE COURT: Okay. All right. Thanks, guys.

1 MS. HOLTHUS: Thank you.

2 THE COURT: We'll see you back next Wednesday. Make
3 sure you get everything to me that -- that you think that I -- I'm going to
4 need. We'll make sure we get everything to you as far as the jury
5 questionnaires, okay.

6 MS. HOLTHUS: Okay.

7 MS. RADOSTA: Mm-hmm.

8 THE COURT: All right. Thanks, guys. I put it on calendar for
9 next Wednesday.

10 MS. HOLTHUS: Eleven, right?

11 MS. RADOSTA: Oh, yeah. Was this like our --

12 THE CLERK: August 22nd at 8:30, slash, 11.

13 MS. HOLTHUS: And our calendar call is the 29th?

14 THE CLERK: The 29th at 8:30.

15 MS. HOLTHUS: All right.

16 THE CLERK: And again, as soon as I find out about the
17 questionnaires when they're ready, I will let everybody know.

18 THE COURT: All right.

19 MS. HOLTHUS: Thank you.

20 MS. RADOSTA: Thank you.

21 [Hearing concluded at 9:45 a.m.]

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

24 

25 _____
Rubina Feda
Court Recorder/Transcriber



1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 CHRISTOPHER SENA,

12 Defendant.

CASE#: C-15-311453-1

DEPT. XIX

13
14 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE
15 WEDNESDAY, AUGUST 22, 2018

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
17 **ALL PENDING MOTIONS**

18 APPEARANCES:

19 For the State:

MARY KAY HOLTHUS, ESQ.
JAMES SWEETIN, ESQ.
Chief Deputy District Attorneys

21 For the Defendant:

22 DAVID LOPEZ-NEGRETE, ESQ.
VIOLET R. RADOSTA, ESQ.
Deputy Public Defenders

23
24
25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, August 22, 2018

2

3 [Proceedings commenced at 12:42 p.m.]

4 THE COURT: Page 4. State of Nevada versus Christopher
5 Sena.

6 Before we get started on this, I need to take a quick break.

7 [Proceedings trailed at 12:42 p.m.]

8 [Proceedings resumed at 12:58 p.m.]

9 THE COURT: All right. This is -- we're back -- are we on the
10 record, Christine?

11 THE COURT RECORDER: Yes, Judge.

12 THE COURT: We're back on the record in the case of State
13 of Nevada versus Christopher Sena in C311453.

14 It's on for -- on the calendar it states motion for clarification
15 and supplement to prior motion in limine to present the complete story of
16 the crime and motion to admit evidence of other sexual crimes and/or
17 evidence of other crimes, wrongs or acts. It's also on for Defendant's
18 motion for production of co -- co-offenders' Presentence Investigation
19 Reports for -- and related discovery. And then it's on -- I have it also on
20 for the -- gosh. Hold on -- for State's motion to strike expert witnesses.

21 Okay. All right. So let me -- let me deal with that first. Is that
22 okay?

23 MS. RADOSTA: Whichever --

24 THE COURT: Okay.

25 MS. RADOSTA: -- Judge, we're fine. Yeah.

1 THE COURT: All right. The State's motion to strike expert
2 witness notice. I want to hear from the State. I've read the motion and
3 everything. I think I'm comfortable with understanding, but -- but I need
4 to know the concerns the State has. I want to make sure that it's clear on
5 the record that I understand the concerns.

6 MR. SWEETIN: And, Your Honor, based upon the notice that
7 has been provided to the State, the State would submit that it -- it neither
8 provides really any notice as to the subject matter -- the subject matter or
9 the substance of the testimony of this expert. In total, it basically -- the
10 notice says his testimony will provide expert opinions on sexual abuse
11 studies and research involving incest, sexual abuse of minors, child
12 pornography, child abuse, bestiality, as well as psychosexual profiles and
13 evaluations. See, now --

14 THE COURT: If any.

15 MR. SWEETIN: If any.

16 THE COURT: Is that -- that's the extent of the notice?

17 MS. RADOSTA: Yes.

18 THE COURT: Okay. All right.

19 MR. SWEETIN: So, first of all, the notice doesn't really give a
20 subject matter even of what the testimony is going to be. It's laying out
21 essentially reference to some sort of articles. It's also talking to sexual --
22 psychosexual profiles. I'm not sure what articles or profiles defense is
23 referring to in this case. That's essentially their notice. That's the
24 subject. But beyond that, the substance of the testimony doesn't give the
25 State a clue in regards to what is actually going to be elicited. Is the

1 elicitation of evidence going to be challenging the manner of the
2 disclosure of the children? Is it going to talk about questionable words
3 that the children might have used in their disclosures, or is there other
4 line of testimony? And the State would submit that the purpose of the
5 notice of expert is to give the State just that notice so the State can
6 determine whether or not they need to secure an expert in that particular
7 area on their own. As it's set right, the State is not sure where the
8 defense is going with this expert. It's wide open. The State does not
9 have the ability to determine what -- make that determination or to even
10 make a determination whether or not -- whatever the defense is
11 attempting to specifically elicit is even relevant to the proceeding.

12 For those reasons the State submits that defense has not met
13 the requirements of NRS 174.234(2). And as a result, the notice should
14 be stricken.

15 THE COURT: Ms. Radosta.

16 MS. RADOSTA: Judge, I -- as I stated in my opposition, it's
17 our position that we are holding compliant with the requirements of the
18 NRS 174.234 subsection 2.

19 This is also -- when you look at the case that we cited of
20 *Perez* and what was --

21 THE COURT: I have that open. I wanted to talk about that a
22 little bit because I --

23 MS. RADOSTA: Right. What was upheld in that case to be
24 perfectly acceptable notice from the State, it was challenged by the
25 defense.

1 THE COURT: But it wasn't.

2 MS. RADOSTA: But it was ruled by the --

3 THE COURT: But it wasn't challenged by the defense. That's
4 the concern that I have. The way you cite this -- and so I'll read from the
5 case --

6 MS. RADOSTA: Mm-hmm.

7 THE COURT: -- just so -- just so we understand it.

8 Okay. It explains -- when it talks about sufficiency of expert
9 notice -- it's on -- it's 129 Nevada -- *Perez versus State*. It's -- 862 is the
10 actual page that they talk about -- it's under headnote 19. They lay out
11 the requirement of 174.234(2) being, you know, a brief statement
12 regarding the subject matter, copy of the curriculum vitae, a copy of all
13 reports made at the direction of the expert witness; okay.

14 MS. RADOSTA: Mm-hmm.

15 THE COURT: It says the State's notice in the case indicated
16 that Dr. Paglini would, quote, testify as a grooming -- as to grooming
17 techniques upon -- used upon children. That's the extent of it.

18 MS. RADOSTA: Mm-hmm.

19 THE COURT: And included his curriculum vitae.

20 MS. RADOSTA: Correct.

21 THE COURT: Dr. Paglini's curriculum vitae indicated that he
22 had conducted sexual offender assessments on adult offender sexual
23 offense, violence risk assessments on juveniles. The State did not
24 submit any reports produced by Dr. Paglini because he did not prepare
25 any reports related to the litigation.

1 Here's where it's interesting. It says Perez's brief argument
2 does not allege that the State acted in either bad faith --

3 MS. RADOSTA: Mm-hmm.

4 THE COURT: -- or that his substantial rights were prejudiced
5 because the notice did not include a report or more detail about the
6 substance of his testimony.

7 MS. RADOSTA: Okay.

8 THE COURT: So the Court there says no one argued this.

9 MS. RADOSTA: Right.

10 THE COURT: So -- so when you come in and say that the
11 Court made the determination that that was a proper notice, that's not
12 what happened in this case. The Court said no one argued it. It sounds
13 to me that the --

14 MS. RADOSTA: But --

15 THE COURT: -- Court in their dictum saying if we had heard
16 something we may address that.

17 Because then it goes, under the circumstances we discern no
18 abuse of discretion allowing Dr. Paglini to testify. Because no one
19 argued that there was improper notice or there was bad faith on behalf of
20 the State.

21 MS. RADOSTA: But I -- for the sake of argument, Your
22 Honor, I think you are assuming what the Supreme Court could have said
23 indicta, but chose not to say indicta. They didn't --

24 THE COURT: No, it's -- flat said that.

25 MS. RADOSTA: But they -- no, they --

1 THE COURT: It says Perez's brief argument does not allege
2 that the State acted in bad faith --

3 MS. RADOSTA: Right.

4 THE COURT: -- or that his substantial rights were prejudiced
5 because the notice did not include a report or more detail about --

6 MS. RADOSTA: Then --

7 THE COURT: -- the substance of the testimony.

8 MS. RADOSTA: Then what's the issue that's being raised if
9 it's not that they were prejudiced from the notice? If it's not that, then
10 what's the issue that's being addressed? This --

11 THE COURT: Perez contends that the State's notice of
12 expert testimony was inadequate and therefore the District Court should
13 have precluded the State from calling Dr. Paglini. We disagree.

14 MS. RADOSTA: Okay. So --

15 THE COURT: They're saying --

16 MS. RADOSTA: -- so they raised the issue that it was an
17 inadequate notice, much like the State here is raising this as being an
18 inadequate notice. I appreciate that they don't come flat out and say that
19 this notice right here is sufficient for all purposes. But they also don't say
20 that it is inadequate and therefore we need to reverse -- or that this
21 witness should not have been allowed to testify because the notice was
22 inadequate, but therefore, it was harmless error or anything like that, that
23 the Supreme Court could have said. They didn't say any of that.

24 They ultimately said we feel that it was not an abuse of
25 discretion for the -- for the District Court to allow this notice and this

1 witness to testify on that -- based on that notice -- or with that notice
2 being the notice given. That's --

3 THE COURT: I know, but -- but what you're -- what's being
4 challenged by the State here is inadequate notice --

5 MS. RADOSTA: Mm-hmm.

6 THE COURT: -- regarding detail about substance of Mr.
7 Harder's testimony. And in *Perez* the Court specifically address it. They
8 said the defense is not arguing that.

9 MS. RADOSTA: The defense argued that the notice was
10 inadequate.

11 THE COURT: But they did not argue that it was inadequate
12 for two reasons. They didn't say the State was acting in bad faith --

13 MS. RADOSTA: Okay.

14 THE COURT: -- or that his substantial rights were prejudiced
15 because the notice did not include a report or more detail about the
16 substance of his testimony.

17 MS. RADOSTA: I think --

18 THE COURT: That one by itself. That's what I'm --

19 MS. RADOSTA: I guess reading --

20 THE COURT: Okay.

21 MS. RADOSTA: -- it differently.

22 THE COURT: All right.

23 MS. RADOSTA: I'm reading that as they're not saying that
24 their substantial rights were violated, but they are say -- they do argue
25 that the notice was inadequate. That's the whole issue that's before the

1 Supreme Court that the notice was inadequate, but they don't go so far
2 as to say that their substantial rights were impair -- or violated as a result
3 of the notice being inadequate. That's how --

4 THE COURT: Well, what -- well --

5 MS. RADOSTA: -- I read it and --

6 THE COURT: I know, but the --

7 MS. RADOSTA: -- obviously you're reading it differently,
8 but --

9 THE COURT: Well, the facts of the case is that the -- the time
10 -- I mean, it's clear when you read the facts they talk about the fact that
11 the State gave notice -- late notice.

12 MS. RADOSTA: Mm-hmm.

13 THE COURT: They came late with it. And so the challenge
14 was is that they -- they violated it under the -- the timing. That was the
15 one challenge. And that was inadequate because of the timing. And so
16 that's how I'm -- that's -- maybe I'm wrong, but that's -- that's how I'm
17 reading that because -- I mean, it sounds clear to me that the -- it
18 appears to me that the -- that the Court is saying, hey, you didn't argue
19 this particular issue and so we're not considering that. That sounds clear
20 to me.

21 So -- so it says, because under the circumstances --

22 MS. RADOSTA: But they actually didn't -- but they -- to be
23 fair, Judge, and I apologize.

24 THE COURT: Mm-hmm.

25 MS. RADOSTA: I shouldn't interrupt. I'm sorry.

1 THE COURT: That's fine.

2 MS. RADOSTA: Finish your thought.

3 THE COURT: Well, it -- the reason why is because the way
4 it's written -- if I read further on it says -- okay, Perez's brief argument
5 does not allege that the State acted in bad faith or that the -- or that his
6 substantial rights were prejudiced because the notice did not include a
7 report or more detail about the substance of Dr. Paglini's testimony.
8 That's --

9 MS. RADOSTA: Mm-hmm.

10 THE COURT: Okay. And then they cite a case, *Mitchell v*
11 *State*. *Mitchell* talks about the bad faith information. That's what *Mitchell*
12 is. Then it says, under the circumstances, we discern no abuse of
13 discretion in allowing Dr. Paglini to testify. The Court reviews the District
14 Court's decision whether to allow an unendorsed witness to testify for
15 abuse of discretion.

16 MS. RADOSTA: Mm-hmm.

17 THE COURT: That's what they looked at.

18 MS. RADOSTA: Okay.

19 THE COURT: That was the challenge is that -- is that it was
20 inadequate because he was unendorsed and the time frame that was
21 presented that they got it.

22 MS. RADOSTA: What do they mean by unendorsed? Is
23 that --

24 THE COURT: They didn't -- they didn't notice him.

25 MS. RADOSTA: But --

1 THE COURT: He was noticed late. He was noticed beyond --
2 because an endorsement you have to endorse him within 21 days prior
3 to the trial.

4 MS. RADOSTA: Right, but that's also time --

5 THE COURT: And that --

6 MS. RADOSTA: -- that's timeliness. That's --

7 THE COURT: I know, but that -- well, that's what they're
8 saying is that you don't meet --

9 MS. RADOSTA: Okay.

10 THE COURT: -- the time frame and right because you didn't
11 endorse him properly.

12 MS. RADOSTA: But they -- okay. To be honest, Judge, I
13 think we just disagree on what --

14 THE COURT: Okay.

15 MS. RADOSTA: -- *Perez* stands for because --

16 THE COURT: So -- but show me.

17 MS. RADOSTA: And they all --

18 THE COURT: I mean, that's -- you're saying that --

19 MS. RADOSTA: All -- all I can say is --

20 THE COURT: -- you're -- you're argument is that -- testify as
21 to grooming techniques used upon children. You're -- first of all, you're
22 saying is less than what you're saying your argument -- I mean, what you
23 presented here.

24 MS. RADOSTA: Mm-hmm.

25 THE COURT: And that it was approved by *Perez versus*

1 *State*, the Supreme Court.

2 MS. RADOSTA: I --

3 THE COURT: That's your argument.

4 MS. RADOSTA: I'm saying that *Perez v State* -- because
5 there's hardly any -- I'm sure Your Honor knows, any case law on this
6 particular issue --

7 THE COURT: Yeah.

8 MS. RADOSTA: -- in the state. And so the way I read *Perez*,
9 clearly different than the way Your Honor read *Perez*. I read it as they
10 raised the issue of an inadequate notice, and that the notice being the
11 grooming techniques, or however it's worded in that, was then not
12 deemed to be inadequate by the Supreme Court. That's how I read it,
13 Your Honor. And beyond that, the Supreme Court didn't say the things
14 that you're implying that they said.

15 THE COURT: Well, the --

16 MS. RADOSTA: That had this been raised --

17 THE COURT: Like what?

18 MS. RADOSTA: -- we might've -- we might've done --
19 because they flat out say things like that all the time. We all know it. And
20 had --

21 THE COURT: Well, in here it says --

22 MS. RADOSTA: -- this issue been --

23 THE COURT: -- the State filed its notice of witness over one
24 month before the trial -- to start the trial requiring the State to provide
25 notice of an expert witness within 21 days of the trial to comply with it.

1 So they're -- here -- I don't know.

2 MS. RADOSTA: Yeah.

3 THE COURT: I'm having a --

4 MS. RADOSTA: I mean, if they filed it 30 days ahead of time
5 then where's the inadequacy of time -- where's the timeliness issue?

6 THE COURT: No, they filed the notice of witnesses over a
7 month prior to the trial, but --

8 MS. RADOSTA: But not the expert?

9 THE COURT: Right.

10 MS. RADOSTA: Okay.

11 THE COURT: They didn't file -- they didn't tell them that they
12 were calling Paglini within the 21 day requirement even and they point
13 that out, so --

14 MS. RADOSTA: If -- as I said, I read it in a certain way, Your
15 Honor, and there is very, very limited guidance beyond the statute in our
16 case law as to what exactly --

17 THE COURT: Okay.

18 MS. RADOSTA: -- adequate notice is or is not.

19 THE COURT: Okay.

20 MS. RADOSTA: In our -- it's our position, Your Honor, as I'm
21 sure you've read in our motion, that the notice that we provided is --

22 THE COURT: Okay.

23 MS. RADOSTA: -- adequate. It is --

24 THE COURT: Well, let me -- let's go -- let's go through that,
25 okay, Ms. Radosta.

1 MS. RADOSTA: Okay.

2 THE COURT: The statute requires a brief statement
3 regarding the subject matter on which the expert witness is expected to
4 testify and the substance of the testimony.

5 MS. RADOSTA: Mm-hmm.

6 THE COURT: Okay. So tell me what --

7 MS. RADOSTA: Your Honor, I apologize --

8 THE COURT: Okay.

9 MS. RADOSTA: -- but we're getting a little bit dangerously
10 close to us revealing our theory of the defense.

11 THE COURT: Well, when you say his testimony will provide
12 expert opinions on sexual abuse studies and research involving incest, or
13 research involving sexual abuse of minors, or research involving child
14 pornography, or research involving child abuse, or research involving
15 bestiality as well as psychosexual profiles --

16 MS. RADOSTA: But --

17 THE COURT: -- and evaluation, where is that -- I mean,
18 how's that --

19 MS. RADOSTA: What we --

20 THE COURT: -- show the connection to this case. That's
21 what I'm --

22 MS. RADOSTA: Because it's what our client is charged with,
23 Your Honor. And -- and what the co-offenders are charged with. At no
24 point -- as the State mentioned in their moving documents, they cite all of
25 these, oh, it could be this, and it could be that, and it could be all these

1 things about how the child might be testifying, or how the child disclosed.
2 At no point in our notice do we say anything about the alleged victims, or
3 their disclosures, or anything like that. That is not in --

4 THE COURT: Mm-hmm.

5 MS. RADOSTA: -- our notice whatsoever. And I even point
6 out to Your Honor that in our response that the -- we say -- and we didn't
7 put this word in our original -- in our original notice, but in our response
8 the physical profiles and psychological evaluations of offenders --

9 THE COURT: Mm-hmm.

10 MS. RADOSTA: -- of alleged offenders of these. The State's
11 worry, apparently from their motion, is that we're going to be somehow
12 presenting Dr. Harder and talking about the alleged victims and their
13 disclosures and things of that nature. That is not -- I mean, they're
14 reading a lot into this notice that just simply isn't there. It really isn't. We
15 don't mention anything about the alleged victims, or the accusers, or
16 anything of that nature in this notice.

17 THE COURT: Okay.

18 MS. RADOSTA: So that --

19 THE COURT: So what the jury would be getting from your
20 expert would be just an education on sexual abuse based on certain
21 studies, research involving -- I mean --

22 MS. RADOSTA: As -- again, Your Honor --

23 THE COURT: I mean, I got it. It just sounds like every single
24 thing that we're talking about with regards to sexual abuse, but I'm just
25 trying to see how -- I understand the charges and you could --

1 MS. RADOSTA: Mm-hm.

2 THE COURT: Could you technically just say that the fact that
3 he's testifying about sexual abuse is relevant to this case?

4 MS. RADOSTA: Well, of course.

5 THE COURT: I mean --

6 MS. RADOSTA: Of course we could say that.

7 THE COURT: Under what circumstances though?

8 MS. RADOSTA: Because our client is -- is being accused of
9 sexual abuse.

10 THE COURT: Okay.

11 MS. RADOSTA: So if -- I mean, we're talking about the
12 potential -- as I've said in our response, the potential -- psychological
13 profiles and psychological evaluations --

14 THE COURT: Okay.

15 MS. RADOSTA: -- of -- I mean, I don't think any of us dispute
16 the fact that this is a bit of an unusual situation. A little bit of an unusual
17 case even for these types of cases, so --

18 THE COURT: But, you know, in the case of *Perez*, at least
19 there's a limit there. It's an understanding that he'd be testifying about
20 grooming techniques used upon children.

21 MS. RADOSTA: What --

22 THE COURT: And in that particular case that was an issue.

23 MS. RADOSTA: Well, I would take --

24 THE COURT: And so --

25 MS. RADOSTA: I mean, I'm not going to get into whether or

1 not that --

2 THE COURT: Okay.

3 MS. RADOSTA: -- in my opinion is an inadequate notice
4 because grooming techniques, that is such an open-ended area. And
5 what I --

6 THE COURT: Yeah, but it's limited. And somebody could
7 come in and specifically say I'm limiting this to grooming techniques.
8 You just threw in the whole --

9 MS. RADOSTA: Well, he's charged with --

10 THE COURT: -- the whole kitchen sink here.

11 MS. RADOSTA: He's charged with all of this.

12 THE COURT: Okay.

13 MS. RADOSTA: He's charged with incest. He's charged with
14 sexual abuse of minors.

15 THE COURT: Uh-huh.

16 MS. RADOSTA: He's charged with making and possessing
17 child pornography. He's charged with child abuse. Regarding the
18 bestiality, that -- we put that in our notice because on -- that was the day
19 that we got the notice the State is trying to get into the video --

20 THE COURT: Okay.

21 MS. RADOSTA: -- of the -- of the issue with the dog.

22 THE COURT: Okay.

23 MS. RADOSTA: Otherwise, that would not be part of our -- of
24 our witnesses.

25 THE COURT: So you're -- you're position, at least at this

1 point in time without revealing your defense --

2 MS. RADOSTA: Mm-hmm.

3 THE COURT: -- like you said, is that you don't anticipate him
4 testifying as to any of the -- any of the statements made by the children,
5 any of the -- any of the specific acts or whatever these children are
6 addressing or -- and aligning it to the children -- or aligning it to the
7 victims?

8 MS. RADOSTA: I apologize, Your Honor.

9 THE COURT: Okay.

10 MS. RADOSTA: Could you --

11 MR. LOPEZ-NEGRETTE: Sorry.

12 MS. RADOSTA: Yeah, we were talking at the same time that
13 you were talking and I want to make sure that I hear your whole question
14 before I answer it because of --

15 THE COURT: Well --

16 MS. RADOSTA: -- just the issue with the --

17 THE COURT: Well, you indicated --

18 MS. RADOSTA: Mm-hmm.

19 THE COURT: -- previously that -- that you didn't anticipate
20 that he'd be testifying to any specific acts or -- and I went one step
21 further, to statements or whatever that have been made by these
22 children. That you're narrow -- I mean, you're addressing the children
23 themselves. You're just talking about basically an education class to tell
24 the jury about --

25 MS. RADOSTA: I would not -- I would not describe it as an

1 education class, Your Honor.

2 THE COURT: Okay. Okay.

3 MS. RADOSTA: I mean, our client is being --

4 THE COURT: Well, that's the whole purpose of an expert
5 basically --

6 MS. RADOSTA: Well, in some --

7 THE COURT: -- in laymen's terms.

8 MS. RADOSTA: If that's how you would view the State's --

9 THE COURT: Okay.

10 MS. RADOSTA: -- witnesses as putting on an education
11 class --

12 THE COURT: Okay.

13 MS. RADOSTA: -- I'm not sure I agree with that either.

14 THE COURT: Well, what I'm looking at --

15 MS. RADOSTA: But --

16 THE COURT: -- is you're just saying he's going to testify
17 about studies. So I could see going into a sexual offense class and
18 watching a teacher come out and tell me about sex offense studies.

19 MS. RADOSTA: Okay.

20 THE COURT: I could see him talking about research that's
21 used, and this is how we reach our decisions, and this is what we do. I
22 can understand it that way. That's how I'm reading that.

23 MS. RADOSTA: Okay. All right.

24 THE COURT: Those are your words --

25 MS. RADOSTA: Yes.

1 THE COURT: -- that you used in your notice.

2 MS. RADOSTA: Yes.

3 THE COURT: So what I'm asking you though --

4 MS. RADOSTA: Mm-hmm.

5 THE COURT: -- is it -- are you saying independent of that, is
6 that you do not anticipate him testifying as to specific incidents that these
7 children have -- or these individuals -- the victims are going to be
8 testifying to or statements that the victims have made.

9 MS. RADOSTA: Well, I -- the first part of that I have a bit of --
10 I'm having an issue with because --

11 THE COURT: Okay.

12 MS. RADOSTA: -- the children are involved --

13 THE COURT: Okay.

14 MS. RADOSTA: -- in all of these alleged -- I mean, I'm not
15 saying they're to blame.

16 THE COURT: Okay.

17 MS. RADOSTA: I'm not saying anything like that, but they are
18 involved in all of these --

19 THE COURT: Okay.

20 MS. RADOSTA: -- situations.

21 THE COURT: Okay.

22 MS. RADOSTA: So it can't be -- he wouldn't be talking about
23 the acts that the children are involved in because anything my client is
24 accused of the children are involved in.

25 THE COURT: Uh-huh. I know, but what I'm saying is, is he

1 going to be specifically talking about these acts. Like, you know,
2 challenging the children's statements, challenging --
3 MS. RADOSTA: I've already said --
4 THE COURT: -- the events the way --
5 MS. RADOSTA: -- that it's not from -- from our notice,
6 there's nothing about --
7 THE COURT: Okay.
8 MS. RADOSTA: -- the alleged victims.
9 THE COURT: Okay.
10 MS. RADOSTA: How they disclosed. How they came
11 forward.
12 THE COURT: Okay.
13 MS. RADOSTA: There's nothing in our notice that says
14 anything about the --
15 THE COURT: Okay.
16 MS. RADOSTA: -- he's going to be commenting on the --
17 THE COURT: Okay. All right. That -- that answers my
18 question.
19 MS. RADOSTA: -- on the children.
20 THE COURT: Okay. All right. Okay.
21 Mr. Sweetin.
22 MR. SWEETIN: Well, if that's the case, I'm not sure what the
23 relevance is.
24 THE COURT: Well --
25 MR. SWEETIN: To start -- well, to start off with, Judge,

1 psychosexual profiles and evaluations. So whose are these
2 psychosexual profiles and evaluations of? I have -- you know, I think the
3 only way that that becomes relevant is if the Defendant has a
4 psychological evaluation. Has that in fact happened?

5 THE COURT: Well, I have no idea. Are you asking me?

6 MR. SWEETIN: I guess --

7 MS. RADOSTA: He appears to be asking --

8 MR. SWEETIN: -- I guess the issue would be --

9 MS. RADOSTA: -- he appears to be asking the defense.

10 MR. SWEETIN: I'm not clear because -- because in fact this
11 notice doesn't give me any detail --

12 THE COURT: Mm-hmm.

13 MR. SWEETIN: -- as to what those psychological profiles and
14 evaluations are going to be. But if they relate to other individuals, other
15 sex offenders, what is the relevance to this case? So they're going to
16 present an expert to get up there and say, you know what, we have
17 found through our research that all sex offenders are brunette. They
18 have brown hair or black hair. So this guy doesn't have that, so
19 obviously he's not a sex offender. That's not appropriate --

20 THE COURT: Mm-hmm.

21 MR. SWEETIN: -- or any derivation of that. And that's
22 essentially -- the State submits the only -- if they're presenting this as
23 exculpatory evidence it has to be something of that sort to make some
24 sort of a general statement and to differentiate the Defendant from that. I
25 don't think that's appropriate. But if they are seeking to do that, they got

1 to -- they need to lay out what specifically is the substance of that
2 testimony.

3 And beyond that, when we're talking up here about expert
4 opinions and sexual abuse studies, research involving incest, sexual
5 abuse, you know, I understand what the Court's saying in regards to an
6 expert many times gives education in particular areas, but what is the
7 relevance of this particular education. I mean, what is the relevance of --
8 of bringing up somebody and saying well, bestiality is when someone has
9 sex with a -- with a dog. Where do they go from that? I mean, where do
10 they go from there? I mean, what -- what exactly is the testimony this
11 expert is going to provide? Is it going to be that normally in family units
12 that there is no bestiality of a dog? You know, I don't know. I don't know
13 where they're going with it. That's the whole point.

14 THE COURT: Well, I could -- I could understand testimony
15 from Mr. Harder basically saying that, you know, my research has shown
16 that under certain circumstances incest occurs under these -- like this,
17 like this, or -- and it seems kind of strange in this case or something that
18 -- I could understand that. I do. I understand what they're saying there.

19 MR. SWEETIN: Well, but if that's --

20 THE COURT: More of the concern I had --

21 MR. SWEETIN: -- the case, Judge, the State --

22 THE COURT: What's that?

23 MR. SWEETIN: But if that's the case, then the State needs to
24 know that because we might want to inquire --

25 THE COURT: Yeah.

1 MR. SWEETIN: -- of another expert, because as the Court
2 knows, experts will say anything you want them to say essentially, the
3 State's position anyway, many of them, and for that reason the State has
4 to go out and acquire their own so that there is an evidence that's
5 presented that's inaccurate. I don't know that, you know.

6 THE COURT: Mm-hmm.

7 MR. SWEETIN: And as the Court's saying, if that in fact is
8 where they're going, I think that's something that needs to be disclosed
9 at this point. If the Court's not going --

10 THE COURT: Well, I don't know.

11 MR. SWEETIN: -- to strike the expert notice --

12 THE COURT: I don't know. And that's --

13 MR. SWEETIN: But that's what I'm asking for.

14 THE COURT: Yeah.

15 MR. SWEETIN: I'm asking for a clarification because if the --
16 if the Court is not going to strike the expert notice, the State would like
17 the opportunity to acquire an expert that would address those very
18 issues.

19 MS. HOLTHUS: And the waiver of notice.

20 MS. RADOSTA: It's -- first of all, we're not in the same -- we
21 are not on the same playing field. This is not a situation where we are in
22 situation where we have to disclose in the same way -- in the same
23 matter that the State has to disclose --

24 THE COURT: Oh.

25 MS. RADOSTA: -- what their -- what their --

1 THE COURT: So you -- wait, wait, wait, before you go any
2 further.

3 MS. RADOSTA: We have --

4 THE COURT: Are you saying that 174.234(2) --

5 MS. RADOSTA: No.

6 THE COURT: -- is -- is interpreted --

7 MS. RADOSTA: No.

8 THE COURT: -- differently --

9 MS. RADOSTA: No. We have not challenged their notices
10 that they have provided.

11 THE COURT: Uh-huh.

12 MS. RADOSTA: We have not.

13 THE COURT: Well, that -- that --

14 MS. RADOSTA: They're literally demanding --

15 THE COURT: -- well, that's -- that's -- that's a different issue.

16 MS. RADOSTA: But --

17 THE COURT: We're talking about their -- they are challenging
18 your notice.

19 MS. RADOSTA: Right. But they are now demanding to know
20 specifically what our expert is going to testify to.

21 THE COURT: Well, no. No, they're saying that to be in
22 compliant with the statute, there has to be a brief statement regarding the
23 subject matter on which the expert witness is expected to testify and the
24 substance of that testimony.

25 MS. RADOSTA: And it is our --

1 THE COURT: So --
2 MS. RADOSTA: -- position, Your Honor --
3 THE COURT: -- I -- I'm --
4 MS. RADOSTA: -- that we have complied with the statute.
5 THE COURT: Yeah, but how -- what --
6 MS. RADOSTA: That's our position. We've complied with the
7 statute. We do not have to offer anything more and we do not have to
8 satisfy Mr. Sweetin's determination as to what's adequate in his mind so
9 that he can know what he's satisfied with.
10 THE COURT: Well, can -- can you --
11 MS. RADOSTA: He's -- he's asking me if my client --
12 THE COURT: -- can you help me then --
13 MS. RADOSTA: He's asking me if my client has done a
14 psychological evaluation.
15 THE COURT: No, I understand that.
16 MS. RADOSTA: He's --
17 THE COURT: Ms. Radosta, let me stop you.
18 MS. RADOSTA: Okay.
19 THE COURT: Help me, by helping me understanding by your
20 test -- by your statement: his testimony provided expert opinions on
21 sexual abuse, studies -- and sexual abuse studies and research involving
22 incest, sexual abuse of minors, child pornography, child abuse, bestiality,
23 as well as psychosexual profiles and evaluation, if any. Tell me what the
24 substance of that testimony would be? Based on what you just said right
25 there, there's -- I mean, is there something -- and you have to use that

1 language that's in there because that's your notice. The notice has to
2 contain --

3 MS. RADOSTA: Well, then --

4 THE COURT: -- substance of the test -- I mean --

5 MS. RADOSTA: It's our -- I can't say this any other way.

6 THE COURT: Okay.

7 MS. RADOSTA: This is our notice. We feel it is compliant
8 with the statute. To go into any more detail than what we have provided
9 is, in our opinion, making us -- putting us in a position where we are
10 revealing the theory of our defense.

11 If the Court feels that our notice is inadequate then -- then
12 grant the State's motion. But we are not in a position, or do we feel that
13 we are obligated to give any more notice --

14 THE COURT: Well, all I'm asking you --

15 MS. RADOSTA: -- than we've already -- then --

16 THE COURT: -- is if -- if you're -- if you're of the opinion that it
17 does satisfy it, can you please tell me, in the language you used, what
18 you consider to be substance of the testimony?

19 MS. RADOSTA: The substance of the testimony is that he's
20 going to be -- it literally says he will be testifying about the psychological
21 profiles and psychological evaluations of alleged offend -- offenders. And
22 I'm sorry, that language of alleged offenders is what I put in my written
23 motion.

24 THE COURT: Mm-hmm.

25 MS. RADOSTA: But we say the testimony will provide expert

1 opinions on sex abuse studies and research involving incest, sex -- it
2 would say what the testimony is going to --

3 THE COURT: Okay.

4 MS. RADOSTA: -- is going to be in our notice, which is -- I
5 mean, which is the -- which is the same -- well, I'll leave it with that. I
6 mean, we -- I don't know what else I can say, Your Honor. That's
7 where --

8 THE COURT: Okay.

9 MS. RADOSTA: -- we're at.

10 MR. SWEETIN: And, Judge, you know -- I mean, the State's
11 position is that this -- that the notice is woefully inadequate for the
12 reasons laid out. You know, from what she -- from what defense counsel
13 has said, even in regards to psychosexual profiles and evaluations that
14 she added of alleged offenders, I'm not sure what the relevance with that
15 would be to this proceeding. I mean, the way it's laid out, it's not
16 relevant.

17 Based upon that -- and the Court has given defense counsel
18 the opportunity to specifically lay out the substance essentially, not
19 violating their -- essentially their case, but to certain -- to lay out the
20 substance as required by statute of that testimony; they're refusing to do
21 that. The State submits there's no -- nothing else the Court can do but to
22 strike the notice at this point.

23 THE COURT: Okay.

24 Anything further?

25 MS. RADOSTA: No, Your Honor.

1 THE COURT: I'm going to grant the State's motion. My
2 reading of *Perez* indicates that there -- there is a substantial issue with
3 regards to -- or question that if you're challenging the notice of not having
4 more detail about substance of the testimony and just reading the
5 statute: a brief statement regarding the subject matter on which the
6 expert witness is expected to testify and the substance of the testimony.

7 I think that the -- your notice does give a brief statement as to
8 the subject matter on which he'd be testifying to. But as to the substance
9 of the testimony, I don't believe that he does. So I'm going to -- I'm going
10 to grant the State's motion.

11 MR. SWEETIN: Thanks, Judge.

12 THE COURT: Then we -- I'll turn to the motion to clarify the
13 motion to reconsider. I viewed the video at the request of the State. I'll
14 let the State make your argument with regards to that. I -- well, go
15 ahead.

16 MS. HOLTHUS: Here's -- here's my position, Judge. It's not
17 a motion to reconsider. The last time we were here we were addressing
18 more so the question of the photograph as a kickoff for Deborah Sena
19 going and reporting --

20 THE COURT: Mm-hmm.

21 MS. HOLTHUS: -- and everything else happening.

22 Subsequent to that, as we've been preparing for the case,
23 reviewing some of the evidence, we re-remembered or whatever, a lot of
24 this case isn't dependent on what Defendant directly does. It's not
25 necessarily his penis. It's not necessarily his sexual act with the people

1 in a number of the cases. It's more at his direction.

2 What the videotape with the dog shows is a couple of things.
3 Number one, it demonstrates the control that he held over Deborah.
4 What Deborah says: I wasn't going to go and report because I knew this
5 was going on. He had this. He threatened to bring that out. And when
6 you see him make the video, it's clear that that's kind of why he's doing it,
7 for his own reasons. Whether it's for his own sexual pleasure or whether
8 it's for blackmail and control over her. It doesn't appear to be for her
9 sexual gratification from the video.

10 The other thing that's apparent from the video that you don't
11 always get to see -- you don't always hear from the Defendant. You
12 know he's there or whatnot. But by seeing him actively engaged in
13 directing -- and at times in the video telling her fairly sternly and almost
14 angrily on how to do whatever he's doing with the dog, we feel that that --
15 when you look at an Information that charges 124 counts, several of
16 which are under an aiding and abetting theory, several of which under --
17 under a conspiracy theory, that control, when you're assessing his
18 participation, his counsel and -- and whatnot throughout the charges,
19 becomes extremely important.

20 The Court has already ruled the fact of the pictures with the
21 dog and the fact that the dog session comes into evidence.

22 MS. RADOSTA: That's incorrect.

23 MS. HOLTHUS: Well, and that's my -- that's why, I guess, I'm
24 asking for clarification. My understanding was that that comes in.

25 THE COURT: I -- I hadn't --

1 MS. HOLTHUS: And you didn't want to bring the pictures in
2 unless Defendant denied it.

3 THE COURT: Right.

4 MS. HOLTHUS: So it was the fact coming in.

5 THE COURT: If the Defendant got up and denied that he had
6 access to the emails or whatever with regards -- because my
7 understanding, based on the documents that have been presented, is
8 that -- is that Deborah -- Deborah Sena indicates that she believes that
9 this case starts as a result of the dog photograph being sent to her
10 employment and then the police got called based on -- based on that.

11 MS. HOLTHUS: It kind --

12 THE COURT: Besides -- that's part of it. I know.

13 MS. HOLTHUS: Kind of it.

14 THE COURT: And so there was a lot of discussion about --
15 about whether the Defendant had access to these emails or had access
16 to be able to send something. I know that there's some issues with
17 control there and that. I do. I recognize that. But the original order was
18 that I would allow -- if you got to the point where he denies anything with
19 respect to the ability to send these emails or address that, then you'd be
20 able to bring it in rebuttal to show because it had direct connection that
21 was sent to. And that was the one picture.

22 Now I have the -- you're asking me to admit the video of it.
23 The issue that I have with this is that -- is that my previous order dealt
24 with much argument involving prejudice over -- you know, probative
25 value over prejudice. And the -- I understand the State's -- wanting to

1 use it for purposes of showing the control aspect or -- involving the -- and
2 the conspiracy aspect and the encouraging and all that type of thing, but
3 you have so many other videos that have that same thing, but it's with --
4 and it's not -- the sexual manner is not with an animal. It's with -- it's with
5 the children. It's with -- it's with the -- the ladies. I mean, you know, the
6 mothers in this case. The same thing. You have that same amount.

7 So -- so what -- what additional about the fact that he's -- I
8 mean, I -- I don't know if he's on there. I'm sure that Deborah would say
9 that that's him directing me. And I see some male's hands and that
10 involved. But -- if assuming that that's -- that is him, what additional
11 information are you attempting to gain from that that's not already
12 intertwined in the case throughout in all the other videos? Not all of
13 them, but many of the other videos.

14 MS. HOLTHUS: The majority of the videos don't have his
15 voice as commanding and instructive in terms of what's going on,
16 number one. Number two, my issue -- so I still don't understand the
17 Court's ruling then. Did you rule -- because --

18 THE COURT: Okay.

19 MS. HOLTHUS: -- and maybe -- maybe we didn't make it
20 clear enough. When Deborah leaves him --

21 THE COURT: Mm-hmm.

22 MS. HOLTHUS: -- she's not going to report him. She's going
23 to a shelter. She's just leaving him.

24 THE COURT: Right.

25 MS. HOLTHUS: Absent the emails where he's literally

1 sending --

2 THE COURT: Mm-hmm.

3 MS. HOLTHUS: -- photographs of her or stills from the
4 video --

5 THE COURT: Right.

6 MS. HOLTHUS: -- from the video --

7 THE COURT: Mm-hmm.

8 MS. HOLTHUS: -- to people at Cox --

9 THE COURT: To Cox Communications.

10 MS. HOLTHUS: -- or other employers or whatnot.

11 THE COURT: Right, Cox.

12 MS. HOLTHUS: That's when she says, hey, this is out of
13 control.

14 THE COURT: Right.

15 MS. HOLTHUS: He's doing this and that's when she goes.

16 So my understanding from your ruling the last time was, and
17 what we asked for, were the photographs and emails. And you had said
18 the fact of it -- the fact that he sent emails that depict her --

19 THE COURT: Mm-hmm.

20 MS. HOLTHUS: -- naked with the family dog in a sexual
21 encounter was admissible, but you didn't want the photographs
22 themselves coming in --

23 THE COURT: Well, I was --

24 MS. HOLTHUS: -- absent his denial.

25 THE COURT: Right.

1 MS. HOLTHUS: Is that correct?

2 THE COURT: I was allowing you to get into the circumstance
3 in which causes her to -- to contact the police or whatever, and the
4 circumstances in which the Cox Communications we know about, and
5 that would be the subject matter. But to get into the actual photos and
6 that I said no.

7 MS. HOLTHUS: Right. So then -- so that was our
8 understanding. So then we were only looking for the photos. We are
9 now -- and that's why it's a supplement, it's not a reconsideration,
10 because now in retrospect, and looking at all the evidence we have
11 together, re-reviewing that --

12 THE COURT: Okay.

13 MS. HOLTHUS: -- videotape, we believe that the videotape
14 has additional benefit. Start with the prejudicial value of it, I think
15 dramatically goes down when the Court has already ruled that the facts
16 of the bestiality is coming in. Now all we're dealing with is whether they
17 get to see the bestiality. And quite frankly, I think it's highly unfair to the
18 State to say that, you know, nobody wants to see someone having sex
19 with a dog, so we're not going to show it. So we're going to leave
20 something that we can prove definitively to the jury by the Defendant's
21 voice directing Deborah to have sex with the family dog right then and
22 there and from -- we don't have to speculate did Deborah make it up.
23 We don't have to wonder how did he control her. We don't have to
24 wonder what his involvement, and her involvement, and what -- how this
25 all came down. They can see it. And to say no because we don't really

1 want to see it. I'm sorry, but number one, bestiality and the prejudicial
2 value, if it were Deborah's child, maybe a little different because she's
3 the one actually having sex with the dog. So I suppose she would have
4 maybe an [indiscernible]. But how you could -- we can pretend that this
5 is prejudicial, watch them have sex with a dog, when they're having sex
6 with their own children, Judge.

7 THE COURT: That's what I'm talking about.

8 MS. HOLTHUS: That's coming in on video.

9 THE COURT: No, but that's what saying.

10 MS. HOLTHUS: So this is -- pales by comparison.

11 THE COURT: That's just additional --

12 MS. HOLTHUS: But this pales by comparison the prejudicial.

13 But in terms of probativeness, it does show the lengths that this woman
14 will go to for him, the control that he's exercising, and the fact that he
15 orchestrates this whole video that he can use as a blackmail tool, and a
16 control over her, and that he in fact does use as a blackmail and control
17 over her down the road. And why do we have to be here telling the jury it
18 exists. They can see the evidence, Judge. And probative, in my opinion,
19 substantially outweighs prejudicial.

20 In light of everything coming in, the prejudicial aspect of this is
21 extremely limited versus the probative of actually getting to hear him
22 orchestrate the whole thing, create this video over which he maintains
23 control over Deborah down the road. And in fact when she leaves he
24 does exactly what he says he was and he starts sending still shots.

25 THE COURT: I gotcha.

1 MS. HOLTHUS: And I just don't think that it's fair to the State
2 to say because, you know, people don't want to see it. It's gross. Well,
3 you know what, nothing is grosser than having sex with your own child.
4 This is nothing. This is a dog. I mean, yeah, it's not -- I mean, it's like a
5 weird fetish --

6 THE COURT: Yeah.

7 MS. HOLTHUS: -- or whatever, but it's nothing when you look
8 at a child. And we are -- we have a beyond a reasonable doubt. We've
9 got jurors who are going to come in here and go, pfft, how can -- this
10 can't possibly be happening. Who would have sex with their own child?
11 Who would have sex with their own child because their husband tells
12 them to? If you love me you will. You know what, Judge, that woman in
13 the video with that dog, that's who would. And it's hard to sell that to Joe
14 -- John Q. Public. We -- most people don't think like that and they don't
15 get it.

16 But we have the ability to show the video, and to show how it
17 really went down, and to show what was going on in that house so that
18 they can understand all the dynamics. And I believe that every piece --
19 we're not asking for the commercial porn where he was into bestiality and
20 all the collections of other people doing things with dogs. We're asking
21 about the video of his wife, at his direction, having sex with the family dog
22 in order to maintain control over her; a result of which he takes stills from,
23 sends them to her employer as a way to get her back. And I just think it's
24 unfair for us not to be able to give this jury the entire story and pales by
25 comparison prejudicially.

1 THE COURT: Okay.

2 Ms. Radosta, Mr. Negrete.

3 MS. RADOSTA: First and foremost, Your Honor, I disagree
4 with the assessment of what Your Honor's order was last year. The
5 transcript is a little confusing at times from last year's hearing --

6 THE COURT: Okay.

7 MS. RADOSTA: -- as to what specifically the Court held. But
8 it was my understanding that the threats to send photographs --

9 THE COURT: Right.

10 MS. RADOSTA: -- or the threats to send something was what
11 the Court allowed. But the content of what was in the photos, as well as
12 the photos, were not coming in unless we opened the door and said
13 something along the lines of he didn't have any control or any knowledge
14 over those -- over the --

15 THE COURT: Right.

16 MS. RADOSTA: -- attachments -- over the video and/or
17 photographs.

18 THE COURT: Well --

19 MS. RADOSTA: It was the threat that was being allowed in,
20 not anything about the content of what was in the photo or the --

21 THE COURT: No, you're right.

22 MS. RADOSTA: -- action itself.

23 THE COURT: She is right. I went back through. I'm looking
24 at the minutes.

25 MS. HOLTHUS: And that's why -- partly way --

1 THE COURT: Okay.

2 MS. HOLTHUS: -- I wanted clarification.

3 THE COURT: No, you're -- she's right.

4 MS. RADOSTA: So --

5 THE COURT: The decision I made is that -- is that -- and I
6 had -- just so you know, I had wrote it down again because I wanted to
7 make sure that I understood it right. I said -- I said that the -- my
8 understanding was Deborah's -- Deborah's reasoning for contacting the
9 police -- and then I thought it would be -- she could testify that he had
10 made threats to her about presenting, you know, some photographs with
11 -- some photographs involving -- involving an animal. I do believe --
12 because it doesn't give any -- it doesn't give any -- any basis other than
13 him threatening her. And so --

14 MS. RADOSTA: Right. So it could -- but for the sake of
15 argument, the threat -- since it doesn't give the basis for what the threat
16 was --

17 THE COURT: Mm-hmm.

18 MS. RADOSTA: -- it could also be sending photos of her with
19 the children.

20 THE COURT: No, I know that. I understand that.

21 MS. RADOSTA: So that's where I --

22 THE COURT: But -- but --

23 MS. RADOSTA: -- was having some issues last year that this
24 threat that he -- which I recall was vague. It wasn't or I'll send photos of
25 you with the family dog. It was --

1 THE COURT: Well, I thought that's what --
2 MS. RADOSTA: -- or I might send photos.
3 THE COURT: -- the very threat was.
4 MS. HOLTHUS: This wasn't a threat, Judge.
5 THE COURT: That was the very threat.
6 MS. HOLTHUS: This is something he did. I don't know where
7 this threat is coming from.
8 MS. RADOSTA: We're talking about what --
9 MS. HOLTHUS: He actually sent them.
10 MS. RADOSTA: We're talking about --
11 THE COURT: I know, but --
12 MS. RADOSTA: -- what the Court allowed.
13 THE COURT: She -- she --
14 MS. RADOSTA: What the Court ruled last year --
15 THE COURT: My understanding --
16 MS. RADOSTA: -- was going to come in.
17 THE COURT: -- was that -- is that there was a threat made to
18 her that if she -- if she didn't come back he was going to send information
19 about their sexual acts to Cox Communications --
20 MS. RADOSTA: But --
21 THE COURT: -- and that -- and that -- somehow it wasn't
22 clear on how it ended up, but then it was clear that Cox got it.
23 MS. RADOSTA: Right.
24 THE COURT: And whether or not that was a mistake or
25 something, I believe was some of the arguments that were being made

1 by the defense, is that it came -- that they got it by mistake. It came in by
2 mistake or she's the one that sent it and then she's using this. That's --
3 am I wrong?

4 MS. RADOSTA: I don't recall.

5 MS. HOLTHUS: I have no idea.

6 THE COURT: Okay.

7 MS. HOLTHUS: Everybody said that there were threats about
8 the email.

9 THE COURT: Mm-hmm.

10 MS. HOLTHUS: I don't -- I can't -- and if we were wrong, then
11 -- then it was a mistake --

12 THE COURT: Okay. So what --

13 MS. HOLTHUS: -- because we certainly --

14 THE COURT: -- so what I was --

15 MS. HOLTHUS: -- intended to offer -- the fact -- we have Cox
16 people lined up to come in and testify regarding this Cox -- the email
17 coming from his address to these employers --

18 THE COURT: Mm-hmm.

19 MS. HOLTHUS: -- consisting of the still shots from the video
20 of her and the dog.

21 THE COURT: Mm-hmm.

22 MS. HOLTHUS: Not threats to send them. He actually sent
23 them.

24 THE COURT: I know, but he threat --

25 MS. HOLTHUS: And when she got called in -- he threatened

1 all the time to do a lot of different things. And, yeah, a lot --

2 THE COURT: I know, but the whole purpose --

3 MS. HOLTHUS: -- of that comes in.

4 THE COURT: -- that you want to use it is that was his threat
5 in order to control her.

6 MS. HOLTHUS: No, no, no --

7 THE COURT: Say either you come back or I'm going to do
8 this and she --

9 MS. HOLTHUS: No, no. That wasn't just a threat, Judge.

10 THE COURT: Didn't -- you just said that.

11 MS. HOLTHUS: We wanted the trigger -- the res gestae
12 trigger.

13 THE COURT: Okay.

14 MS. HOLTHUS: What made her report this after all the
15 shenanigans?

16 THE COURT: Right.

17 MS. HOLTHUS: And quite frankly, it was one of the
18 considerations when we prosecuted her. It was never about the kids, in
19 my opinion. It was now he's making me look bad. He's sending these
20 emails. And so, --

21 THE COURT: Mm-hmm.

22 MS. HOLTHUS: -- you know, that was a whole part of what
23 was offensive to the State. Additionally, it wasn't until he sent these to
24 coworkers and embarrassed her that now she goes to a divorce lawyer,
25 now she's going to turn over the whole story.

1 THE COURT: Mm-hmm.

2 MS. HOLTHUS: But again, I think that whole story, as we
3 argued before and as I understood it, we -- we were successful before
4 and that was all coming in. You just didn't want the definitive picture of
5 her and the dog. She could say he sent a picture of me and the dog --
6 sex

7 THE COURT: Well, the whole -- the whole -- the whole basis
8 of the -- of what I was talking about -- what I was deciding with regards to
9 the animal photo was I thought it would be prejudice for them to see it.
10 That's the position I was taking. But I also felt that in order to put context
11 on -- on what the -- the ability to control her, or the threat to her about not
12 coming back, was what he was actually sending her -- or what he was
13 actually going to do. And that's what happened is that he sent a photo of
14 her with a dog. And so I -- I felt that it would be -- that in order for the jury
15 to understand the context of it, rather than just some idle threat -- like you
16 were saying, Ms. Radosta, about being with children or anything like that,
17 is that in order to do so, it would have to have the context would be what
18 it was. And so -- with an animal. And so I thought I was leaving it at that,
19 but I wasn't allowing any photos of it. That's the position I was taking.

20 MS. RADOSTA: Okay. So --

21 THE COURT: In order for there to be any content or anything
22 behind it, other than just saying, you know what, I'm going to send --

23 MS. RADOSTA: The State --

24 THE COURT: -- a photo of you.

25 MS. RADOSTA: I'm -- okay. I'm sorry. I'm --

1 THE COURT: My understanding was is that there was a
2 specific threat that was made to her about if you don't come back to me,
3 or if you don't do what I want you to do, I'm going to send a photograph
4 of you with a dog.

5 MS. RADOSTA: I don't recall if it was as specific as that.

6 THE COURT: Well --

7 MS. RADOSTA: And, Your Honor, I'm flipping through --

8 THE COURT: Jim's shaking his head yes. I mean --

9 MS. RADOSTA: Well --

10 MS. HOLTHUS: Jim is actually more familiar with --

11 THE COURT: Okay.

12 MS. HOLTHUS: -- the detail in the emails pre. And so if he
13 wants to go ahead and --

14 MR. SWEETIN: I know that there were -- there -- the
15 witnesses would testify that in fact there were threats throughout. There
16 were also some --

17 MS. RADOSTA: Wait. What witness --

18 MR. SWEETIN: -- some emails --

19 MS. RADOSTA: Wait, wait, wait. I'm sorry. What witnesses
20 would be testifying about --

21 MR. SWEETIN: Well --

22 MS. RADOSTA: -- emails between my client and Deborah?

23 MR. SWEETIN: No. What I said was that they would testify
24 that there were threats throughout the relationship in regards to if you -- if
25 you don't do this, this is going to come out essentially. And that's -- you

1 know, that's all through all of the transcripts of both the statements given
2 to the police, as well as I believe at preliminary hearing stage. That's all
3 been out there for a long time.

4 But beyond that, there are some emails that occurred prior to
5 the email that actually goes over to Cox Communications. And in those
6 emails I don't believe -- I can't remember -- I can't specifically represent
7 whether there's reference specifically to the email involving the dog, but
8 there's a general reference in regards to the emails that exist and that
9 those things might be coming out and -- out if things don't change
10 essentially. So there --

11 THE COURT: Well -- well, if it's a direct reference to her
12 video with this animal, then there'd be context with it. If it's not, then
13 there wouldn't be because it would be -- it would be a threat. A threat's a
14 threat. And you could -- you know, use it the same way. But when
15 you're specifically talking about with the animal, then it makes more
16 sense that they be allowed to understand what that threat is. But to see
17 the photos and that, I didn't think that that --

18 MS. RADOSTA: For --

19 THE COURT: -- I thought that was -- because the threat's
20 there. And --

21 MS. RADOSTA: But --

22 MS. HOLTHUS: It's not just the threat, Judge. It's the
23 carrying out.

24 THE COURT: No, I understand.

25 MS. HOLTHUS: He carried out the threat.

1 THE COURT: If you'd have charged it, it's a different issue.
2 That's why I'm looking at it right now. Because there's so much in this
3 case that involves, in my opinion, disgusting acts, if they're proven. But
4 to get to the point where I'm throwing one additional one in, like you said,
5 it's no big deal. It is a big deal because we're talking about dealing with
6 an animal, which is -- I agree, doing things with children is disgusting all
7 get out. Doing things with animals is disgusting. Could be -- some
8 people consider it more disgusting, some people consider it less
9 disgusting, but it's still -- there's still a prejudicial factor there.

10 And so my position was is that if in fact the threat of just what
11 it was was brought out to the extent -- you got out what you needed. To
12 go to the point of showing the actual video -- now you're telling me
13 additional now, is that you want to say that there's controlling aspect of it.
14 And I see that. I do. I see that in the video. But I'm not -- watched all
15 the other videos. And the position that I'm trying to take with that is, is
16 there not -- I know that based on your moving papers there's pages and
17 pages of explanation that has been provided to the Court as to what is
18 depicted in some of these videos. And many of it is the same where he
19 is directing them to do certain things. I believe with the three-year-old
20 child he's directing them in --

21 MS. HOLTHUS: That's not video.

22 THE COURT: -- in a video.

23 MS. HOLTHUS: That's -- a lot of the direction --

24 THE COURT: Is there a video where he's directing them to
25 do things? Is there or is there not, other than this dog video?

1 MS. HOLTHUS: Some, but not --

2 THE COURT: Okay.

3 MS. HOLTHUS: -- not as -- a lot of it is Deborah saying he
4 was over there telling us kind of what to do. But in terms of hearing him
5 command it -- there's -- there's one or --

6 Is it one or two that he's actually involved in and he's kind of
7 manipulating. So --

8 MR. SWEETIN: There's a couple that you can see him in.
9 There's a few that you can hear him in, but it's never as clear as it is in
10 the video that we're talking about where his direction and his manner in
11 regards to the control that he had over the entire situation.

12 MS. RADOSTA: Your Honor, can I --

13 THE COURT: Yeah.

14 MS. RADOSTA: -- finally make my point? I keep getting
15 inter --

16 MS. HOLTHUS: And can I just say one more thing?

17 MS. RADOSTA: Mm, my goodness.

18 MS. HOLTHUS: Just one --

19 MS. RADOSTA: [Chuckling.]

20 MS. HOLTHUS: I just would remind the Court that it's not the
21 Defendant having sex with the dog. In terms of the prejudicial aspect of
22 it, it's Deborah really who -- who --

23 THE COURT: I know, but he's involved in that.

24 MS. HOLTHUS: I know.

25 THE COURT: He is. It's clear. And he's telling her to do it.

1 MS. RADOSTA: If -- if it's prejudicial --

2 THE COURT: So that's --

3 MS. RADOSTA: -- to see somebody having sex with an
4 animal, it's prejudicial that the State's offering it to show he coerced her,
5 which is how they're going to be offering it, into having sex with an
6 animal. That's clearly prejudicial, Your Honor.

7 THE COURT: Well, I --

8 MS. RADOSTA: But that's neither -- that's neither here --

9 THE COURT: You know, I'm less persuaded by that than just
10 the simple fact that there's -- there's --

11 MS. RADOSTA: If --

12 THE COURT: I believe there's sufficient amounts of evidence
13 otherwise --

14 MS. HOLTHUS: Then maybe I should --

15 MS. RADOSTA: But --

16 THE COURT: -- that goes directly to the charge --

17 MS. RADOSTA: If --

18 THE COURT: -- the crimes charged. That's what I'm talking
19 about.

20 MS. RADOSTA: Additionally, Your Honor, if I could just
21 please make a couple of points without being interrupted.

22 THE COURT: Okay.

23 MS. RADOSTA: And I know I'm guilty of that myself
24 sometimes, so --

25 THE COURT: No, go ahead.

1 MS. RADOSTA: -- I take it with a grain --

2 THE COURT: It's all right.

3 MS. RADOSTA: -- I offer that with a grain of salt.

4 First and foremost, this -- every bit of what Ms. Holthus argued
5 today, every bit of it, is in the transcript from one year ago. Every bit of it.
6 They -- their moving documents only ask for the photograph, but when
7 we got into court Ms. Holthus asked for the videotape, asked for the
8 content, asked for everything. And that's where the transcript gets a little
9 confusing because that's where we're kind of all over the place because
10 first and foremost it wasn't part of their moving documents, but we did
11 discuss it in its entirety a year ago. That's why I -- I titled my motion an
12 opposition to their motion to reconsider. We addressed everything; that
13 this was being offered to show his control of the family, his control of
14 Deborah, everything. All of those arguments were addressed last year.
15 And absolutely nothing has changed in the law that would allow the Court
16 to revisit the exact same issues that were addressed a year ago.

17 But beyond that -- even if the Court feels that it -- since it --
18 that it wasn't addressed -- but I would ask Your Honor to go back and
19 read the transcript that was attached to my opposition because I was
20 really surprised when I went back and read it how similar it is to
21 everything that's in the State's moving documents today. There's nothing
22 new.

23 THE COURT: Okay.

24 MS. RADOSTA: But beyond that, Your Honor, the idea that
25 this is being offered and that they should be able to talk about the content

1 of the threat, being the threat that he was going to send an email with her
2 and the dog, the emails that I'm looking at that I have in front of my -- my
3 -- right here at my desk, shows that it was a threat to reveal something
4 with a big smile on Brandon's face. There's no mention that it was a
5 threat to send a video of the dog. The threat, at least from the emails
6 that I had been provided, and I'm looking at them quite quickly in front of
7 me, but it was a threat to send something involving the kids, not anything
8 -- not a threat involving the dog.

9 So I don't think that we -- that the State should be allowed to
10 get into the content as a way to quote, unquote tell the complete story of
11 this threat because it's misrepresenting what the threat was. The threat
12 was to send video of her with the kids. That didn't happen. He ended up
13 sending a different video allegedly, from the State's offering of this
14 particular piece of evidence, but his threat was to send something of her
15 and the kids. So to say that this -- that they should be allowed to get into
16 the photograph, and/or the content of the photograph, and/or the video
17 and content of the video to give context to this threat is just misstating
18 what the threat was, Your Honor.

19 Beyond that, we went through all of the prejudicial versus
20 probative argument last year.

21 THE COURT: Mm-hmm. Okay.

22 MS. RADOSTA: Nothing has changed. It's still -- it is still
23 prejudicial. I would point out to Your Honor, for the sake of argument, in
24 reading through some of the jury questionnaires, people do draw a
25 distinction. People were drawing distinctions in some of their answers on

1 the jury questionnaires. Some -- some were saying the only thing worse
2 than hurting a child is hurting an animal. People do draw a distinction
3 between the two things, so it is a prejudicial -- it is a prejudicial offering
4 on the State's part, Your Honor. But I think that to allow it to be brought
5 in under the guise of explaining this threat is -- well, obviously prejudicial,
6 but beyond that, it's incorrect as to what the evidence will show from
7 what I've been provided thus far.

8 THE COURT: Okay. If there in fact is a -- is some type of
9 email that suggests that he's sending, or he's going -- he's threatening to
10 send a photograph of the animal, that's certainly is -- I'm going to allow
11 you to introduce it that way.

12 I'm also going to allow you -- I believe -- because I'm reading
13 through the minutes again, is that I granted the motions with the
14 exception of the photographs depicting sexual conduct with any animals
15 unless the defense opens the door by denying that he had any
16 knowledge or control of the emails or the photographs; okay. That one --
17 that's what my order was.

18 I do believe that in order to have context as to what -- what
19 prompted Deborah Sena to approach the police or -- or is that the -- the
20 information that I understand is that Cox Communications had connect --
21 contacted her based on this photo and then she responded in the
22 manner in which she did. To give context to explain that, I'm going to
23 allow you to get into the content of the photo. But I'm not going to allow
24 you to use the photographs or the actual videos of the conduct with the
25 animal unless there's some denial of -- by the defense, in regards to what

1 was sent or what information was provided to Cox.

2 MS. HOLTHUS: Can I ask one thing?

3 THE COURT: Okay.

4 MS. HOLTHUS: If you will make that without prejudice in the
5 event -- you had said that you felt that there was volumes of evidence
6 and lots of other video that could be used in lieu.

7 THE COURT: Mm-hmm.

8 MS. HOLTHUS: If at the end -- you know --

9 THE COURT: Well, one --

10 MS. HOLTHUS: -- if we get into our case and you don't see
11 as much -- or I would offer you an opportunity to view all the video at
12 once. And what I think is different in this -- in this -- in our supplement is
13 -- well, I don't know if we addressed it or didn't address it in the
14 argument. We did not put it in our moving papers. We did put it our
15 moving papers this time. And we did afford Your Honor the opportunity
16 to view the video. Because quite frankly, last time you were -- if you
17 were addressing that, then you were addressing evidence you didn't
18 even know what it was because we didn't give it to you.

19 THE COURT: Mm-hmm.

20 MS. HOLTHUS: So I don't know that this Court can be held to
21 a ruling on that. And that's why this time we wanted you to see it. And
22 so if -- if it would help you, we can provide you all the video tape footage
23 that would arguably count, if you will, if that would help you to see that
24 this is more probative than prejudicial.

25 THE COURT: Well, I understand the whole nature of what

1 you're moving to admit is based on the controlling nature that's in that
2 video with him telling her what to do, directing him how to do it, video --

3 MS. HOLTHUS: Forcefully.

4 THE COURT: Yeah. No, I see.

5 My understanding -- because part -- part of the -- the
6 argument with regards to the statute of limitations that was being object --
7 I mean, was -- with the oldest child, was that there was a lot of controlling
8 aspects of it. And that was the ruling that I made based on the fact that
9 he still was controlling her and -- so --

10 MS. HOLTHUS: But she's almost exclusively by way of
11 testimony.

12 THE COURT: No, I understand that. But -- but my
13 understanding was is there -- and I do believe that there's a -- based on
14 what was presented to me in the -- in the written papers, is that there's a
15 video of one of the -- one of the mothers with three-year-old son?

16 MS. HOLTHUS: No. The three year old is not --

17 MS. RADOSTA: There's no video of anybody --

18 MS. HOLTHUS: No video of the three year old.

19 MS. RADOSTA: -- under the age of about 14, Judge.

20 MS. HOLTHUS: Correct.

21 THE COURT: Okay.

22 MS. HOLTHUS: That's --

23 THE COURT: All right. Well, I --

24 MS. RADOSTA: Thirteen, fourteen. In that --

25 MS. HOLTHUS: And that's -- that's one of our concerns is --

1 THE COURT: Okay.

2 MS. HOLTHUS: -- there is a lot of -- it is testimony based
3 upon --

4 THE COURT: Mm-hmm.

5 MS. HOLTHUS: -- various witnesses. Various witnesses with
6 different biases and prejudices who's coming in. He's going to, I
7 assume, point fingers to say -- and I'm not really sure what, that it was
8 consensual on the part of the mothers and the children. And they're
9 going to say he was coerced. We had the other bad acts motion about
10 the potential domestic violence previous and the threats to take them out
11 in the desert and all that other stuff all coming in.

12 THE COURT: Mm-hmm.

13 MS. HOLTHUS: So, I mean, that's going to be what it's about.
14 And a lot of it is testimony. And that's why to the extent that we have
15 anything that eyewitnesses that jury to what was going on in that house,
16 it becomes pretty compelling to pick sides, if you will, ultimately when you
17 go to the jury room and make a decision.

18 THE COURT: You know, at this point in time the order
19 stands. I will tell you, Ms. Holthus, I -- I don't want to say I [indiscernible],
20 but things change when you're in trial.

21 MS. HOLTHUS: And that's all I'm asking is if you --

22 THE COURT: So, I'll keep an open --

23 MS. HOLTHUS: -- deny it without prejudice.

24 THE COURT: -- mind with that, but I'm telling you now that
25 the order is what I've -- I'm saying if there's nothing additional then I don't

1 see that I'd change my position. But that's --

2 MS. HOLTHUS: So -- and --

3 THE COURT: -- the position I'm taking; okay.

4 MS. HOLTHUS: Because it was a clarification, your testimony
5 is Deborah can testify that she had sex with a dog at his direction, he
6 took video --

7 THE COURT: Mm-hmm.

8 MS. HOLTHUS: -- and eventually he sent stills of that video
9 to Cox?

10 THE COURT: Yes.

11 MS. HOLTHUS: Okay.

12 THE COURT: Okay. All right.

13 MS. RADOSTA: Wait, wait, wait, wait, wait.

14 THE COURT: That was the -- that was what I ruled on.

15 MS. RADOSTA: I -- I just want -- no --

16 THE COURT: No, I ruled on the content -- the content --

17 MS. RADOSTA: The content of --

18 THE COURT: -- of the photo.

19 MS. RADOSTA: -- the photo. Not that --

20 THE COURT: The photo that was sent.

21 MS. RADOSTA: -- he made me do this. Not that it was
22 against my will. Not --

23 THE COURT: Oh, no, no, no, no.

24 MS. RADOSTA: -- that there's a photograph of her --

25 THE COURT: She could always testify as to what he told her

1 to do. You -- the challenge was as to the actual video of it.

2 MS. RADOSTA: The -- no. The challenge of it, originally and
3 today --

4 THE COURT: All the bad acts; okay.

5 MS. RADOSTA: -- is the content of --

6 THE COURT: No, I -- you guys are driving me nuts.

7 MS. RADOSTA: Sorry, Judge, but in --

8 THE COURT: You're driving me nuts. I'm having a hard time
9 keeping -- keeping -- you know, there's so much going on here that --
10 okay, I'm -- I vented. Go ahead.

11 MS. RADOSTA: Sorry. And I'm -- I'm equally frustrated, Your
12 Honor, because I honestly thought that this entire issue was resolved last
13 year.

14 THE COURT: Mm-hmm.

15 MS. RADOSTA: This is a situation --

16 THE COURT: Yeah, I -- no, I agree with you.

17 MS. RADOSTA: So --

18 THE COURT: I do.

19 Mary Kay, I never agreed to allow her to be testifying as to
20 being directed to have sex with animals and all that. I never -- I never
21 went that far. That was her --

22 MS. HOLTHUS: Well, if she's testifying as to the
23 photograph --

24 THE COURT: I know, but the bad act -- you'd still be asking
25 for the same thing with bad acts. My order -- let me see. Let me see.

1 Let me make sure.

2 MS. HOLTHUS: Like I said, Judge, that's why I did it as a
3 motion to clarify because when we were getting ready for trial it --

4 THE COURT: Yeah, it's --

5 MS. HOLTHUS: I wasn't -- I wasn't clear. You definitely -- to
6 me --

7 THE COURT: Well --

8 MS. HOLTHUS: -- if you're going to let me bring in a
9 photograph, then the foundation for the photograph necessarily includes
10 everything. And if you say I can't take the photograph with the
11 foundation and the surrounding then -- and that's -- that's all of it, Judge.
12 I mean --

13 THE COURT: I'm going to re-read these motions. I have to
14 because -- because I'm reading my -- my minutes.

15 MS. RADOSTA: And --

16 THE COURT: I said I've granted it with the exception of
17 paragraphs -- photographs depicting sexual conduct with any animals
18 unless defense opens the doors with regards to denying emails or
19 photographs. So I think the only request for other bad acts had to do
20 with what happened with respect -- with that --

21 MS. HOLTHUS: Dog.

22 THE COURT: -- with -- with Cox. I don't know whether or not
23 you had all the information as to the actual video of the dog at the time
24 because when --

25 MS. HOLTHUS: We didn't ask you for the video of the dog at

1 the time. That's why I was bringing this --

2 THE COURT: I know, but --

3 MS. HOLTHUS: -- as a supplemental motion.

4 THE COURT: -- you would've been asking me for --

5 MS. HOLTHUS: Yeah, for the photo -- and that's --

6 THE COURT: No, you'd been asking me for other bad acts of
7 showing that he was directing her to have sex with the animals. I need
8 to --

9 MS. RADOSTA: Your Honor, if you do wish to re-read the
10 motions --

11 THE COURT: I need to look at that.

12 MS. RADOSTA: -- I would ask --

13 THE COURT: I need to see -- because I -- I don't specifically
14 remember going to that extent that you were asking me to introduce
15 evidence of bad acts where he was directing her to have sex with a --
16 with animals, which would be he's participating in bestiality acts.

17 MS. HOLTHUS: Right. That's why we brought it in a bad
18 actions motion.

19 THE COURT: I don't know if it was part of that.

20 MS. RADOSTA: It wasn't --

21 THE COURT: That's what I'm --

22 MS. RADOSTA: Their moving --

23 THE COURT: The only thing I remember was you wanted to
24 introduce evidence of this -- her -- photograph of her, that she would be
25 testifying was direct -- was -- she was directed to do this at his direction --

1 MS. HOLTHUS: Right.

2 THE COURT: -- that got sent to Cox Communication as a --

3 MS. HOLTHUS: Right.

4 THE COURT: -- based on a threat that he was trying to carry
5 out.

6 MS. HOLTHUS: Right. And -- and --

7 THE COURT: Okay.

8 MS. HOLTHUS: -- my understanding, which you ruled, she
9 could say that, that he directed her to have sex with a dog, he took
10 video --

11 THE COURT: I got to go back and look at the transcript.

12 MS. HOLTHUS: -- and used it to threaten her, but we couldn't
13 -- we couldn't put the photograph in unless -- and the minutes say --

14 THE COURT: Let me see.

15 MS. HOLTHUS: -- unless he denied sending the emails or the
16 photographs.

17 THE COURT: Let me -- let me go back through and re-read
18 the transcript and all that of the whole -- to see -- see what -- what was
19 being --

20 MS. HOLTHUS: And I'm not trying to be problematic, Judge.

21 THE COURT: I know.

22 MS. HOLTHUS: We just --

23 THE COURT: No, I know.

24 MS. HOLTHUS: Another issue came up and we felt it became
25 more probative as a result of the video. And we -- I generally have

1 confusion as to exactly what the ruling was with respect to the --

2 THE COURT: Well, I --

3 MS. HOLTHUS: -- photographs.

4 MS. RADOSTA: I mean, I --

5 THE COURT: If I -- I'm just going back -- I need to read this
6 again because -- because I'm not confident that I understood that you
7 were asking for the additional information regarding the actual sex with
8 the animals other than in the context of him threatening her --

9 MS. HOLTHUS: Right.

10 THE COURT: -- with a photo of it.

11 MS. HOLTHUS: But see -- I mean -- the whole threat of it --

12 THE COURT: I know. But see --

13 MS. HOLTHUS: The context of it is --

14 THE COURT: -- what's happening, Ms. Holthus, right now is
15 that -- is you'd basically be arguing this. And I want to see whether or not
16 that argument was presented to me before. And -- and so I'm looking --
17 that's why I want to make sure that I -- that I understand this and what --
18 what I was looking at, because if it wasn't, then you're asking me to look
19 at something additional. And that's what I want to make sure I
20 understand that first, okay, because I -- and to be clear, you -- you're real
21 good at making sure that the record fits what you want to do. And that's
22 what's happening right at the end when you say to make clear this is
23 what it is. And I want to make sure before I agree to that.

24 MS. HOLTHUS: I'm just trying to summarize because I need
25 to know, Judge. I can't prep --

1 THE COURT: I know. But, Ms. Holthus, it's your case. And
2 the problem is that there's been different presentations. You weren't the
3 one presenting it before. And in this particular situation it was Mr.
4 Sweetin. So let me look at this. Let me see what -- what I was looking at
5 and then I'll -- I'll readdress it with the Court. Give me till Monday.

6 MS. HOLTHUS: Sure.

7 THE COURT: All right. We'll put it on just for this Monday; all
8 right. And then -- wait, are we on Wednesday?

9 MS. RADOSTA: We're on Wednesday.

10 THE COURT CLERK: We're on Wednesday morning.

11 THE COURT: Give me till Wednesday.

12 MS. HOLTHUS: Okay.

13 THE COURT: All right. And then I'll let you know for sure
14 where I'm at with that and hopefully I'm clear.

15 But -- but with regards to the other -- okay. And then there's --
16 the last one. Defense has asked the Court -- filed a motion for reduction
17 of co-offenders PSIs and related discovery.

18 MR. SWEETIN: Yeah.

19 MR. LOPEZ-NEGRETE: Your Honor, this is pretty straight
20 forward. I'm not sure if the State's opposing it or not --

21 THE COURT: I --

22 MR. LOPEZ-NEGRETE: -- but I think it's definitely unfair.

23 THE COURT: Did you -- did you file an opposition?

24 MR. SWEETIN: No.

25 THE COURT: Okay.

1 MR. SWEETIN: Well, this it. I think what they're trying get at
2 is any statements made by either of the co-defenders in the course of the
3 PSI. Of course we're -- the State's prohibited by statute from distributing
4 the PSI --

5 THE COURT: Right.

6 MR. SWEETIN: -- but I do have two copies of the complete
7 PSI here.

8 THE COURT: Okay.

9 MR. SWEETIN: I'll represent there is a statement of one of
10 the defendants, Deborah Sena, attached to -- and I have that actually -- a
11 separate copy of it here.

12 THE COURT: Okay.

13 MR. SWEETIN: I don't see that there's a reason why the
14 defense would not be entitled to that. If I could just present it to the Court
15 for in-camera review --

16 THE COURT: Okay.

17 MR. SWEETIN: -- to make a determination.

18 THE COURT: Is there a reason why you would need all the
19 other information that's -- that's in the Presentence Investigation Reports
20 as well.

21 MR. LOPEZ-NEGRETE: The presentence investigation
22 reflects everything that she talked about. It's the result of an interview
23 with her. And so all that information that's included in the PSI is her
24 statement in a way; it's just basically filtered through the PSI writer. And
25 that's why we're asking for the PSI writer's notes as well because her

1 statements are obviously critical in this case, her and Terrie's, both of
2 them, because they are the adverse witnesses against him.

3 MR. SWEETIN: Well, and --

4 MR. LOPEZ-NEGRETTE: And we need to be able to cross-
5 examine them. And the State has access to these statements, but then
6 we don't. That's particularly unfair I think in this situation.

7 MR. SWEETIN: Well, actually the PSI does not incorporate
8 essentially the -- the Defendant's statements. Essentially it lays a
9 synopsis of the -- the facts of the case and it makes a recommendation.
10 So that's all that's in the PSI essentially. There might be a section where
11 the Defendant makes specific statements in the PSI. In this case, I think
12 in only one of the PSIs it makes note that a statement's attached and that
13 was to Deborah's.

14 THE COURT: No, that was Terrie.

15 MR. SWEETIN: Or was it Terrie's?

16 THE COURT: I mean -- no, Sena. Is that Deborah?

17 MR. LOPEZ-NEGRETTE: Deborah.

18 MS. HOLTHUS: It's hard to read the first name.

19 THE COURT: Terrie.

20 MR. SWEETIN: Oh, it is. I'm sorry.

21 THE COURT: It's actually Terrie. There's one attached --

22 MR. SWEETIN: It is Terrie's.

23 THE COURT: -- to Terrie.

24 MR. SWEETIN: Yeah.

25 THE COURT: Okay.

1 MR. SWEETIN: And I think that's the only -- only statement.
2 And certainly any sort of criminal history or other history, all of that is
3 protected. That's one of the reasons why the statute is that it is and it
4 can't be distributed.

5 THE COURT: Well, they have no --

6 MR. SWEETIN: And I don't think it's relevant.

7 THE COURT: -- criminal history at all, so --

8 MR. SWEETIN: But I'm just saying that I don't see that
9 there's a reason why --

10 MR. LOPEZ-NEGRETTE: I mean, if --

11 MR. SWEETIN: -- the PSI should be released other than just
12 the statements made by the Defendant.

13 MR. LOPEZ-NEGRETTE: If they're testifying, then the criminal
14 history is relevant obviously.

15 THE COURT: I know, but there is no criminal history.
16 That's --

17 MR. LOPEZ-NEGRETTE: We don't know that until we get that;
18 right? I mean --

19 MS. HOLTHUS: He just told you.

20 THE COURT: Well, I'm telling you there's no criminal
21 history --

22 MR. LOPEZ-NEGRETTE: Sure.

23 THE COURT: -- from this. The only -- the only thing that
24 shows up on the criminal history are these cases -- is this case. That's
25 why I'm asking because there's nothing -- there's -- there's nothing --

1 MR. LOPEZ-NEGRETE: I would think that there's some
2 social history that's obviously included in every PSI.

3 THE COURT: Yeah, but what does social history have to do
4 with the -- her statement?

5 MR. LOPEZ-NEGRETE: She's talking about her family life.
6 And she's talking about the marriage.

7 THE COURT: Well, I know, but what does that have to do
8 with her credibility, or lack of credibility; is that what you're saying?

9 MR. LOPEZ-NEGRETE: I'm saying that there might be
10 information in there that we could use if she testifies that we can actually
11 say, oh, actually you said something different --

12 THE COURT: Uh-huh.

13 MR. LOPEZ-NEGRETE: -- to the PSI writer about your
14 marriage or about your children. And that's what this case is all about.

15 THE COURT: Okay. All right.

16 So I have a copy of the Presentence Investigation Report for
17 Terrie Sena and a Presentence Investigation Report for Deborah Sena.
18 What I'm going to do is I want to reach out to Mr. Pitaro for Deborah
19 Sena --

20 MS. RADOSTA: I believe she's --

21 THE COURT: -- Terrie Sena and Mr. Tomscheck for Deborah
22 Sena.

23 MS. HOLTHUS: Deborah's got --

24 MS. RADOSTA: I believe actually --

25 MS. HOLTHUS: -- Betsy now.

1 THE COURT: What's that?

2 MS. RADOSTA: Betsy Allen now represents Terrie Sena.

3 THE COURT: Oh.

4 MS. RADOSTA: It's moved --

5 THE COURT: Who does?

6 MS. RADOSTA: Betsy Allen.

7 THE COURT: Okay. Betsy Allen --

8 MS. RADOSTA: It's moved into --

9 THE COURT: -- for Terrie Sena and Tomsheck was the

10 attorney for Deborah Sena. And have them here Wednesday.

11 MR. LOPEZ-NEGRETTE: And, Your Honor, regarding the PSI

12 writer's notes.

13 THE COURT: Mm-hmm.

14 MR. LOPEZ-NEGRETTE: That also -- we're requesting that as

15 well. I'm not sure if the State has those.

16 THE COURT: No, you're asking for the PSI and related

17 discovery --

18 MR. LOPEZ-NEGRETTE: Right.

19 THE COURT: -- is that what you're saying?

20 MR. LOPEZ-NEGRETTE: The PSI writer's notes. I mean,

21 that's the final report.

22 THE COURT: Okay.

23 MR. LOPEZ-NEGRETTE: But I'm wondering if the PSI writer in

24 interviewing them kept notes --

25 THE COURT: Mm-hmm.

1 MR. LOPEZ-NEGRETE: -- so that she could transpose them
2 to the PSI.

3 THE COURT: Well, we're going to address it on Wednesday
4 with regards to see whether or not there is an objection to them. Also, I
5 am going to provide you with a copy of Terrie Sena's statement here.
6 The actual report though I'm not -- I'm not in a position at this time to
7 reveal it. So -- so have them here on Wednesday. We'll address that as
8 well; okay?

9 MR. SWEETIN: Thank you.

10 MR. LOPEZ-NEGRETE: Thank you.

11 MS. RADOSTA: Thank you.

12 THE COURT: And obviously if there's no objection to it I'll
13 provide it to you.

14 Now the notes, that's a different issue because everything that
15 the department has -- has determined has been presented to the Court
16 here. So you're saying that you -- you would perceive that there's
17 something different in the notes than what they're telling the Court?

18 MR. LOPEZ-NEGRETE: There could be rough notes
19 obviously in preparing --

20 THE COURT: Well, that's -- I don't like that word could be.
21 You tell me if there is, then it's an issue, but --

22 MR. LOPEZ-NEGRETE: I mean --

23 THE COURT: -- but your fishing expedition is what you're
24 doing here.

25 MR. LOPEZ-NEGRETE: No, no, no. I'm only asking for

1 anything that the PSI writer heard from the mouth of Deborah --

2 THE COURT: That's been --

3 MR. LOPEZ-NEGLETE: -- or Terrie.

4 THE COURT: -- reported here.

5 MR. LOPEZ-NEGLETE: And that isn't included in there;

6 right?

7 THE COURT: Okay.

8 MR. LOPEZ-NEGLETE: Anything that wasn't covered in the

9 PSI, but they left it in a note somewhere, that's what I want to know.

10 THE COURT: Okay. Have you asked them for it?

11 MR. LOPEZ-NEGLETE: No, Your Honor.

12 MS. RADOSTA: Because --

13 MR. LOPEZ-NEGLETE: We asked the State for it.

14 MS. RADOSTA: Right.

15 MR. SWEETIN: We don't have it.

16 THE COURT: The State doesn't have their notes.

17 MR. LOPEZ-NEGLETE: Right.

18 THE COURT: So have you asked the department for it?

19 MR. LOPEZ-NEGLETE: No. I don't even know who the PSI

20 writer is, Your Honor.

21 THE COURT: Okay.

22 MR. LOPEZ-NEGLETE: That's the thing.

23 THE COURT: Well, I'll tell you.

24 MR. LOPEZ-NEGLETE: Okay.

25 THE COURT: Okay. The writer who prepared the PSI for

1 Terrie Sena was Sandra Rerdon, R-E-R-D-O-N. And her supervisor is
2 Judy Little. And the one for Deborah Sena was Sandra Rerdon. Same
3 individual. And her supervisor is Judy Little. Okay?

4 MR. LOPEZ-NEGRETE: Great. We'll reach out.

5 THE COURT: All right. Okay.

6 MS. HOLTHUS: What I would suggest is that defense might
7 want to reach out to Josh and Betsy before Wednesday so they know the
8 issue because their clients are at prison.

9 THE COURT: Right.

10 MS. HOLTHUS: And so they -- in fact, we're scheduled to go
11 there sometime before then. So if they want to let them know -- because
12 I would assume --

13 THE COURT: Okay.

14 MS. HOLTHUS: -- they have to ask their clients.

15 THE COURT: Do you understand --

16 MS. HOLTHUS: Otherwise, Wednesday --

17 THE COURT: -- what they're saying?

18 MS. HOLTHUS: -- they're going to come in and say --

19 THE COURT: Call Josh and --

20 MS. HOLTHUS: -- don't know.

21 MR. LOPEZ-NEGRETE: We'll let them know that we're
22 asking for this.

23 THE COURT: And let them know that you're asking for it and
24 it's on -- that's why they got to be here on Wednesday. And maybe by
25 that time they'll talk to them and [indiscernible] issue.

1 There may be some things in here that needs to be excluded, like
2 obviously social security numbers and certain things, but --

3 MR. LOPEZ-NEGRETTE: That's -- yeah.

4 MS. RADOSTA: Sure.

5 MR. LOPEZ-NEGRETTE: And we're not interest in that.

6 MS. RADOSTA: And -- I mean --

7 THE COURT: Your client probably already has those
8 anyhow, but --

9 MS. RADOSTA: Just as -- just as a point of reference.

10 THE COURT: Okay.

11 MS. RADOSTA: Sometimes we see in the body of the
12 document so and so did not take responsibility for their -- you know, and
13 that's something that wouldn't necessarily be included in a handwritten
14 note.

15 MR. LOPEZ-NEGRETTE: Right.

16 MS. RADOSTA: But it's the opinion of the -- of the writer that
17 -- and that would be in their handwritten notes.

18 MR. LOPEZ-NEGRETTE: Exactly.

19 THE COURT: Okay. All right, guys.

20 MS. RADOSTA: Thanks, Judge.

21 THE COURT: All right. Have a good night.

22 We're off.

23 ///

24 ///

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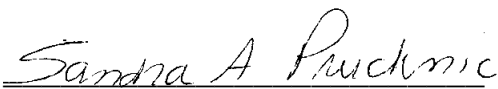
THE COURT RECORDER: All right. Going off.

THE COURT: Okay.

[Proceedings concluded at 2:10 a.m.]

* * * * *

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.


SANDRA PRUCHNIC
Court Recorder/Transcriber



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,) CASE#: C-15-311453-1
7 Plaintiff,) DEPT. XIX
8 vs.)
9 CHRISTOPHER SENA,)
10 Defendant,)

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE
13 WEDNESDAY, AUGUST 29, 2018

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **CALENDAR CALL**

16 APPEARANCES:

17 For the State: MARY KAY HOLTHUS, ESQ.
18 JAMES R. SWEETIN, ESQ.
Chief Deputy District Attorneys

19 For the Defendant:

20 Christopher Sena VIOLET R. RADOSTA, ESQ.
21 DAVID E. LOPEZ-NEGRETE
Deputy Public Defender

22 Deborah Sena: ANTHONY L. ABBATANGELO, ESQ.

23 Terrie Sena: BETSY ALLEN, ESQ
24

25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, August 29, 2018

2
3 [Hearing began at 8:03 a.m.]

4 THE COURT: Let me call a case on page 4. State of Nevada
5 versus Christopher Sena in C311453. This is back on at the request of
6 the Court to clarify what had previously -- previously discussed with
7 regards to the State's motion for other -- admit evidence of other bad
8 acts as well as their claim for a complete story. I went back through it
9 and the whole issue right now that we're dealing with is the video -- the
10 video that was seized that shows Deborah Sena with a -- with an animal.

11 The -- when I read the -- I went back and read the transcripts.
12 I read the motions again. The position I'm taking here is that I'm going
13 to allow the State to inquire of Deborah Sena about the contents of the
14 video based on the position that the State is presenting with regards to
15 Deborah Sena being coerced or influenced. I believe that that is
16 relevant for purposes of -- of this -- this trial here.

17 I'm not going to allow the State to use the video -- to show the
18 video unless the Defendant presents some type of defense or makes a
19 denial. Presents some type of denial as to ownership or possession of
20 the -- or knowledge of the items that were attached with the video. My
21 understanding is that when a search warrant was done as a result of the
22 information sent to Cox Communication and the statements made by
23 Deborah Sena a search warrant was issued and they retrieved I believe
24 it was, correct me guys if I'm wrong, a zip drive --

25 MS. RADOSTA: I think so.

1 MS. HOLTHUS: Yes.

2 THE COURT: -- with multiple images and video along with the
3 video that is at issue here with the animal.

4 And so, if there's some kind of defense saying that he has no
5 knowledge of this, I had nothing to do with it, then I'm going to allow you
6 to play it because then it shows his involvement in the video directly and
7 then the connection -- that you can make the connection to the rest of
8 the videos that it's attached with, okay.

9 MS. HOLTHUS: Okay.

10 THE COURT: That's the decision I made with regards to that.

11 Now, with respect to the Defendant's motion for production of -
12 -

13 MS. RADOSTA: And sorry, Judge, before you move onto the
14 next topic just for clarification purposes of the -- my objection to revisiting
15 this --

16 THE COURT: Mm-hmm.

17 MS. RADOSTA: -- are you --

18 THE COURT: I went back and read the transcript. That's the
19 position I had before.

20 MS. RADOSTA: Okay.

21 THE COURT: That's the position I took before. I indicated -- I
22 mean, I think it -- I thought it was clear. But I saw your concern, Ms.
23 Radosta. I do.

24 MS. RADOSTA: Okay.

25 THE COURT: So I do understand the State's request for

1 clarification because --

2 MS. RADOSTA: Okay.

3 THE COURT: -- because there seemed to be -- at the end of
4 that argument, I seem to vacillate. And so I wanted to make sure that it
5 was clear, okay.

6 MS. RADOSTA: Okay.

7 MS. HOLTHUS: And just --

8 MS. RADOSTA: And that was the only point I needed.

9 THE COURT: Okay.

10 MS. RADOSTA: Yeah.

11 MS. HOLTHUS: And so the fact of it can come in. So, in one
12 of the emails you had asked last week and neither one of us remember.
13 We did go back through and one of the emails, one of the threats is
14 regarding the fact that there's the existence of the --

15 THE COURT: Mm-hmm.

16 MS. HOLTHUS: -- dog video and how people aren't going to
17 let women who have sex with dogs have kids. That's all okay. We're
18 not getting to the --

19 THE COURT: I believe -- I believe that Mr. Sweetin had -- had
20 addressed that in the initial argument. And I apologize to Ms. Holthus is
21 that you were making the argument previously as to the influence type of
22 position. And I -- and so it just reminded me. So it did clarify everything
23 as far --

24 MS. HOLTHUS: Okay.

25 THE COURT: -- as I was concerned, so.

1 MS. RADOSTA: And I don't believe that we have a copy of
2 that email that talks about the threat to -- involving the dog. We have an
3 email that talks about a threat of sending an email or an email involving -
4 -

5 THE COURT: Okay. Here --

6 MS. RADOSTA: -- threatening to send a video involving
7 Brandon.

8 THE COURT: Alright.

9 MS. RADOSTA: But -- so if the State does have a -- have a --
10 an email that talks specifically about threatening to send an email
11 regarding the dog --

12 THE COURT: Uh-huh.

13 MS. HOLTHUS: I don't --

14 MS. RADOSTA: -- I'd ask that that be given to us today.

15 THE COURT: Okay.

16 MS. HOLTHUS: There's only three emails.

17 MS. RADOSTA: Okay.

18 MS. HOLTHUS: You should have them all.

19 MS. RADOSTA: Okay.

20 MS. HOLTHUS: It's within one of the three.

21 MS. RADOSTA: Okay.

22 MS. HOLTHUS: And I don't recall --

23 MS. RADOSTA: Alright.

24 THE COURT: Here's -- here's the concern that I had was that
25 in the previous motion in the motion to admit other bad acts or for

1 complete story, at the end of that I --

2 MR. SWEETIN: Can I approach, Judge?

3 THE COURT: Yes. Oh, those are the emails? Okay.

4 MR. SWEETIN: Here are the emails. And I got the one
5 tagged that we're talking about.

6 THE COURT: Alright. At the -- well --

7 MS. RADOSTA: No. I was just asking to --

8 THE COURT: Okay.

9 MS. RADOSTA: -- for it to be provided. I'm not just, you know
10 --

11 THE COURT: Here's what Ms. Radosta's concern was; and I
12 agree with her, is that I had indicated to the State that if you wanted to
13 bring in the actual particularities of -- the particulars of that you would
14 probably have to file another motion for bad acts because it wasn't
15 specifically requested initially. It was just talking about -- it was limiting it
16 to the -- to what you're asking right now. But I think it's clear to the Court
17 the whole purpose of it. I do believe there's relevance for it.

18 So, in the event that someone's reviewing this and saying that
19 I didn't consider it as another bad act and the State didn't ask for it, I'm
20 beyond that. I believe that there is relevance. And irrespective of the
21 State even asking for it I think that -- that to clarify and make it a better
22 record I'm allowing the contents of the video based on testimony from
23 Deborah Sena. But I'm not going to allow the actual video unless like I
24 said previously there's some type of defense or a opposition or denial
25 raised by the Defendant thus opening the door to you getting to be able

1 to establish that in fact he knew about this information, okay.

2 MS. HOLTHUS: Mm-hmm.

3 THE COURT: And okay. Yeah. This email here goes directly
4 to the position of the influence is what I think that the State's trying, so
5 yeah. Okay. That's the decision I made with that.

6 Now as to the motion for production of co-offender's PSI as
7 related to discovery --

8 MR. ABBATANGELO: Your Honor, Tony Abbatangelo --

9 THE COURT: Okay.

10 MR. ABBATANGELO: -- on behalf of Josh Tomscheck.

11 THE COURT: Uh-huh.

12 MR. ABBATANGELO: He had a meeting on the other side of
13 town and could not be here at 8 o'clock. He told me to let the Court
14 know that on behalf of Deborah Sena, he takes no position on releasing
15 her PSI to defense counsel for Christina and submit it to the Court's
16 discretion.

17 THE COURT: Okay.

18 [Colloquy between the Court and the Clerk]

19 THE COURT: Okay. I just received a email also from -- from
20 Ms. Allen. She said, yes. I have concerns about releasing the whole
21 document. I would agree to portions that contain statements by my
22 client only.

23 Here's the position that the Court is put in, is if you look at
24 NRS 213.1075 it provides that except as otherwise provided by specific
25 statute all information obtained in the discharge of official duty by a

1 parole or probation officer or employee of the board is privilege and may
2 not be disclosed directly or indirectly to anyone other than the board, the
3 judge, district attorney or others entitled to receive such information
4 unless otherwise ordered by the board or judge or unless necessary to
5 perform the duties of the division.

6 So, with respect to statements made by the individuals to the
7 Department of Parole and Probation for purposes of the case itself, I'm
8 going to release those. I think I already gave you a statement made --

9 MS. RADOSTA: Terrie's -- Terrie's --

10 THE COURT: -- from Terrie.

11 MS. RADOSTA: -- attached statement. Yeah.

12 THE COURT: And so the -- there doesn't appear in the
13 presentence investigation reports that there was any other statements.
14 But since Mr. Tomscheck represents --

15 MS. RADOSTA: Deborah.

16 MS. HOLTHUS: Deborah.

17 THE COURT: -- Deborah. And so at this point in time I -- if I
18 haven't done it already I'm going to release to -- yeah here it is -- I'm
19 going to release to you Deborah's PSI.

20 MS. RADOSTA: Okay. Thank you.

21 THE COURT: And the -- the -- yeah. I'll give you a copy of
22 the judgement of conviction. A copy of the presentence investigation
23 report for Deborah Sena. Okay.

24 MR. LOPEZ-NEGRETTE: Your Honor, just a couple things.

25 THE COURT: Hold on.

1 MR. LOPEZ-NEGRETE: Okay.

2 THE COURT: With respect to Terrie Sena, I'm going give you
3 a copy of the judgement of conviction. In reviewing the presentence
4 investigation report, the statement that she provided I've given to you
5 already. Okay. So, other than that I think -- unless I had -- unless there
6 were some compelling reason otherwise that -- she's out here now?

7 UNIDENTIFIED SPEAKER: I think [indiscernible].

8 THE COURT: Okay. Alright. Well Ms. Allen might be here.

9 MS. HOLTHUS: So, you gave them the entire PSI of Deborah
10 and the partial --

11 THE COURT: And the statement --

12 MS. HOLTHUS: -- of Terrie.

13 THE COURT: -- from Terrie. Mm-hmm. Let's see if she's --

14 MS. RADOSTA: Yeah. That's --

15 THE COURT: Here she is. She's out.

16 MS. RADOSTA: Yeah.

17 THE COURT: Okay. Ms. Allen, thank you so much for joining
18 us this morning.

19 MS. ALLEN: Yeah. Good morning. Sorry.

20 THE COURT: I got your --

21 THE COURT: -- I got your email and I expressed that to the
22 parties. I was just at the position right now. She had made a statement
23 for her sentencing. I provided that to the defense, okay.

24 MS. ALLEN: The -- you mean on the PSI or actually --

25 THE COURT: Yeah.

1 MS. ALLEN: -- in court?

2 THE COURT: A separate statement.

3 MS. ALLEN: Yeah.

4 THE COURT: Yeah.

5 MS. ALLEN: Which I'm okay with that.

6 THE COURT: Okay. Alright. So in looking at the PSI I can't -
7 - I don't know of any other information that -- well, Mr. Negrete had
8 indicated previously that there were some things that they think that they
9 could be able to cross-examine on based on some of the history that
10 she's provided.

11 MS. ALLEN: Can they -- I mean, if you can articulate. I mean,
12 maybe I just --

13 THE COURT: That's what I was getting to right now --

14 MS. ALLEN: Okay.

15 THE COURT: -- when you just were coming in, so.

16 MS. ALLEN: Okay.

17 THE COURT: So, I've -- I have provided a copy of the PSI for
18 Deborah to do that.

19 MS. ALLEN: Okay.

20 THE COURT: Based on the representations of his counsel.
21 So, Mr. Negrete?

22 MR. LOPEZ-NEGRETTE: So, I guess following up on that
23 point. Obviously the PSI does contain a psychosocial history section.
24 And so that does discuss the offender's background regarding any
25 possible abuse that they may have had as a child or growing up. And

1 then also discussing any relationship dynamics that happened in this
2 case regarding Terrie and Chris. And so, I'm not sure if that information
3 made it into the PSI. I think that would be relevant obviously for us to
4 have and to be able to use for cross-examination.

5 And, Your Honor, following up on the other issue that we
6 discussed last time when I was requesting the notes of the PSI writer
7 herself I did follow up and I contacted Ms. Roardon [phonetic]. I left a
8 message last week. I left a message this week. I left a message for her
9 supervisor. Didn't hear anything back.

10 That does encompass -- or that's still part of our request to get
11 the notes because in my view of it basically it's another interview
12 performed by an agent of the State on a adverse witness for us. It's the
13 same as if a police officer had interviewed Terrie or Deborah and then
14 you would have some redactions regarding exactly what they talked
15 about.

16 Obviously it wasn't recorded, but that's basically in my view
17 the same type of situation that we have here. And that's why I think it's
18 appropriate to release it.

19 THE COURT: Okay. Well that's what I addressed to you with
20 regards to the statute under 213.1075. But in my reviewing of the
21 presentence investigation report for Terrie, I don't know. Ms. Allen, I'll
22 have you take a look at it to kind of remind and --

23 MS. ALLEN: Yeah. I had -- I honestly don't have a copy of it.

24 THE COURT: Alright. Here's one right here. Go ahead.

25 MS. ALLEN: I'm doing a post-conviction so --

1 THE COURT: The --

2 MS. ALLEN: Does this include the evaluation?

3 THE COURT: No. That's the presentence investigation
4 report. The -- I think that something that maybe -- maybe -- what they're
5 talking about is regards to the -- maybe the mental health history and
6 substance abuse history.

7 MS. ALLEN: That -- I mean, I'd be okay with that.

8 THE COURT: Okay.

9 MS. ALLEN: I mean, if they -- if that's -- I just --

10 THE COURT: Do you want to -- do you want to -- do you want
11 to --

12 MS. ALLEN: I guess my concern is the --

13 THE COURT: Mm-hmm.

14 MS. ALLEN: -- the obviously any of the socials, driver's
15 license --

16 THE COURT: Right. Right. Right.

17 MS. ALLEN: All those things. I just --

18 THE COURT: Do you want to -- do you want to take a minute
19 and look that over and see whether or not there's other things that you
20 have a concern with? I can't see -- Mr. Negrete, here's the problem is
21 that you're basically throwing something at the Court here to make a
22 determination whether or not you'd be entitled to something that you
23 can't even tell me what your purpose is other than to look at it to see if
24 there's something to help you. That's the problem.

25 MR. LOPEZ-NEGRETE: I mean, I think it falls under *Brady*,

1 Your Honor.

2 THE COURT: How?

3 MR. LOPEZ-NEGRETTE: Because --

4 THE COURT: You can't just say, Judge, we'll fish for this and
5 if it's there --

6 MR. LOPEZ-NEGRETTE: No, no, no.

7 THE COURT: If you tell me there's something, I mean, that's -
8 -

9 MR. LOPEZ-NEGRETTE: Again, if it's having to do with any
10 history of abuse that she suffered growing up.

11 THE COURT: Yeah. I --

12 MR. LOPEZ-NEGRETTE: Any type of abuse that she suffered
13 obviously in the course of the marriage with Mr. Sena.

14 THE COURT: Well, I don't -- I --

15 MR. LOPEZ-NEGRETTE: If there are any other issues
16 regarding this type of abuse which is the whole subject of this trial and
17 she's testifying against him directly, I think that that is definitely relevant.
18 And at least for --

19 THE COURT: Other than the statement that she provided to
20 you there's nothing in here that actually is stating that -- that has
21 anything to do with your client as to abuse. I mean, that's -- she does
22 say that she had an issue in a previous divorce.

23 MR. NEGRETTE: Right. And, I mean, without getting too
24 detailed about it -- if this -- I mean, I know that Ms. Deborah Sena in her
25 sentencing obviously talked about being a battered woman, right.

1 THE COURT: Yeah. That's not here.

2 MR. LOPEZ-NEGRETTE: And that's -- that's basically the
3 testimony that we're going to have in this situation for both of them,
4 right? That they were forced into this type of behavior.

5 THE COURT: Okay.

6 MR. LOPEZ-NEGRETTE: If there's any history of this with Mr.
7 Sena or with somebody else, then I think that's definitely relevant for us
8 to -- to have.

9 MS. ALLEN: I wouldn't oppose of releasing page three.

10 THE COURT: Okay.

11 MS. ALLEN: I don't think that -- that's an issue.

12 THE COURT: Alright.

13 MS. ALLEN: The rest of it -- I just can't -- I don't know what
14 the -- how this would help in any way? I mean, I'm looking at it from a
15 defense perspective.

16 THE COURT: Right. No. I see. I understand.

17 MS. ALLEN: I'm not, you know, trying to impede anything but
18 obviously protecting my client.

19 THE COURT: Mm-hmm.

20 MS. ALLEN: And I just don't see how any of that would help.
21 But I don't have a problem releasing page three. The statement she
22 already has. The rest is like an offense synopsis from Metro --

23 THE COURT: Right.

24 MS. ALLEN: -- which comes directly from a police report.

25 THE COURT: Right.

1 MS. ALLEN: Yeah.

2 THE COURT: Okay. Alright. So, I'll go ahead and make that
3 decision then and I'll go ahead and release to -- I'm going to have this
4 marked completely and then I'll give page three to them. That's the part
5 that I was talking about with regards to mental health history and
6 substance abuse history. So, I'm just going to rip this off and give it to
7 you, okay.

8 MS. ALLEN: Is this -- does the Court want this copy back?

9 THE COURT: Yes. Yes. Yes.

10 [Colloquy between the Court and the Clerk]

11 THE COURT: Okay.

12 MR. LOPEZ-NEGRETTE: Your Honor, I have one last thing on
13 this particular subject.

14 THE COURT: Uh-huh.

15 MR. LOPEZ-NEGRETTE: In looking at the transcript for Ms.
16 Terrie Sena's sentencing in front of Judge Earley there was mention by
17 Mr. Pitaro of a statement that Terrie wrote and that then they submitted
18 to the court. The transcript is unclear if that statement is the one that the
19 court already gave us as part of the PSI.

20 THE COURT: Oh, I have no idea.

21 MR. LOPEZ-NEGRETTE: And so I think Mr. Sweetin was
22 present at that hearing, but just to be complete I want to make sure I get
23 that as well. I've tried to obtain it through the courts and they -- they say
24 they can't provide it to me I guess because we're not attorney of record.
25 And so, I just want to make sure that there isn't another statement that

1 Terrie submitted as part of her sentencing.

2 THE COURT: We're going to look and see. We're going to
3 look and see if there's something else that was filed that way. Do you
4 remember, Mr. Sweetin? If it was something --

5 MR. SWEETIN: I don't remember there being a separate
6 statement.

7 THE COURT: Okay.

8 MR. SWEETIN: I just remember the one statement. So it
9 would be something I would not be aware if there was something.

10 THE COURT: Okay.

11 [Colloquy between the Court and the Clerk]

12 MR. LOPEZ-NEGRETTE: Yeah. The sentencing
13 memorandum I have.

14 THE COURT: Okay.

15 MR. LOPEZ-NEGRETTE: And it does have some letter from --
16 from other people. But the transcript for the sentencing itself says that
17 Terrie herself wrote a statement.

18 THE COURT: Okay.

19 MR. LOPEZ-NEGRETTE: And so I don't know if it's different
20 than the one that we have now.

21 THE COURT: Mm-hmm.

22 MS. RADOSTA: This -- this definitely appears as though it
23 was written and attached to the PSI just given what it looks like when --
24 in the transcript when -- you know, we all do it all the time, Judge. My
25 client handed me a letter in court --

1 THE COURT: Yeah.

2 MS. RADOSTA: -- and you walk it up to the judge, so.

3 MS. HOLTHUS: Is that what the transcript says?

4 MS. RADOSTA: Yeah. The transcript says Mr. Pitaro -- I

5 have a -- I have a letter here from my client and I would like to submit it

6 to the court or something essentially.

7 MS. HOLTHUS: That sounds separate.

8 MS. RADOSTA: She wrote a statement and we've agreed to

9 just submit it to the court.

10 THE CLERK: There's nothing that -- there's nothing that was

11 marked as an exhibit at the time of sentencing and there's nothing that

12 was left side filed as a letter provided to the Court. So, I don't know

13 what Judge Earley's process was or procedure was. Judge Kephart has

14 it marked in there as a Court's exhibit or it's a left side filed so it's a part

15 of the record. But I don't know what Judge Earley's procedure was. It's

16 not in -- there's not a record of it.

17 THE COURT: I mean, I don't know what else to tell you. We

18 looked. And that's not to say that there may not be one. Maybe I would

19 reach out to Mr. Pitaro.

20 MR. LOPEZ-NEGRETE: Okay.

21 MS. ALLEN: I have the file --

22 THE COURT: And ask him --

23 MS. ALLEN: I think I have the file.

24 THE COURT: Oh, okay.

25 MS. ALLEN: Yeah.

1 THE COURT: Do you know if there's a --

2 MS. ALLEN: I don't remember seeing -- that kind of stuff -- for
3 the purposes of what I'm doing --

4 THE COURT: Yeah.

5 MS. ALLEN: -- that stuff wasn't really important.

6 THE COURT: Right.

7 MS. ALLEN: Like the PSI things like that. I was looking more
8 at the record and --

9 THE COURT: Okay. Would you mind taking a look at it?

10 MS. ALLEN: No. I don't have a problem.

11 MS. RADOSTA: And honestly even if -- I mean, even if Ms.
12 Allen has a file I know what happens with me in those situations. If a
13 client hands me something in court as often as not I just hand it to the
14 judge.

15 MS. ALLEN: To the judge.

16 THE COURT: No. No. No.

17 MS. RADOSTA: I don't make a copy of it, so.

18 THE COURT: I understand that. You made a record and
19 what I'm telling you is that we've looked to see if there's anything that we
20 could find that's actually been filed. We can't see that. So --

21 MS. RADOSTA: Is there any way we can -- we or the Court
22 could pull the actual hard copy of the file to see if there's something in
23 the hard copy of Terrie Sena's file?

24 THE CLERK: There is no longer a hard copy of the file. We
25 do not keep hard copies. The Court is paperless.

1 MS. RADOSTA: Okay.

2 MS. ALLEN: Oh.

3 MS. RADOSTA: So --

4 MS. HOLTHUS: So is it scanned.

5 THE COURT: So if it's not --

6 MS. RADOSTA: So they're -- and you're not showing
7 anything that would have been scanned as a court exhibit?

8 THE CLERK: I show that there are no exhibits in this case --
9 in Terrie Sena's case and there was nothing filed or left side filed with
10 the Court as far as a letter.

11 MS. ALLEN: I'll look.

12 THE COURT: Do you think it may have been something filed
13 with -- with the --

14 THE CLERK: PSI?

15 THE COURT: No. With their presentence -- I mean,
16 presentence memo?

17 THE CLERK: I looked through the sentencing memo. It
18 wasn't there.

19 THE COURT: Okay.

20 THE CLERK: There wasn't a letter from her. There were
21 letters from a Kimberly somebody.

22 THE COURT: Okay.

23 THE CLERK: And a couple of other people, but they were not
24 the Defendant themselves. That's what I was looking for.

25 THE COURT: Okay.

1 MS. HOLTHUS: Normally though if there had been a letter
2 provided for either left side or regular it would be scanned and it would
3 be there.

4 THE CLERK: Every court -- every judge has --

5 MS. HOLTHUS: Okay.

6 THE CLERK: -- different procedures. I cannot speak to every
7 procedure.

8 THE COURT: I would hope that that's what happened in that
9 department. I can't -- I can't say. I know what we do in this department.
10 And we're supposed to all be consistent in some respect. It's at least
11 with documents and that. So, I --

12 MS. ALLEN: Sometimes judges hand them back. They read
13 them and then hand them back.

14 MS. RADOSTA: Sometimes.

15 THE COURT: Okay.

16 MS. ALLEN: I know that happened before. So maybe it is in
17 a file and I just didn't --

18 THE COURT: Okay.

19 MS. ALLEN: -- care because it wasn't normally what I was
20 doing.

21 THE COURT: Well I always ask when I do mine. I ask them if
22 they want me to consider it. And if they tell me yes, then it becomes part
23 of the file.

24 MS. ALLEN: Right.

25 THE COURT: If they tell me no, then I -- even these ones I

1 remove them and they do not become part of the file 'cause it wasn't
2 something I considered.

3 MS. ALLEN: Mm-hmm.

4 THE COURT: So --

5 MS. HOLTHUS: And for what it's worth State has no objection
6 to defense contacting --

7 THE COURT: Okay.

8 MS. HOLTHUS: -- Judge Earley to see if she can --

9 THE COURT: Well I think they have --

10 MR. LOPEZ-NEGRETE: Right.

11 THE COURT: -- in some respect. And --

12 MS. ALLEN: Yes.

13 MR. LOPEZ-NEGRETE: I may just follow up and see if there
14 is something more they can do.

15 THE COURT: Okay.

16 MS. ALLEN: Yeah.

17 THE COURT: If -- yeah. If she's got something different --
18 ask the track that deals -- used to deal with her.

19 MS. RADOSTA: Mm-hmm.

20 THE COURT: And see what they can tell you. And if they
21 give you something -- I'll try to help you, you know, do what I can do to --

22 MS. RADOSTA: Thanks, Judge, we appreciate that.

23 THE COURT: -- to talk to the Court and find out what she
24 does and --

25 MR. LOPEZ-NEGRETE: Great.

1 THE COURT: In the meantime, I'm going to ask Ms. Allen to
2 look through the files --

3 MS. ALLEN: I will.

4 THE COURT: -- see whether or not there's a copy of
5 something like that in the file.

6 MS. ALLEN: I don't have a problem.

7 THE COURT: And if there is, rather than just turning it over to
8 the defense, let me know so I can make sure to give copies so
9 everybody has it.

10 MS. ALLEN: I will.

11 THE COURT: Okay. Okay. Alright, so --

12 MS. RADOSTA: The only other issues, Judge, are really
13 quick ones housekeeping matters.

14 THE COURT: Mm-hmm.

15 MS. RADOSTA: What is our schedule going to be for the first
16 week or two?

17 THE COURT: We're going to start at 7:30 in the morning and
18 go 'til midnight the first four days. No. No, I'm just kidding.

19 MS. ALLEN: Sounds about right.

20 MS. RADOSTA: Yeah.

21 THE COURT: I'm just kidding. No. We're here -- the case
22 I'm in right now we've been here -- we go 'til seven 'cause we're just
23 trying to -- it's a mess, so.

24 MS. ALLEN: May I be excused?

25 THE COURT: Yes. Thank you, Ms. Allen.

1 MS. ALLEN: Thank you. No problem.

2 THE COURT: I appreciate you coming by.

3 MS. ALLEN: Sorry I was late.

4 THE COURT: Okay. Well, on Monday and Wednesdays I try
5 to get started by eleven. On Tuesdays I usually am able to get started
6 by 10:30, 11 o'clock. I'll let you know hopefully the day before where
7 we're at on it. We're not starting on this case until Wednesday.

8 THE CLERK: Correct.

9 THE COURT: That date I think -- I think we already talked
10 about it starting at 1; is that right on that date on Wednesday?

11 THE CLERK: It's not a big calendar and I'm not --

12 THE COURT: It's not. Okay.

13 THE CLERK: -- setting anything else on it.

14 THE COURT: Alright.

15 THE CLERK: I think we should be able to start by 11:30.

16 THE COURT: By 11 -- okay. Thursday that week we have all
17 day, so we'll go from 9 o'clock if you want or I'll start earlier at 8:30 and
18 go 'til 5 o'clock. I give everybody lunch, give them breaks and that.
19 Friday same thing. Same time frame.

20 MS. RADOSTA: Your Honor, I would just ask on that Friday if
21 we could start at 9. I have a doctor's appointment that I cannot move.

22 THE COURT: Okay.

23 MS. RADOSTA: It's been on --

24 THE COURT: That's fine.

25 MS. RADOSTA: -- but it's early, so.

1 THE COURT: Let's just plan on the days that I gave you the
2 full date. We'll start at 9, okay.

3 MS. RADOSTA: Thank you.

4 THE CLERK: That's the 7th?

5 MS. RADOSTA: Yes.

6 THE COURT: Yeah. So we'll just start at 9.

7 MS. RADOSTA: Start at 9. I appreciate that, Judge.

8 THE COURT: And then -- and then depending on my
9 calendars on Monday, Tuesday and Wednesday, occasionally
10 Thursdays I have hearings or I have a civil calendar as well.

11 MS. RADOSTA: That gives us --

12 THE COURT: Fridays you have all day.

13 MS. RADOSTA: Okay.

14 THE COURT: And I always let the jury kind of give us an
15 understanding what they want to do. If you are all have witnesses and
16 we're in the middle of the end -- close to the end of the day and the jury
17 wants to keep going and you guys can keep going, then I try to do that.

18 MS. RADOSTA: Okay.

19 THE COURT: Okay. I don't plan on doing any Saturdays so
20 don't think about that. I've done it in the past --

21 MS. RADOSTA: I --

22 THE COURT: -- because jury's want it. You know they want
23 to get done. They don't want to come back on Monday and they say
24 could we finish. We did it -- you know we've done that. But I don't plan
25 that. And besides your issue --

1 MS. RADOSTA: Mm-hmm.

2 THE COURT: -- Ms. Holthus has asked about possibly having
3 one day at the end of September for an event that she has and I want to
4 -- I want to ask you to -- let's see where we're at 'cause we may be
5 done. I mean, I don't know.

6 MS. HOLTHUS: No. I understand, but we're trying to book
7 flights.

8 THE COURT: Okay.

9 MS. HOLTHUS: And so, I can't --

10 MS. RADOSTA: We -- I think it was the 21st, Judge, which
11 would put us barely to --

12 THE COURT: I thought it was the 29th?

13 MS. RADOSTA: Was it the 21st?

14 THE CLERK: It was the 21st.

15 MS. HOLTHUS: The 21st.

16 THE COURT: The 21st.

17 THE CLERK: Friday the 21st.

18 MS. RADOSTA: I highly doubt --

19 THE COURT: Okay.

20 MS. RADOSTA: -- we'll be done that --

21 THE COURT: Alright. Okay. So --

22 MS. HOLTHUS: But I --

23 MS. RADOSTA: And we have no objection.

24 MS. HOLTHUS: -- anticipate we would probably still be in -- I
25 just knew that -- there was a couple questionnaires --

1 THE COURT: Alright.

2 MS. HOLTHUS: -- that also were asking about the 21st. I
3 don't know if there was anything special. But I --

4 THE COURT: Okay.

5 MS. HOLTHUS: -- I can't. I got to book a flight.

6 THE COURT: Alright. Well just plan it. We'll go ahead and
7 be dark on the 21st.

8 MS. HOLTHUS: I appreciate it.

9 THE COURT: Okay. That way you can --

10 MS. HOLTHUS: Thank you.

11 THE COURT: -- make your arrangements. What you need to
12 do and --

13 MS. RADOSTA: The only other thing, Judge, is how do you
14 do jury selection? Do you do individual? Do you do panel?

15 MS. HOLTHUS: Can I just ask one thing before we get to
16 that? I just want to make this record.

17 MS. RADOSTA: Yeah.

18 MS. HOLTHUS: I'm sorry. I had asked Ms. Radosta. You
19 had granted our motion to dismiss their expert notice and so I asked if
20 they were going to be considering refiling it with more specifics or more
21 information. And I just want to make a record that that has not been
22 done.

23 THE COURT: Okay.

24 MS. HOLTHUS: So, as far as we know they're not calling an
25 expert.

1 THE COURT: Okay. You were asking about jury selection.

2 MS. RADOSTA: Yeah.

3 THE COURT: Okay. The way I conduct jury selection is that
4 in this particular case because there's so -- because of the
5 questionnaires, many of the questions I'll be asking are going to be
6 limited because it's already in the questionnaire.

7 MS. RADOSTA: Right.

8 THE COURT: And so I'm going to tailor my initial questions to
9 that.

10 MS. RADOSTA: Okay.

11 THE COURT: I question the whole panel that I have here.
12 And since we don't have a lot of room we're going to try -- we're going to
13 be setting up chairs. We're going to bring in hundred individuals the first
14 day. I'm going to put thirty -- what do we fit -- thirty-four --

15 THE CLERK: Yeah. Thirty-four in the box.

16 THE COURT: Thirty-four individuals in the jury box, out in
17 front, and in the well, okay. The -- I'll ask the whole group that's in here
18 a certain set of questions and then I go to just the box. And then once
19 I'm done asking questions of the whole group, I'll have you all come up
20 we'll talk about the cause. And based on that if anyone in this group
21 here is removed for cause we just bring people in from this group and
22 put them in there.

23 Then I ask just this group, and then when I'm done with that
24 just with my questions then I have you also address the Court, ask for
25 cause for just that group. Some may be removed then.

1 Now, put them back in. I just ask them the simple questions
2 that I've asked previously. Then I turn it over to the State. I don't
3 require them to pass for cause until you're done asking this -- asking this
4 group the questions as well. Then I ask you to approach. Then based
5 on that I'll have you tell me what you want to do. We address it. You
6 may pass for cause then, you may not, okay.

7 Then, if we get this group the 34 I'll release everyone else.
8 Once we get to this 34, then that's who you'll be challenging in your
9 peremptories

10 MS. RADOSTA: Okay.

11 THE COURT: Because of the nature of the offense here
12 there's eight peremptory challenges for each side. And you have -- I'm
13 going to put four -- four -- did I say four or six -- four alternates in. So,
14 now you'll be allowed however one peremptory challenge for the
15 alternates. Okay.

16 MS. RADOSTA: I'm sorry, so -- I'm sorry. You said four or six
17 alternates?

18 THE COURT: Four. Four.

19 MS. RADOSTA: Four. Okay.

20 THE COURT: Okay.

21 MS. RADOSTA: I think that answers all my questions about
22 selection.

23 THE COURT: Okay.

24 MS. RADOSTA: Did you have anything else?

25 MR. LOPEZ-NEGRETTE: So then when we get the panel, do

1 we go individually one by one? Or we can address the whole panel?

2 THE COURT: Well, I try to get you to -- my preference is that
3 you ask questions of the whole panel, but often times that will -- that will
4 prompt the responses that you need to go to individuals.

5 MR. LOPEZ-NEGRETE: Okay.

6 THE COURT: And then I ask that you don't re-ask the
7 questions that I've asked already unless you want to address a specific
8 answer based on that question. Also the -- you have the jury
9 questionnaires that probably should assist you in, you know, couching
10 your questions based on the jury questionnaire. And so I -- but to start
11 juror number one and then just ingratiate yourself with them, and juror
12 number two ingratiate yourself -- I don't --

13 MR. LOPEZ-NEGRETE: Okay.

14 THE COURT: -- I don't like that. If you have specific
15 questions for them that's fine. I don't have any problem with that. And I
16 certainly try not to get involved in your jury questions unless I think that
17 there's something inappropriate by -- and I would expect that that would
18 prompt an objection from the other side, okay. So, I mean --

19 MS. RADOSTA: Thanks, Your Honor. And I would presume if
20 necessary you'll allow us potentially to question witnesses -- or
21 witnesses -- jurors outside the presence if necessary if we're worried
22 that potentially they could -- what's the word I'm looking for --

23 THE COURT: Contaminate.

24 MS. RADOSTA: Yeah. The rest of the panel based on
25 answers in their jury questionnaire and or if they're talking about

1 something particularly.

2 THE COURT: Well we'll have to see --

3 MS. RADOSTA: Okay.

4 THE COURT: -- in that point in time. I'll listen to it and see
5 what your positions are with that. But I -- that's not a preference of the
6 Court.

7 MS. RADOSTA: Okay.

8 THE COURT: But I understand that under some
9 circumstances we may need to do that.

10 MS. RADOSTA: Okay.

11 THE COURT: Okay.

12 MS. RADOSTA: Alright.

13 THE COURT: Alright.

14 MS. RADOSTA: And -- could we just approach on one other -
15 -

16 THE COURT: Sure.

17 MS. RADOSTA: -- matter.

18 [Bench conference - not transcribed]

19 THE COURT: Alright. So, if there's nothing further with
20 regards to this and then we have the trial scheduled for the fourth, I'll
21 see you all back on the fourth. We're going to get started by --

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MS. RADOSTA: The 5th.

MS. HOLTHUS: Fifth.

THE COURT: -- I mean the fifth. I'm sorry. We're getting started by the -- by eleven. Okay.

MS. RADOSTA: Thanks, Judge.

THE COURT: Alright. Thank you

[Hearing concluded at 8:36 a.m.]

* * * * *

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.



Rubina Feda
Court Recorder/Transcriber

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