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2 IN THE SUPREME COURT OF THE STATE OF NEVADA  
3

4 MAURICE MOORE,	)	No. 79817	Electronically Filed Feb 13 2020 01:16 p.m. Elizabeth A. Brown Clerk of Supreme Court
	)		
5 <i>Appellant,</i>	)		
	)		
6 <i>Vs.</i>	)	Dist. Ct. No. C-17-324535-1	
	)		
7	)		
8 THE STATE OF NEVADA,	)		
	)		
9 <i>Respondent.</i>	)		
10	)		
11	)		
12	)		
13	)		
14	)		

15  
16  
17 **APPELLANT'S APPENDIX I**

18 (Appeal From Judgment Of Conviction)

19  
20 ROBERT M. DRASKOVICH, ESQ.  
21 Nevada Bar No. 6275  
22 815 S. Casino Center Blvd.  
23 Las Vegas, Nevada 89101-6718  
24 (702) 474-4222  
25 Attorney for Appellant  
26  
27  
28

STEVE WOLFSON, ESQ.  
Clark County District Attorney  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155  
(702) 455-4711  
Counsel for Respondent

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Arrest / Detective Report

**Administrative**

Location 10332 Faustine Ave Las Vegas, NV 89129 Sector/Beat X1  
 Occurred On (Date / Time) Sunday 2/26/2017 1:30:28 AM Or Between (Date / Time) Sunday 2/26/2017 4:08:31 AM  
 Reporting Officer 13246 - Carral, Michael S Reported On 2/26/2017  
 Entered By 13246 - Carral, Michael S Entered On 2/26/2017 4:06:33 AM  
 Supervisor 09371 - Richmond, Stuart A Follow Up Pro Squad NW 14 Follow Up  
 Jurisdiction Las Vegas, City of Report Type Disposition Arrest  
 Route To: Related Cases  
 Connecting Reports Voluntary Statement

Assisting Officers:  
 13756 - Brumaghin, Anthony J Officer  
 13515 - Stark, Joshua J Detective

**Offenses**

Statutory Sex Seduction By Pers, 21+(F)-NRS 200.368.1

Completed Yes Hate/Bias Domestic Violence No  
 Entry Premises Entered Type Security Location Type Parking Lot/Garage Tools  
 Weapons Criminal Activities

**Victims**

Name: Martinez, Alexia

Victim Type Individual Written Statement Yes Can ID Suspect Yes  
 Victim of 50115 - Statutory Sex Seduction By Pers, 21+(F)-NRS 200.368.1 Domestic Battery No  
 SSN DOB 12/10/2002 Age 14 Sex Female Race White Ethnicity Not Hispanic or Latino  
 Height 5' 7" Weight 180 Hair Color Black Eye Color Brown  
 Employer/School Occupation/Grade DLN Work Schedule  
 Resident Resident DL State DL Country Tourist Departure Date  
 Injury Injury Weapons

Addresses  
 Residence 10332 Faustine Ave Las Vegas, NV 89129 Clark United States

Phones  
 Cellular (725) 200-8611

Email

Offender Relationships  
 A - Moore, Maurice Victim Was Stranger

Domestic Violence Information  
 Relationship to Suspect Intimate Relationship Primary Aggressor Determined  
 Voluntary Statement DV Information Provided  
 Injury Severity Medical Attention  
 Photos Taken

Notes:

**Suspects**

**Arrestees**

Arrestee Name: Moore, Maurice

Written Stmt. No Alerts Non-English No Language

2/26/2017 11:15 AM 17F03314X - MOORE, MAURICE LLV170226000295

Scope ID new DOB 3/20/1975 Age 41 SSN 551-49-2072  
 Race Black or African American Ethnicity Not Hispanic or Latino Build Medium Handedness Right  
 Sex Male Height 5' 9" Weight 170 Hair Color Black Eye Color Brown  
 Employer/School Occupation/Grade  
 Hair Length Bald / Shaved Hair Style Thin Eyes Normal  
 Complexion Dark Facial hair Teeth Normal  
 Appearance Casual Clothes Injury/Condition  
 Speech manner Not Unusual Speech Characteristics Not Unusual  
 DLN DL State California DL Country United States  
 Resident Resident Tourist Departure Place of Birth San Francisco, Ca  
 Habitual Offender Status MO Factors Victim Raped Vaginally  
 Victim Raped Anally  
 Primary Means of Attack/Weapon Personal Weapons (Hands, Feet, Teeth, etc.) Weapon Features  
 Employer/School Occupation/Grade

**Scars, Marks and Tattoos**

Tattoo Arm, right Tattoo Jaugar

**Addresses**

Residence 6339 Ancicl Ave Las Vegas, NV 89129 Clark United States

**Phones**

Cellular (725) 200-8611

**Domestic Violence Information**

TPO in Effect Drug/Alcohol Involvement Voluntary Statement  
 Injury Severity Medical Attention DV Info provided  
 Photos Taken Arrestee Demeanor

Notes:

**Witnesses**

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**Other Entities**

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**Properties**

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Type: Automobile (not Stolen or Recovered)

Status	Used In The Crime	Quantity	1	Value	60,000.00	Color	Blue
Description	03 Astin Martin						
Manufacturer	Astin Martin	Model	DV7	Serial No./VIN	2HGFG3B85CH531447		
Vehicle Year	2003	Body Type	2-door				
Lic Plate #	IAMSUM	Lic Plate State	California	Lic Plate Exp	03/26/18		
Insurance Company	GCO						
Owner	A - Moore, Maurice						

Notes:

**Detailed Property Information**

Length	Width	Height
Horse Power	Propulsion Serial #	
Caliber	Barrel Length	
Features		

**Recovered Property Information**

Recovered Date	Recovered Value
Recovered Location	Recovered Reason
Recovered By	Recovered Stock #
Owner Type	Released To
Insurance Rep.	Tow Company

**Solvability**

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## Modus Operandi

### MO General

Occupied? Yes  
General Premise Vehicle  
MO Against Property  
Entry Point  
Entry/Attempt Method  
Safe Entry  
Victim Location  
Maid

Surrounding Area  
Specific Premise Middle of Block  
Parking Lot

Exit Point  
Entry Tool  
Suspect Actions  
Electronic Locks  
Inspectress  
Entry Location  
Vehicle Entry  
Additional Factors  
Video Surveillance

### MO Against People

Victim-Suspect Relationship  
Victim Condition Alone  
Suspect Pretended to Be Seeking Someone  
Sexual Acts Anal Intercourse  
Oral Sex  
Vaginal Intercourse

Pre-Incident Contact None  
Suspect Solicited/Offered Sex  
Suspect Actions Other  
Vehicle Involvement Suspect in Vehicle

## Narrative

On 02/26/17 at approximately 0123 hours, I Officer M. Carral P#13246 operating as marked patrol unit 1X11 along with Officer A. Brumaghin P#13756 1X44 was dispatched to a missing person call located at 10332 Faustine St Las Vegas, NV89129. Per the details of the call the person reporting Nava, Maria stated her daughter was missing. Maria stated her daughter was last seen 20 minutes ago Martinez, Alexia DOB 12/10/02 (14years old) ID# 8299118. Maria then stated she was last seen wearing Black shirt and dark leggings. Maria then recalled and stated her daughter had returned and now she battered her daughter. Dispatched then changed the call to a domestic violence call.

Upon arrival, I made contact with Alexia, who stated her Mother had slapped her twice in the face with an open hand for leaving the house without permission. Alexia had a small scratch on the side of her cheek. I then spoke with her Mother, who was upset that she had left the house without permission. Maria then stated he had hit Alexia because she had ran away. Maria then stated Alexia had been talking and texting a guy that had just dropped her off and was still in the area. Maria then stated she had just texted the unknown male to come back posing as Alexia. The male agreed and stated he was outside the house. Officer Brumaghin, A P#13756 then attempted to locate the male.

Officer Brumaghin then located a black male adult later identified as Moore, Maurice 03/20/75 inside a blue 04 Aston Matrln bearing personalized California Plate "IamSum". A local records check revealed the vehicle returned to Moore, Maurice 03/20/75. Moore was sitting inside his vehicle in the passenger seat with the vehicle turned off outside 10332 Faustine St Las Vegas, NV 89129.

I then made contact with Moore, who stated he had just been inside the vehicle with Martinze, Alexia DOB 12/10/02. Moore went on to say he had met Alexia on a social media site named "Tinder". Moore told Officers he made out with Alexia but did not have sex with her. Moore consented to a pat down for weapon and officers noticed Moore had several white stains outside his sweat pants next to his genital area that looked like semen secretions.

Officers then spoke with Alexia who stated she met Moore over the Tinder app and he came to her house to pick her up. Alexia then stated she had sexual intercourse with Moore inside his car prior to her returning home. She stated she had sex with Moore inside the passenger seat of his car and told officers he climbed on top of her and believes he used a condom. She then stated it was not consensual and she requested Moore stopped multiple times. Alexia stated she consented to making out with him but he made her give him oral sex by forcing her head down on him. She then stated he pulled down her pants and penetrated her vaginally. Alexia stated she asked him to stop but stated Moore kept thrusting. Alexia then stated Moore exited her vagina with his Penis and then inserted his penis inside her anus. At this time Alexia started crying and Moore then stopped and then inserted his Penis back inside her Vagina until he Finished. Alexia then pulled her pants back up and Moore stated "You're going to be ok". Alexia then stated she exited his vehicle and then went home.

Moore was then placed under arrest and read his Miranda rights. Moore then stated, "Yes, I understand". Moore then went on to say he made out with Alexia but denied having any penetration with her and told Officers Alexia told him she was 18 years old.

Alexia was then taken to UMC hospital for an SA examine. Detective Stark from Sexual Assault came out and took over the investigation. Moore was transported to Head Quarters to be interviewed.

### Patrol Follow-Up

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**JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
  
Plaintiff,  
  
-vs-  
  
**MAURICE TERRANCE MOORE  
#7039952,**  
  
Defendant.

CASE NO: 17F03314X

DEPT NO: 1

AMENDED  
CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of **SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (Category A Felony - NRS 200.364, 200.366 - NOC 50106)** and **LEWDNESS WITH A CHILD UNDER THE AGE OF 16 (Category B Felony - NRS 201.230 - NOC 58747)** in the manner following:

That the said Defendant, on or about the 26th day of February, 2017, at and within the County of Clark, State of Nevada, <sup>25-26th</sup>

COUNT 1 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

did then and there, willfully, unlawfully and feloniously sexually assault and subject A.M., a child under sixteen years of age, to sexual penetration, to wit: fellatio, by Defendant placing his penis on and/or into the mouth of A.M.

COUNT 2 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

did then and there, willfully, unlawfully and feloniously sexually assault and subject A.M., a child under sixteen years of age, to sexual penetration, to wit: sexual intercourse, by Defendant inserting his penis into the genital opening of A.M.

COUNT 3 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

did then and there, willfully, unlawfully and feloniously sexually assault and subject A.M., a child under sixteen years of age, to sexual penetration, to wit: sexual intercourse, by Defendant inserting his penis into the genital opening of A.M.

//

//

1 COUNT 4 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE  
2 did then and there, willfully, unlawfully and feloniously sexually assault and subject  
3 A.M., a child under sixteen years of age, to sexual penetration, to wit: anal intercourse, by  
4 Defendant inserting his penis into the anal opening of A.M.

5 COUNT 5 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE  
6 did then and there, willfully, unlawfully and feloniously sexually assault and subject  
7 A.M., a child under sixteen years of age, to sexual penetration, to wit: anal intercourse, by  
8 Defendant inserting his penis into the anal opening of A.M.

9 COUNT 6 - LEWDNESS WITH A CHILD UNDER THE AGE OF 16  
10 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon  
11 or with the body, or any part or member thereof, of a child, to wit: A.M., a child under the age  
12 of 16 years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or fondle  
13 the breast(s) and/or body of A.M., with the intent of arousing, appealing to, or gratifying the  
14 lust, passions, or sexual desires of the Defendant, or A.M.

15 COUNT 7 - LEWDNESS WITH A CHILD UNDER THE AGE OF 16  
16 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon  
17 or with the body, or any part or member thereof, of a child, to wit: A.M., a child under the age  
18 of 16 years, by Defendant using his hand(s) and/or finger(s) to touch <sup>slap</sup> and/or rub and/or fondle  
19 the buttock(s) and/or body of A.M., with the intent of arousing, appealing to, or gratifying the  
20 lust, passions, or sexual desires of the Defendant, or A.M.

21 All of which is contrary to the form, force and effect of Statutes in such cases made and  
22 provided and against the peace and dignity of the State of Nevada. Said Complainant makes  
23 this declaration subject to the penalty of perjury.

24  
25  
26   
05/01/2017

27 DA#17F03314X/hjc/SVU  
28 LVMPD EV#1702260295  
(TK1)

JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

MAURICE TERRANCE MOORE  
#7039952,

Defendant.

CASE NO: 17F03314X

DEPT NO: 1

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (Category A Felony - NRS 200.364, 200.366 - NOC 50106) and LEWDNESS WITH A CHILD UNDER THE AGE OF 16 (Category B Felony - NRS 201.230 - NOC 58747), in the manner following, to-wit: That the said Defendant, on or about the 26th day of February, 2017, at and within the County of Clark, State of Nevada,

COUNT 1 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

did then and there willfully, unlawfully, and feloniously sexually assault and subject A.M., a child under sixteen years of age, to sexual penetration, to wit: fellatio: by placing his penis on or in the mouth of the A.M., against his or her will, or under conditions in which Defendant knew, or should have known, that A.M. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 2 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

did then and there willfully, unlawfully, and feloniously sexually assault and subject A.M., a child under sixteen years of age, to sexual penetration, to wit: sexual intercourse: by placing his penis into the genital opening of the said A.M., against his or her will, or under conditions in which Defendant knew, or should have known, that A.M. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 3 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

did then and there willfully, unlawfully, and feloniously sexually assault and subject

\* Forward to Sex team \* ASAP.



1 A.M., a child under sixteen years of age, to sexual penetration, to wit: sexual intercourse: by  
2 placing his penis into the genital opening of the said A.M., against his or her will, or unde  
3 conditions in which Defendant knew, or should have known, that A.M. was mentally o  
4 physically incapable of resisting or understanding the nature of Defendant's conduct.

5 COUNT 4 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

6 did then and there willfully, unlawfully, and feloniously sexually assault and subject  
7 A.M., a child under sixteen years of age, to sexual penetration, to wit: anal intercourse: by  
8 placing his penis into the anal opening of the said A.M., against his or her will, or unde  
9 conditions in which Defendant knew, or should have known, that A.M. was mentally or  
10 physically incapable of resisting or understanding the nature of Defendant's conduct.

11 COUNT 5 - LEWDNESS WITH A CHILD UNDER THE AGE OF 16

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

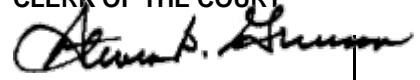
17 COUNT 6 - LEWDNESS WITH A CHILD UNDER THE AGE OF 16

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

23 All of which is contrary to the form, force and effect of Statutes in such cases made and  
24 provided and against the peace and dignity of the State of Nevada. Said Complainant makes  
25 this declaration subject to the penalty of perjury.

26 \_\_\_\_\_  
27 02/27/17

28 17F03314X/lal  
LVMPD EV# 1702260295  
(TK1)



RTRAN

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

THE STATE OF NEVADA,	)	CASE NO. C-17-324535-1
	)	
Plaintiff,	)	DEPT. NO. XX
	)	
v.	)	
	)	
MAURICE TERRANCE MOORE,	)	
	)	
Defendant.	)	
_____	)	

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE  
MONDAY, AUGUST 5, 2019

**RECORDER'S TRANSCRIPT OF HEARING:  
JURY TRIAL - DAY 1**

APPEARANCES:

FOR THE STATE:	STACEY L. KOLLINS, ESQ. Chief Deputy District Attorney
	WILLIAM JAKE MERBACK, ESQ. Chief Deputy District Attorney
FOR THE DEFENDANT:	ROBERT M. DRASKOVICH, ESQ. MICHAEL W. HORVATH, ESQ.

RECORDED BY: ANGIE CALVILLO, COURT RECORDER  
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 DIRECT EXAMINATION

2 BY MS. KOLLINS:

3 Q Hi, Alexia, how are you?

4 A I'm good. How are you.

5 Q I'm good. Can you tell us how old you are today?

6 A I'm 16.

7 Q When's your birthday?

8 A December 10, 2002.

9 Q Okay. Where do you live now?

10 A I live in Kansas.

11 Q Okay. Who do you live in Kansas with?

12 A My stepdad, my mom, my two sisters.

13 Q Did -- how recent did you move to Kansas?

14 A I moved there about a week ago.

15 Q Okay. And planning on attending your next year in  
16 school there?

17 A Yes.

18 Q Okay. Did you travel back here at my request to  
19 talk about this case?

20 A Yes.

21 Q I want to turn your attention to February of 2017.  
22 How old were you?

23 A I was 14.

24 Q And when had you turned 14?

25 A In December.

1 Q And what grade were you in?  
2 A Eighth.  
3 Q Okay. Where did you go to school then?  
4 A Leavitt Middle School.  
5 Q Okay. And who did you live with?  
6 A I lived with my -- my stepdad, my mom, my  
7 grandmother, and my two sisters.  
8 Q What's your mom's name?  
9 A Maria Nava.  
10 Q And what's your stepdad's name?  
11 A Jose -- oh, I'm sorry -- I'm sorry, I forgot my mom  
12 changed her last name. It's Maria Carrillo. I'm sorry.  
13 Q Okay. So now her name is Carrillo?  
14 A Yes, I'm sorry.  
15 Q That's okay. Relax. Do you need some water?  
16 There's some right next to you if you do. Okay?  
17 A Thank you.  
18 Q And back in 2017, was your mom's last name Nava?  
19 A Yes.  
20 Q And what's your stepdad's name?  
21 A Jose Carrillo.  
22 Q And what's the address of where you lived in Las  
23 Vegas?  
24 A 10332 Faustine Avenue.  
25 Q Okay. And is that a house or --

1 A It's a two-story house.

2 Q Two-story house? And all the people you just told  
3 me, they all lived there, right?

4 A Yes.

5 Q And in February of 2017, did you have girlfriends  
6 that you hung out with?

7 A Yes.

8 Q And did you guys talk on social media?

9 A Yes.

10 Q What social media did you do?

11 A Instagram, SnapChat. Things like that.

12 Q Okay. Anything else?

13 A We had a shared Tinder account, me and one of my  
14 friends.

15 Q You shared a Tinder account?

16 A And I had my own.

17 Q I'm sorry?

18 A And I had my own separate to the shared one.

19 Q So you had your own Tinder account and a shared  
20 Tinder account?

21 A Yes, ma'am.

22 Q Okay.

23 MS. KOLLINS: And we have the stipulation on the  
24 photos, correct --

25 MR. DRASKOVICH: Yes.

1 MS. KOLLINS: -- Mr. Draskovich?

2 MR. DRASKOVICH: So stipulated.

3 MS. KOLLINS: Okay.

4 THE COURT: All right. Go ahead, what's the  
5 stipulation?

6 MS. KOLLINS: What do we have marked, Ms. Clerk, 1  
7 through -- we didn't --

8 THE DEFENDANT: The photos are 1 to 101.

9 MS. KOLLINS: Stipulation --

10 MR. DRASKOVICH: And we had previously met, we  
11 previously review all of the photos, and we have no  
12 opposition to their --

13 THE COURT: All right. So --

14 MR. DRASKOVICH: -- being admitted into evidence.

15 THE COURT: -- you're moving for 1 to 101 to come  
16 in.

17 MS. KOLLINS: Yes, sir.

18 THE COURT: Any opposition?

19 MR. DRASKOVICH: No, Your Honor.

20 THE COURT: Okay. All right. 1 to 101 will be  
21 admitted.

22 (State's Exhibits 1 through 101 admitted)

23 MS. KOLLINS: Continuing, permission to publish,  
24 please, Your Honor.

25 THE COURT: Go ahead.

1 MS. KOLLINS: Thank you.

2 THE COURT: What one is this, I'm sorry?

3 MS. KOLLINS: 45.

4 BY MS. KOLLINS:

5 Q Is that your house, Alexia, back in February 2017?

6 A Yes, ma'am.

7 Q Okay. And whose truck is that out front?

8 A That's my dad's work truck.

9 Q Okay. Getting back to social media. So you had  
10 some friends, and you said you had Instagram.

11 A Uh-huh.

12 Q What was your Instagram name?

13 A It was honeybabylexi.

14 Q Okay. And you said you have a Tinder account that  
15 you shared, and you had a Tinder account by yourself. What  
16 was your name on your Tinder account?

17 A I believe it was Alexia Martinez or Lexi Martinez, I  
18 can't remember.

19 Q Okay. And when did you create your Tinder account?

20 A I think a week before the incident that happened.

21 Q When you created that account, what did you think  
22 that site was for?

23 A I knew some people like -- I knew some people went  
24 on that like to hook up, but what me friends did, they would  
25 hang out with older people because they could give them rides

1 to places and stuff.

2 Q Did you think it was a place to meet boys?

3 A Yes.

4 Q Did you think -- how old did you say you were to get  
5 your account on Tinder?

6 A 18.

7 Q Okay. But you weren't 18, were you?

8 A I wasn't.

9 Q Did you have any way of checking or knowing the age  
10 of the people you were talking to other than their profile?

11 A No.

12 Q Okay. So you said you had the account for about a  
13 week before the incident?

14 A Yes.

15 Q Okay. Did you talk to a lot of people in that week?

16 A I don't recall.

17 Q Did you talk to someone by the name of Nathaniel?

18 A Yes.

19 Q Okay. And when did you start talking to Nathaniel?

20 A Two days prior to the incident, I think.

21 Q Okay.

22 A I --

23 Q And what do you remember about Nathaniel's profile?

24 A I think it said he was 23 or something, something  
25 around that age.



1 Q What else did it say about him, do you remember?

2 A No. I'm sorry.

3 Q It's okay. I have some better Kleenex. Hold on, if  
4 you need it. So it said he was 23. Did it say where he  
5 lived?

6 A I don't remember.

7 Q Okay. Can you tell me what the person looked like  
8 that represented his name as Nathaniel?

9 A He was -- on the pictures I could see that he was  
10 bald, he was African-American, and that -- and that's all I  
11 remember.

12 Q Okay. Do you see the person that called himself  
13 Nathaniel here in the courtroom today?

14 A Yes.

15 Q Where is that person seated today, and what are they  
16 wearing today in court?

17 A They're seated over there, they're wearing a black  
18 suit with a blue shirt underneath it.

19 Q Tie or no tie?

20 A No tie.

21 MS. KOLLINS: May the record reflect identification  
22 of the defendant?

23 THE COURT: The record will so reflect.

24 MS. KOLLINS: Thank you.

25 //

1 BY MS. KOLLINS:

2 Q So the two days before what you call the incident,  
3 do you remember who started talking to who? Whether you  
4 started talking to the person named Nathaniel or he started  
5 talking to you?

6 A I think he started talking to me.

7 Q Okay. In your profile on Tinder did you have any  
8 pictures that exposed body parts?

9 A I don't remember.

10 Q Okay.

11 MS. KOLLINS: Your Honor, we also have a  
12 stipulation to 11 through -- I think you're running out of  
13 time -- 11 through 16, and I need to have the rest of these  
14 marked.

15 THE COURT: Okay. Now, previously, you had  
16 indicated that you had a stipulation as to 1 to 101.

17 THE CLERK: Yeah, those are all.

18 THE COURT: You're saying 11 to 16.

19 MS. KOLLINS: Oh, I apologize, Your Honor.

20 MR. DRASKOVICH: Yes, Your Honor.

21 MS. KOLLINS: I didn't know she counted these in  
22 the photographs.

23 THE CLERK: Yes.

24 THE COURT: All right. So is there anything  
25 between 1 to 101 that you're not objecting to?

1 MR. DRASKOVICH: We're not objecting to any  
2 admission of these exhibits.

3 THE COURT: Okay. All right. So we're good with  
4 the prior admission of 1 to 101 from --

5 MR. DRASKOVICH: Yes, we are.

6 THE COURT: -- the defense perspective?

7 MR. DRASKOVICH: Yes, we are.

8 THE COURT: And you're still wanting all 1 to 101  
9 introduced?

10 MS. KOLLINS: Yes, because some of those pages are  
11 being marked individually instead of as a unit, so yes.

12 THE COURT: Okay. All right. That's fine. I just  
13 to make sure that we're all on the same page now. So 1 to  
14 101 have been admitted.

15 MR. DRASKOVICH: That is correct.

16 THE COURT: All right. You can publish 16 to -- 11  
17 to 16, Counsel.

18 MS. KOLLINS: Okay. Thank you.

19 BY MS. KOLLINS:

20 Q So on Tinder the account that you're speaking with  
21 Nathaniel on, was that the account that you created by  
22 yourself or with Patricia?

23 A Was the account I created by myself, I believe.

24 Q Okay. And did you also have an Instagram?

25 A Yes.

1 Q And that was honeylexibaby?  
2 A Honeybabylexi.  
3 Q Honeybabylexi?  
4 A Um-h'm.  
5 Q Is that a yes?  
6 THE COURT: I'm sorry, you got to answer --  
7 THE WITNESS: Yes.  
8 THE COURT: -- yes or no.  
9 THE WITNESS: Yes.  
10 BY MS. KOLLINS:  
11 Q Okay.  
12 A I'm sorry.  
13 Q That's okay.  
14 A I'm sorry.  
15 Q So I'm showing you admitted 11. Is that from Tinder  
16 or is that from Instagram, do you remember?  
17 A Tinder.  
18 Q That's from Tinder?  
19 A Yes.  
20 Q Okay. Because on the bottom it says Instagram  
21 photos. Do you put Instagram photos into Tinder?  
22 A Yes.  
23 Q Okay. So that's one of your Tinder pictures?  
24 A Yes.  
25 Q And then 13 is that also one of your Tinder

1 pictures?

2 A Yes.

3 Q And it's look like I got -- I got them a little  
4 backwards, Alexia, I apologize. There's 12.

5 A Yes.

6 Q Also one of your Tinder pictures?

7 A Yes.

8 Q And 14? Yes?

9 A Yes.

10 Q And 16?

11 A Yes.

12 Q Okay. So it indicates on the title page of those  
13 that you were 18; is that right?

14 A Yes.

15 Q And it says, Down for anything, I don't care what we  
16 do, LMAO?

17 A Yes.

18 Q And what did that mean?

19 A I didn't -- regardless of -- I didn't care. Like, I  
20 mean, if you wanted to go hang out, if you wanted to go to  
21 the mall, I didn't really care what I did. I just didn't  
22 want to be in my house.

23 Q Okay. So did that in and of itself mean sex?

24 A No. Not inherently, no.

25 Q Okay. So do you remember how Nathaniel reached out

1 to you?

2 A No, I don't really remember.

3 Q Okay. I'm going to need you to take your fingernail  
4 out of your mouth.

5 A No, I don't remember.

6 Q Okay. She's writing down everything we say.

7 A Okay.

8 Q What kinds of things did you start talking about  
9 when you first started talking?

10 A I don't know, I think I was just talking about  
11 myself, like my family and stuff, I think. I really don't  
12 remember. Like, that's --

13 Q Did you tell him you were in college?

14 A I don't -- I don't remember if I did.

15 Q Okay. Is that something that you may have done?

16 A I may have done that.

17 Q Okay. Why would you do that?

18 A To keep going so that people would believe that I  
19 was 18.

20 Q Okay. Why did you want him to believe you were 18  
21 when you first started talking?

22 A I -- I don't know.

23 Q So having just turned 14, was that something that  
24 you had done before is telling people you were 18?

25 A No.

1 Q Had you gone on any other sites and talked to guys  
2 and told them you were 18?

3 A No.

4 Q Okay. Your friend, Patricia, how old was she, the  
5 one that --

6 A She was 15 at the time.

7 Q Okay. So she's a little bit older than you?

8 A Yes.

9 Q Okay. Is this something your parents knew about,  
10 this Tinder account?

11 A No.

12 Q Would they have let you have a Tinder account?

13 A No.

14 Q Now that you -- you know, a couple of years have  
15 gone by, do you have a complete understanding of what Tinder  
16 is?

17 A Yes.

18 Q What is Tinder, as you know it now?

19 A A place where people go to hook up with each other.

20 Q Okay. And hook up?

21 A Have sex.

22 Q Have sex?

23 A Yes.

24 Q Did you know when you first got on Tinder, not after  
25 you were on it for a few days, but when you first got on it,

1 did you know that's what it was for?

2 A I know some people did that. I knew that's what  
3 they did.

4 Q Was that your intent when you got on it?

5 A No.

6 Q So you begin to communicate with this person. Do  
7 you now know him to have a different name?

8 A Yes.

9 Q What name do you know him to have now?

10 A Maurice Moore.

11 Q Okay. When you first begin to communicate with him,  
12 does he ever tell you that my profile -- I know I said I was  
13 23, but I'm really 41 years old?

14 A No.

15 Q Did he ever tell you how old he is?

16 A No.

17 Q Okay. Would that have changed in your mind who you  
18 were talking to, if you knew he was 41?

19 A Yes.

20 Q All right. How would it have changed?

21 A I wouldn't have continued to talk to him.

22 Q Why not?

23 A It was just -- it would have been like too much for  
24 me. I --

25 Q Would have been about three times your age?



1 A Yeah.

2 Q Okay. So does your discussion with him turn  
3 romantic?

4 A Yes.

5 Q Can you tell me about that?

6 A I don't -- I think he was telling me that like I was  
7 pretty and all this stuff, and like that I a nice body and  
8 all these things, and I think I fed into it, and I continued  
9 to flirt back.

10 Q Okay. So he told you you were pretty? Is that  
11 right?

12 A Yeah, something along those lines.

13 Q Okay. And you said you flirted back?

14 A Yes.

15 Q Okay. Did some of your flirting get kind of risque?  
16 Do you know what risque means?

17 A Yes.

18 Q Okay. Did you guys talk about specific sex acts and  
19 body parts and things like that?

20 A Yes.

21 Q Okay. Why did you do that?

22 A I don't know.

23 Q Okay. Well, you're 16 now. Would you get on Tinder  
24 and do that now with someone?

25 MR. DRASKOVICH: Objection. Relevance.

1 THE COURT: Sustained.

2 BY MS. KOLLINS:

3 Q So you don't know why?

4 A No, I don't. I couldn't tell you why I did that.

5 Q Okay. Was that -- do you know if any of your  
6 friends were having that kind of chatter?

7 MR. DRASKOVICH: Objection. Relevance as to what  
8 her friends were doing.

9 THE COURT: I'll overrule.

10 BY MS. KOLLINS:

11 Q You can answer the question.

12 A Yeah, Patricia was. She was -- she was the one that  
13 had -- was telling me about it, and she was -- she was like  
14 seeing some people, and she was like talking to them.

15 THE COURT: Well, now -- now we're beginning to go  
16 far beyond the answer --

17 THE WITNESS: Okay.

18 THE COURT: -- to the question.

19 THE WITNESS: I'm sorry.

20 THE COURT: Answer as to yes, Patricia was, I will  
21 allow. But the remainder of the answer I'll order stricken  
22 and the jury to disregard.

23 THE WITNESS: I'm sorry.

24 BY MS. KOLLINS:

25 Q So that was something you knew about?

1           A     Yes.

2           Q     Okay.  Were you present when she did that?

3           A     Sometimes.

4           Q     Okay.  Did you make a plan to meet with Maurice  
5 Moore?

6           A     I made a -- yes.

7           Q     Okay.  And how many days was that plan after you met  
8 him?

9           A     I'm sorry, can you rephrase it?

10          Q     After you met on Tinder, how many days was it before  
11 you guys came up with a plan to get together?

12          A     I -- I don't -- I don't remember, I'm sorry.

13          Q     Okay.  Would -- do you know how many days before you  
14 got together that you had met him?

15          A     Like a day or two, I think.

16          Q     Okay.  So within that day or two that you'd met over  
17 the course of that 24, 48 hours, did you guys come up with a  
18 plan to get together?

19          A     Yes.

20          Q     And was that a -- tell me about that plan.

21          A     Basically, while my parents were sleeping, I was  
22 going to sneak out to go see him.

23          Q     Did you let him know that you were sneaking out, him  
24 being Maurice Moore?

25          A     Yes.

1 Q Okay. Did you have conversations about your parents  
2 being strict?

3 A I believe I did.

4 Q Have you had a chance previously to review the  
5 Tinder messages?

6 A Some of them.

7 Q Excuse me?

8 A I mean, like I -- review them, no, but like when I  
9 spoke with you --

10 Q Okay.

11 A -- you showed me one.

12 Q Okay. We looked at messages that were taken from  
13 your phone; is that fair?

14 A Yes.

15 Q Okay. Do you remember those messages by heart?

16 A No, ma'am.

17 Q Okay.

18 (Pause in the proceedings)

19 BY MS. KOLLINS:

20 Q Lexi, I'm going to have you --

21 THE COURT: Well, what are we looking at?

22 MS. KOLLINS: State's 18.

23 THE COURT: Okay.

24 MS. KOLLINS: Entered by stipulation.

25 THE COURT: I assume that the stickers aren't part

1 of the exhibits.

2 MS. KOLLINS: No, those are my --

3 THE COURT: Let's pull those off. And then 18.  
4 That's -- that has been admitted, so go ahead.

5 BY MS. KOLLINS:

6 Q Can you see that on the screen there, Lex?

7 A Not really, I'm sorry.

8 Q Okay. Hold on.

9 THE COURT: Does she need to hit the blue light  
10 again?

11 (Pause in the proceedings)

12 BY MS. KOLLINS:

13 Q Bear with me Alexia. There's no good way to do this  
14 apparently. Okay. Now can you see that on the screen next  
15 to you? There's a screen next to you.

16 A Oh.

17 THE COURT: Over toward me there is a screen.

18 BY MS. KOLLINS:

19 Q Right to your left.

20 A It's not on.

21 THE COURT: It's not on?

22 THE WITNESS: No.

23 THE COURT: Let me fix that.

24 (Pause in the proceedings)

25 THE WITNESS: I can see it.

1 BY MS. KOLLINS:

2 Q Can you see it now?

3 A Yes.

4 Q Okay. So what you're looking at, this is State's  
5 18. This is an extraction from your cell phone that starts  
6 on February 23rd, but there's actually some messages before  
7 that; is that fair to say?

8 A Yeah. Yes.

9 Q Okay. So the person -- the message from Nathaniel,  
10 that's to you?

11 A Um-h'm.

12 THE COURT: You need to answer yes or no.

13 THE WITNESS: Yes.

14 BY MS. KOLLINS:

15 Q Okay. And this is in the Tinder application,  
16 correct?

17 A Yes.

18 Q And it starts conversation back and forth with you  
19 being the next Alexia, right?

20 A Yes.

21 Q So February 23rd, let's just start there about three  
22 down.

23 A Okay.

24 Q Is that a yes.

25 A Yes. I said okay.

1 Q So that's 11:53 p.m.?  
2 A Um-h'm, yes.  
3 Q Okay. So it's around midnight?  
4 A Yes.  
5 Q And so you're -- obviously, you guys have been  
6 talking for a few minutes --  
7 A Yeah.  
8 Q -- at midnight on the 23rd; is that fair?  
9 A Yes.  
10 Q And defendant asks you, "How are you," right?  
11 A Yes.  
12 Q And you respond?  
13 A "I'm good."  
14 Q Okay. And he says?  
15 A "Hey, love, sorry I'm responding so late. I had a  
16 long -- long night last night. I just woke up recently."  
17 Q Okay. So it's been about a day since you've talked,  
18 then, right, because those last -- the how are you is from  
19 the 23rd, and we're going into February 24th?  
20 A Yes.  
21 Q Okay. And you've known him for about a day?  
22 A Yes.  
23 Q And he's calling you "love" already?  
24 A Yes.  
25 Q Okay. He asks you what you're up to, is that

1 correct, continuing the same conversation on the 24th?

2 A I can't see it. Can you move it down a little bit  
3 more.

4 Q Oh, sure.

5 A Yeah. Yes, I can see it.

6 Q "What you doing? What you up to?"

7 A "I'm not doing anything. What about you."

8 Q What about you, that's WBU?

9 A Yes.

10 Q And then back from him?

11 A He says, "Just relaxing in bed right now. I'd love  
12 to spend time with you tonight, if you're available. You're  
13 hella pretty to me, and I'm hella attracted to you."

14 Q Okay. Is that the first time he tells you you're  
15 pretty and he's attracted to you or -- I mean, I know it's  
16 the first one we've read, but you've been talking probably  
17 for another day prior to this, so has he said that to you  
18 before?

19 A I don't remember.

20 Q Okay. What do you tell him?

21 A I said, "I can't tonight, my dad's in town, and  
22 wants to take me out."

23 Q Okay. And your dad, is that your real dad or  
24 stepdad?

25 A Yes, my real dad was in town.

26 Q And it rolls over to the next page. And what does



1 he respond to you?

2 A "Okay. I understand. Well, when can I see you? I  
3 really want to spend time with you, and I want you to pick me  
4 over the other guys on twitter" -- I mean, "Tinder," I'm  
5 sorry.

6 Q Okay. And did you respond to him?

7 A No.

8 Q And what does he say?

9 A "So when can I see you?"

10 Q And what do you say back to him?

11 A "I'm not quite sure yet, but I'd love to see you."

12 Q And his response?

13 A "I'd love to see you to. I'm very attracted to you,  
14 and I want to make you feel hella good when we're together.  
15 I promise you that you're going to love the way I make you  
16 feel. I promise you this."

17 Q Okay. And again, you've known each other for about  
18 48 hours, maybe a little more?

19 A Yes.

20 Q And what's the next thing he says to you on February  
21 24th?

22 A "You're hella pretty to me."

23 Q And you say?

24 A "Thank you."

25 Q And then you just told him that your dad's in town  
26 and you can't go out, right?

1 A Yes.

2 Q Okay. And so what does he ask you next?

3 A "So what do you think you'll be available to hang  
4 out? I really want to see you."

5 Q And you tell him?

6 A "I'm not sure."

7 Q And then he says to you?

8 A "I understand. Well, are you talking to anyone else  
9 on Tinder? Have you met anyone else that like -- that you  
10 like?"

11 Q And you tell him?

12 A Can you move it down, please?

13 Q Oh, sorry. I keep thinking you can see it, because  
14 I can see it.

15 A I said, "Not really."

16 Q And then he responds?

17 A "Okay. I feel you. Well, I really want you and  
18 want you to pick me over the other guys, so will you promise  
19 me that you'll give me a chance before you hang out with  
20 another guy? Will you promise me this, yes."

21 Q Okay. And what do you respond to him?

22 A "Okay."

23 Q And then what does he say?

24 A "You promise me, baby, for real?" "Yes."

25 Q So it's been 24, 48 hours, and he's calling you  
26 "baby"?

1 A Yes.

2 Q And what do you tell him?

3 A "Yes, I promise."

4 Q Why did you tell him that?

5 A I'm sorry, what?

6 Q Why did you make a promise back to him if you didn't  
7 really know who he was?

8 A I don't really know.

9 Q And what does he say back to you, Alexia?

10 A "Okay. Thanks, love, I'm happy now. I'm sending  
11 you hella kisses right now, HA, HA. Here's my number. Text  
12 me when you're free."

13 Q And he sends you a phone number?

14 A Um-h'm.

15 Q Is that right?

16 A Yes.

17 Q And then he -- you ask him what?

18 A "Do you have an iPhone?"

19 Q And then he tells you?

20 A "No, I've got an Android. Why do you ask?"

21 Q Now, at this time, you didn't have a phone, did you?

22 A No.

23 Q Okay. You your phone taken away from your parents  
24 over grades or something?

25 A Yes.

26 Q So the phone -- but you were using a phone that had

1 wireless connection to talk to him?

2 A Yeah.

3 Q So that means you were using the WIFI in your house,  
4 but not like the -- not like digits to text on a phone line,  
5 right?

6 A Yes.

7 Q Okay. So -- and you tell him what?

8 A "Oh, I don't know. My phone's being weird, only  
9 letting me text to iPhones."

10 Q Okay. Do you tell him at that point that you don't  
11 have a phone number or did you just keep texting?

12 A I -- I just keep texting.

13 Q Okay. And at this point, are you guys talking in  
14 any other social media besides Tinder?

15 A I think that he -- I think that he got my Instagram  
16 from my Tinder account, and then started talking to me there.

17 Q Okay. Well, let's finish Tinder.

18 A Okay.

19 Q So seeing you've been talking for a while, this is  
20 still February 24th, 6:01, what does he say to you?

21 A He says, " K, well, I can't wait to talk to you and  
22 see you, baby. Just let me know when we can talk and hang  
23 out. I want you hella bad in a real way."

24 Q I'm sorry, I'm at the top. Can you go one up for  
25 me.

26 A Can you bring it down a little bit more so I can see

1 it? And then, okay, it says, "I see. Well, all I'm  
2 concerned is about being with you and spending time with you.  
3 So whatever you got to -- we got to do to make this happen,  
4 that's all that matters to me. Feel me?"

5 Q And then you say?

6 A "Yes."

7 Q Okay. And then you just read that next message that  
8 ends with, "I want you hella bad in a real way," right?

9 A Yes.

10 Q And then it looks like about a hour goes by. Does  
11 he talk to you again?

12 A It says, "You there?"

13 Q Okay. And it looks like we go into the next  
14 afternoon before you respond; is that right?

15 A Yes.

16 Q Okay. And then you start to speak on the afternoon  
17 of the 25th.

18 A Yes.

19 Q Does that look right?

20 A Yes.

21 Q And you have some discussion about talking on the  
22 Tinder account?

23 A Yes.

24 Q And what does he say to you?

25 A He said, "Hey, can you text me because my Tinder  
26 account isn't letting me log in sometimes. I've been trying

1 to log in and message you for the last hour, and it just now  
2 accepted my user name and password."

3 Q And it continues.

4 A "When I launch the APP, I have no idea if it's going  
5 to let me in or not and I don't want to get -- keep getting  
6 block out of my account because -- because then I lose all  
7 contact with you."

8 Q Okay. And what does he send you?

9 A He sends me his number again.

10 Q Okay. And then the next message at 4:20 in the  
11 afternoon from him is?

12 A "I really want to spend time with you, and I don't  
13 want to lose contact with you because of Tinder. So when you  
14 get this message, please call me or text my phone directly  
15 because I can get blocked out of my account at any time, K?"

16 Q Okay. And then a smiley face, right?

17 A Yes.

18 Q Okay. And then it looks like he reaches out again  
19 at 5:09 in the afternoon?

20 A Yes.

21 Q What does he say?

22 A "Hey, love, are you there? Text me or call me on my  
23 cell when you get a chance, K?"

24 Q And did there -- was there a time during the day  
25 several hours where you just stopped responding to him?

26 A Yes.

1 Q Why was that?

2 A I was -- I had -- I was with my biological dad.

3 Q Okay.

4 A I was like with him. I wasn't home.

5 Q And if you weren't supposed to have a phone, could  
6 you have this WIFI phone like in front of parents to talk  
7 back and forth and things like that?

8 A No.

9 Q Okay. So it gets later in the day, and you text him  
10 or message him on Tinder, "Hi?"

11 A Yes.

12 Q Do you see that about 5:19?

13 A Yes.

14 Q And he says?

15 A "Hey, ma, how are you? What are you up to? I want  
16 to talk to you and spend time with you."

17 Q Okay. And then you don't respond immediately, fair?

18 A Um-h'm.

19 Q Is this a yes?

20 THE COURT: I need you to --

21 THE WITNESS: Yes.

22 BY MS. KOLLINS:

23 Q And you say, "Yes, sorry, very bust." Is that  
24 supposed to be "busy"?

25 A Yes.

26 Q Okay. And then 5:50, I mean, you say hi to him

1 about 5:48; is that right?

2 A Yes.

3 Q Okay. And then at 5:50, 2/25, what does he say to  
4 you?

5 A He said, "HA, HA, HA you're hella funny. You keep  
6 saying hi to me. His Alexia, how are you doing today, my  
7 love, HA, HA. Can I see you tonight or are you going to be  
8 busy tonight?"

9 Q Then that looks like there's a duplicate message; is  
10 that right, 5:50 -- 51?

11 A Yeah. Yes.

12 Q Okay. And then you tell him what about the evening  
13 of the 25th?

14 A Not tonight. I won't be home. I'll be nanny.

15 Q I'll be nanny?

16 A Yeah, like I'll be like taking care of someone. I  
17 was taking --

18 Q Taking care of --

19 A I was taking --

20 Q -- your sisters?

21 A Yeah.

22 Q Yeah. Okay. And then he asks you what?

23 A Do you nanny for a family in Las Vegas? Do you live  
24 in Las Vegas? Yes?

25 Q And you tell him?

26 A I live in Vegas.



1 Q Sorry, Alexia.

2 A You're fine.

3 Q So at 6:01, see it rolls over to the second page.

4 It's again from Nathaniel, and at this time, you still know

5 him as Nathaniel, right?

6 A Yes.

7 Q Okay. And what does he tell you?

8 A "Well, I'm very attracted to you, and I want -- I

9 want to put you bae for real, mom, mama."

10 Q Okay. What does put you bae? What does that mean?

11 A I don't know.

12 Q I want to put you.

13 A I don't even know what that means.

14 Q You don't know what that means? Okay.

15 And you tell him?

16 A I said, "We'll see."

17 Q And he responds?

18 A "When can we talk, and when can I spend time with

19 you?"

20 Q And you tell him?

21 A "I'm not sure."

22 Q And he asks you?

23 A Are you interested in me or not really?

24 Q And you tell him?

25 A "I'm interested."

26 Q And he says to you?

1           A     "You can be honest with me.  It's okay if you're not  
2 interested in me.  I completely understand."

3           Q     And then what?

4           A     "Okay.  I just saw your last message."

5           Q     And that's from him to you?

6           A     Yes.

7           Q     And so at the next message, 2:25 that's a smiley  
8 face?

9           A     Yes.

10          Q     Okay.  And then the next message is from you to him,  
11 and we're still on Tinder.  What do you say to him?

12          A     "I truly am."

13          Q     Okay.  So you'd only known him for a couple days.  
14 What were you interested in him?  Like, what did you think  
15 this would be?

16          A     I don't know.  I think this was like probably the  
17 first person that had actually like reached out to me on  
18 Tinder, and I was in -- I was bored and not really -- like, I  
19 wasn't good with my family then, so it was just kind the only  
20 attention I was really getting.

21          Q     Okay.  Did you like it when you were getting that  
22 attention?

23          A     Yes.

24          Q     So we're at 2/25 about 6:07.  What does he say?

25          A     "Okay.  Thanks, love.  I'm very interested in you,  
26 too.  I want to see you, spend time with you ASAP.  I'm

1 matching with other girls, but I don't want them. I only  
2 want you, K?"

3 Q Had you -- you said you had talked to other people  
4 on Tinder. Had you talked to other people for as many days  
5 on Tinder as you talked to this person?

6 A No.

7 Q Had you talked to any other people that called you  
8 bae or love or anything like that on Tinder?

9 A No.

10 Q Okay. On 2/25 we're still around 6:00 p.m., what  
11 did he say?

12 A "When can I talk to you/see you?"

13 Q And then the next message is just about his user  
14 name and password and the APP and such? It's not --

15 A Um-h'm.

16 Q Is that a yes?

17 A Yes.

18 Q Okay. On 2/25 at 6:11, he asks you what?

19 A "Are your parents strict? Will we have to sneak out  
20 to hang out, yes?"

21 Q Okay. Did he know -- because you had conversations  
22 prior to when we started going through these, right?

23 A I think I did. I don't remember.

24 Q Okay. Well, how did he know you lived with your  
25 parents.

26 A I -- I may have told him.

1 Q Okay.

2 A I don't remember, I'm sorry.

3 Q And you hadn't had any voice conversations up to  
4 that point, right?

5 A No.

6 Q Okay. So he knew that you lived with your parents?

7 A Yes.

8 Q And did you discuss that the only way for you to see  
9 him would be for to you sneak out of the house?

10 A Yes.

11 Q Even though that you were telling him that you were  
12 18, you were going to have to sneak out to see him?

13 A Yes.

14 Q And he didn't seem to have any problem with that?

15 MR. DRASKOVICH: Objection. Calls for speculation.  
16 Texts between cell phones.

17 THE COURT: I'll sustain the form of the question.  
18 You can ask it a different way.

19 BY MS. KOLLINS:

20 Q Did Mr. Moore express any concern to you about you  
21 living with your parents or the only way that you could get  
22 together you would have to sneak out?

23 A No.

24 Q And you tell him what?

25 A I have strict parents.

26 Q Okay. And what does he say back?

1           A     "Okay. I get it now. Well, whatever we got to do  
2 to be together, just let me know. I'll sneak out with you  
3 and do whatever it takes to be with you, K?"

4           Q     And you say?

5           A     "Okay."

6           Q     And he says to you?

7           A     "I really want this, and I really want you. So  
8 whatever we got to do to be together."

9           Q     And then it says "I'm" --

10          A     "With it, feel me?" And I said -- I'm sorry. I  
11 said --

12          Q     And you said?

13          A     -- "thank you". Well, it says "yo", but I meant to  
14 say "you".

15          Q     Okay. All right. And then we're still in the same  
16 PM conversation on 6:25. What do you say to him?

17          A     "Maybe we can have sex in your car."

18          Q     Why did you say that?

19          A     I don't know. I don't know why I said that.

20          Q     Is that something you were planning on happening?

21          A     I said it, but I didn't think that it was going to  
22 happen.

23          Q     So did you think through that statement before you  
24 said it to him?

25          A     No.

26          Q     And he tells you what?

1           A     "That's cool. I drive a Maserati. It's kind of  
2 small, but we can make it work. Do you live on the north  
3 side, east side, west side?"

4           Q     And you tell him?

5           A     Northwest.

6           Q     And he tells you what?

7           A     Okay. Well -- okay. "Well, if you can sneak out  
8 tonight, I do love to chill with you, hold you, kiss you,  
9 make love to you. I promise to be really patient and gentle  
10 with you." I'm sorry. I'm sorry. I'm sorry.

11          Q     It's okay.

12                   THE COURT: Take your time.

13 BY MS. KOLLINS:

14          Q     Alexia, let me know if you need a break. Okay? I  
15 know this is hard.

16          A     "I'll kiss you soft and slowly for a very long time.  
17 I even lick your nipples, like those nerves in your nipples,  
18 like a little baby. I promises to get your kitty very, very  
19 wet before we have sex, I promise, K?"

20          Q     And then he says to you what?

21          A     "I'm super clean, too. My breath, my body,  
22 everything is clean, and my pics very recent. I look exactly  
23 like my pics on Tinder."

24          Q     Okay. Did you go look -- did you see his pictures  
25 on Tinder? Is that a yes?

26          A     Yes, I'm sorry.

1 Q That's okay. And there comes a point where the  
2 Tinder APP isn't working and you guys are switching over to  
3 Instagram; is that fair?

4 A Yes.

5 Q And you tell him, looks like on February 25th, that  
6 your Instagram name is honeybabylexi?

7 A Yes.

8 Q And that's kind of the end of the same conversation?

9 A Yes.

10 Q And just skipping to the bottom, and he tells you he  
11 just requested you and his name is Nathaniel Malero?

12 A Yes.

13 Q Is that right at the very bottom? Can you see that?  
14 I'm sorry.

15 A Oh, yes.

16 Q Okay. And is that the name that you knew him by the  
17 whole time you were on Tinder?

18 A I don't remember what the last name was on Tinder.

19 Q But the first name was Nathaniel?

20 A Yes.

21 Q Okay. As it gets closer that that evening is going  
22 to work out as a time to get out, how do you know that that  
23 night is going to be the night that works to get out?

24 A I -- I don't remember, but what I do remember is  
25 that night my parents did go to the casino with my  
26 grandparents, and I thought they were going to be gone for

1 is that correct?

2 A Yes.

3 Q And prior to your testimony today, you were given a  
4 transcript of your first interview with Detective Stark on  
5 February 26, 2017, correct?

6 A Yes.

7 Q And you were given a copy of your prior preliminary  
8 hearing testimony that occurred on June 22nd?

9 A Yes.

10 Q And you reviewed those in preparation for your  
11 testimony today, correct?

12 A Yes.

13 Q You had met with Ms. Kollins on multiple occasions  
14 to go over what your proposed testimony will be; is that  
15 correct?

16 A Yes.

17 Q And I see you looking at her. Is this something you  
18 and she have discussed prior to your testifying today?

19 A I'm sorry?

20 Q Me asking you the question if you've gone over your  
21 statement with her on --

22 A Yes.

23 Q -- prior occasions, that's something you and she  
24 have talked about, correct?

25 A Yes.



1 Q You've gone over what you may or may not remember;  
2 is that correct?

3 A Yes.

4 Q So when you were asked today, well, it's difficult  
5 to remember what happened, you reviewed your prior  
6 statements, prior to testifying, correct?

7 A I've tried.

8 Q I see. You're an intelligent person, correct?

9 A Yes.

10 Q You've done well in school?

11 A Yes.

12 Q In fact, you've been in honors classes?

13 A Yes.

14 Q You'll agree with me that you're intelligent?

15 A Yes.

16 Q My questions today are in no way to demeanor you or  
17 embarrass you. Okay?

18 A Okay.

19 Q You had testified today that you didn't have a  
20 complete understanding of what this Tinder was, correct?

21 A Yes.

22 Q That's not something that you had discussed in your  
23 first -- or your first testimony given to Detective Stark,  
24 correct?

25 A Correct.

1 Q And that's not something that you had testified  
2 concerning in your June 22, 2017 testimony, correct?

3 A Correct.

4 Q That's something that you're coming up with today  
5 for the testimony during this trial, correct?

6 MS. KOLLINS: Objection. Argumentative.

7 THE COURT: No, I'll overrule it.

8 THE WITNESS: I wouldn't necessarily say coming up  
9 with --

10 BY MR. DRASKOVICH:

11 Q Okay.

12 A -- but I'm pretty sure I did express to some extent,  
13 maybe not the extent that I am today, that my intentions on  
14 the APP wasn't to go around sleeping with people and that I  
15 knew that there was some things -- I knew that some of my  
16 friends were on this APP not sleeping with people.

17 Q Okay.

18 A I did have a full understanding it.

19 Q I see. And you agreed that that's something you've  
20 discussed with Ms. Kollins prior to today, correct?

21 A Correct.

22 Q And that you and she have talked about how we can  
23 present this idea that you just didn't know what was going on  
24 with your communications on Tinder, correct?

25 A No.

1 Q I see. You have testified today that you knew some  
2 people hooked up on it, but it was your understanding that at  
3 the time this was some sort of a ride application, correct?

4 A No, I think you misinterpreted me. I said some of  
5 my friends do talk to these older people because they will  
6 give them rides and hang out with them, and all of us were  
7 14. None of us had our license, and our parents wouldn't  
8 take us out whenever we pleased.

9 Q Okay. You'd agree with me that in your  
10 conversations specifically to Mr. Moore, your conversations  
11 with him on both Tinder and Instagram were sexual in nature?

12 A Yes.

13 Q And through your conversations with Ms. Kollins you  
14 would refer to him as the defendant, correct?

15 A Yes.

16 Q Not Mr. Moore, not Maurice, but the defendant; isn't  
17 that right?

18 A I couldn't.

19 Q I'm sorry?

20 A I couldn't. I -- I can't say his name, I'm sorry.

21 Q Okay. What part of his name can't you say?

22 A The whole thing, I can't say it.

23 Q You can't say Maurice?

24 A It's just too much for me.

25 Q Okay. So it's your testimony that you can't say

1 Maurice?

2 A I can say it. I -- I physically can say it.

3 Q I see.

4 A It's just -- it's hard for me to say it, to  
5 acknowledge it.

6 Q I see. It's your testimony today that it was not  
7 your intention to hook up with him on the date in question?

8 A Yes.

9 Q And that your conversations ultimately turned  
10 romantic, correct?

11 A Yes.

12 Q But you'd agree with me that romantic is not really  
13 a good way to describe the conversations you had with him,  
14 correct?

15 A Correct. They were sexually explicit.

16 Q Yes. You had testified that today that in reference  
17 to these conversations with him, this was the only attention  
18 that you were getting, correct?

19 A It was some of the only like positive attention I  
20 was getting, basically.

21 Q So then your answer is yes, you have testified --

22 A Yes.

23 Q -- today that --

24 A Yes.

25 Q And that's not something you had discussed in your

1 prior conversation with Detective Stark, correct?

2 A No.

3 Q And that's not something that you testified about on  
4 your preliminary hearing transcript, correct?

5 A No.

6 Q You'd agree that that's something that you have  
7 formulated or recalled in your conversations with Ms. Kollins  
8 in preparation for your testimony today, correct?

9 A No.

10 Q There are questions today concerning the use or lack  
11 thereof of lubrication to make you comfortable, correct?

12 A Correct.

13 Q That's not something that you discussed with the  
14 detective on the night in question, correct?

15 A Correct.

16 Q And that's not something that you discussed during  
17 your questions during the preliminary hearing, correct?

18 A Correct.

19 Q That's something that you and Ms. Kollins had  
20 prepared or discussed in preparation for your testimony  
21 today?

22 A No. Those questions weren't asked when -- during my  
23 interview with Detective Stark or my preliminary.

24 Q I see. But you were -- had discussed the issue of  
25 lubrication just prior to today's testimony, correct?

1 A No.

2 Q So that was the first time that you had heard a  
3 question in reference to lubrication was while you were on  
4 the stand today being asked questions by Ms. Kollins?

5 A Correct.

6 Q You were asked in the latter part of your testimony  
7 concerning a number of very sexual explicit statements that  
8 were made between yourself and Mr. Moore, specifically  
9 State's Exhibits 103 and 122, correct?

10 A Correct.

11 Q You just recently reviewed those, didn't you?

12 A Yes.

13 Q You didn't review those during your conversation  
14 with Detective Stark, correct?

15 A Correct.

16 Q And you didn't review those in preparation for your  
17 testimony before another Judge during your preliminary  
18 hearing in June 2017, correct?

19 A Correct.

20 Q You didn't know about their existence, did you?

21 A No, I did know, because I -- I had -- I knew that  
22 the conversation was sexually explicit. I didn't know the  
23 exact details of what I said.

24 Q I see. So you'd agree with me that when you had  
25 your conversation with Detective Stark and you said had you

1 no intention of sexual contact when you met with Maurice  
2 Moore, you hadn't been given the opportunity to see what you  
3 had really said, correct?

4 A Correct.

5 Q And when you had testified repeatedly during your  
6 preliminary hearing that you had no intention sexual contact  
7 with Maurice Moore, once again, you hadn't had an opportunity  
8 to see what you'd really seen, correct?

9 A I'm sorry, can you repeat the last part? I didn't  
10 hear you.

11 Q You'd agree with me that when you gave testimony in  
12 front of another Judge on June 22nd of 2017 and repeatedly  
13 said that you had no intention of sexual contact, you had not  
14 had the opportunity to review these sexually explicit  
15 Instagram messages, correct?

16 A Correct.

17 Q And that you just learned of those yesterday, the  
18 day before, correct?

19 A I wouldn't say learned of them because I knew that I  
20 was talking to him in a sexually explicit way, like I had  
21 said before. I just didn't know the exact words I was  
22 saying.

23 Q And you in reviewing those messages just in the last  
24 day or two have discussed with Ms. Kollins what your  
25 testimony would be today concerning those messages, correct?

1

2 A No.

3 Q She didn't ask you prior to your taking the stand  
4 even know now that you see these messages, your intentions  
5 were still the same? Do you remember that inline of  
6 questioning?

7 A Yes.

8 Q Is it your testimony that you didn't discuss that  
9 line of questions with her just --

10 A She --

11 Q -- prior to today's testimony?

12 A She showed me one of the messages, and I did -- and  
13 I understood that I had said that. And that I needed to take  
14 responsibility for what I said.

15 Q Okay. So it's your testimony right now that she  
16 didn't show you all of those messages that she's just shown  
17 to us today --

18 A Yes.

19 Q -- right now? She just showed you one.

20 A Yes.

21 MR. DRASKOVICH: I'm going to turn this off and use  
22 this with the Court's permission as just a stand.

23 THE COURT: Wait, you -- there's a little tray next  
24 to you. Do you see that?

25 MR. DRASKOVICH: I do. Thank you.



1 THE COURT: All right. Once it's working, I hate  
2 to --

3 MR. DRASKOVICH: Thank you.

4 THE COURT: -- to stop it.

5 BY MR. DRASKOVICH:

6 Q In your interview with Detective Stark, on the early  
7 morning hours of March -- or I'm sorry, February 22, 2017 you  
8 were asked to describe Mr. Moore's car, correct?

9 A You say February 22nd.

10 Q Yes. February 26th, because you're aware of the  
11 date of the --

12 A Oh, yeah, but you said 22nd. I'm sorry, I got  
13 confused.

14 Q I see. You were -- you were asked by Detective  
15 Stark to describe the car, correct?

16 A Yes.

17 Q And you told Detective Stark the front seats were  
18 tiny, correct?

19 A Yes.

20 Q And it's fair to say upon reviewing a photo taken of  
21 the inside of that car, the inside of the car was fairly  
22 small, wasn't it?

23 A Yes.

24 Q There's a big thing in the middle, correct, the  
25 console?

1 A Yes.

2 Q You've testified today concerning multiple sex acts  
3 that took place inside this tiny passenger area of the car,  
4 correct?

5 A Yes.

6 Q And it's your testimony today that this was done,  
7 the various acts of vaginal and anal sex, without your  
8 participation?

9 A Correct.

10 Q That he forced this upon you?

11 A Yes.

12 Q You had testified that he pushed the back seat back  
13 that you were sitting in, correct?

14 A Yes.

15 Q But you'd agree with me that was an electric seat,  
16 correct?

17 A I don't -- I didn't if it made that --

18 Q This isn't something you discussed with Ms. Kollins,  
19 is it?

20 A No, but I didn't know that that made a difference  
21 whether or not the seat was pushed back regardless if it was  
22 electric or manual.

23 Q I see. You'd agree with me you've been in a car  
24 that has an electric seat, correct?

25 A Yes.

1 Q You push that button and it just kind of goes  
2 (making noise) and slowly reclines, correct?

3 A Correct.

4 Q You'd agree with me the night in question, you  
5 reclined that seat with your right hand?

6 A I don't remember reclining that seat.

7 Q Okay. But you'd agree with me this was supposedly a  
8 traumatic event to you, correct?

9 A Yes.

10 Q And wouldn't you agree with me that you would  
11 remember details of this traumatic event that occurred to  
12 you?

13 A Not details because I've been trying to suppress  
14 something like this, so I can continue to do what I need to  
15 do without thinking about it all the time.

16 Q I see. But it wouldn't surprise you, would you, if  
17 you had, in fact, reached over and reclined the seat  
18 yourself, correct?

19 A Maybe my hand was on the buttons, but I never  
20 reclined it in intentions for him to have sex with me.

21 Q I see. And you were in that car for approximately  
22 an hour, correct?

23 A Correct.

24 Q You and Mr. Moore had spoken for some time in the  
25 car, correct?

1 A Yes.

2 Q And at no point in time did you tell Mr. Moore your  
3 age; isn't that right?

4 A That's correct.

5 Q There had been some questions by Ms. Kollins in  
6 reference to speaking of college. You did speak of college?

7 A That -- I -- I know I spoke to Detective Stark about  
8 it, but I don't know if I ever spoke -- spoke directly to him  
9 about it.

10 Q You'd agree with me that when you spoke with  
11 Detective Stark on the 22nd -- 26th of February, you  
12 discussed college, and you discussed the topic of college  
13 with Mr. Moore, correct?

14 A I don't -- I don't remember discussing the topic of  
15 college with Mr. Moore.

16 Q Okay. And if I told you that you did, would you  
17 have any reason to disagree with me?

18 A No.

19 Q You didn't discuss what grade you were really in  
20 with Mr. Moore, did you?

21 A I didn't.

22 Q You didn't discuss the school that you were  
23 attending to Mr. Moore, did you?

24 A I didn't.

25 Q And you did that with the intent of not allowing him

1 to know your true age, correct?

2 A Yes.

3 Q You had testified today that you performed oral sex  
4 upon Mr. Moore prior to these other sexual acts for five to  
5 ten minutes, correct?

6 A That's what it felt like.

7 Q Okay. Any reason to disagree that this sexual  
8 contact between you and he lasted that long or does that  
9 still, as you sit here today, seem like accurate -- an  
10 accurate period?

11 A I -- like I said, for me that -- it felt like five  
12 to ten minutes. I don't know exactly how long it was in  
13 actuality.

14 Q Would you agree with me that then on -- during your  
15 interview with Detective Stark you then said that he  
16 penetrated his [sic] vagina with your -- with his penis for  
17 approximately 20 to 30 minutes?

18 A That's what it felt like.

19 Q Okay. And you'd have no reason to disagree with  
20 that period of time, would you?

21 A I don't.

22 Q So you'd agree with me that at least initially  
23 during this first sex act and then the second sex act, we're  
24 talking almost half an hour, correct?

25 A That's what it felt like, half an hour.

1 Q Okay. And then there are other sex acts that  
2 occurred that included more vaginal sex and more anal sex,  
3 correct?

4 A Correct.

5 Q And you had testified at some point in time that he  
6 had slapped your buttocks right and left during anal sex,  
7 correct?

8 A I never said right and left. I -- as I said before,  
9 I don't remember which hand or --

10 Q Okay so you don't --

11 A -- when it was.

12 Q -- remember the being slapped or --

13 A No, I said I don't remember which hand or what  
14 buttocks he slapped.

15 Q Okay. Would you agree with me that you asked him to  
16 slap your buttocks during this sexual act?

17 A I didn't.

18 Q Would you agree with me that his slapping your  
19 buttocks did not leave any marks?

20 A I don't -- I don't remember if it did or not.

21 Q Okay. If I told you that there were no marks, would  
22 you have any reason to disagree with me?

23 A No.

24 Q And you were asked by Ms. Kollins in reference to  
25 the mark that was on your face, and you remember the photo

1 that was shown --

2 A Yes.

3 Q -- took of that? And you were asked how you got  
4 that, and you testified that you didn't remember; do you  
5 recall that?

6 A Ms. Kollins asked me if it was my mother or if it  
7 was something that happened in the car, and I said I don't  
8 remember, as in I don't remember which -- if I did get it  
9 from the car or from my mom.

10 Q Okay. And if I told you that during your sexual  
11 assault nurse exam that occurred after your interview with  
12 Detective Stark, you told the sexual assault nurse examiner  
13 that that mark was from being slapped by your mother?

14 A I would have no reason to disagree with you.

15 Q And your mother actually slapped you more than one  
16 time in the night in question, correct?

17 A Correct.

18 Q Now, after this approximate hour that you were in  
19 the car with Mr. Moore, you left the car, correct?

20 A Correct.

21 Q And you'd agree with me that during the time that  
22 you were in this car, you didn't once try to leave the car,  
23 correct?

24 A Correct.

25 Q You didn't pull the door and try and run away, did

1 you?

2 A Correct.

3 Q And you didn't scream out for help to anybody,  
4 correct?

5 A I didn't.

6 Q And I'm no way trying to demean you. I'm just  
7 asking what you said, okay, or did. You didn't yell out, did  
8 you?

9 A I said it before multiple times, I didn't know what  
10 to do.

11 Q Okay. You leave the car, correct?

12 A Correct.

13 Q And when you initially told Detective Stark how you  
14 left, you told Detective Stark that you got dressed and then  
15 left the car, correct?

16 A Correct.

17 Q And when you testified in the preliminary hearing of  
18 June 22, 2017, you say that you -- you've testified that you  
19 got out of the car without getting dressed and got dressed  
20 out on the street, correct?

21 A I don't remember saying that, but I would have to  
22 reason to disagree with you if I did say it.

23 Q Okay. And then you approached the house, your home,  
24 correct?

25 A Yes.



1 of witnesses to get us through the afternoon.

2 Anything else at this point before we break for the  
3 evening, State?

4 MS. KOLLINS: No.

5 THE COURT: Okay. Defense?

6 MR. DRASKOVICH: No, Your Honor.

7 THE COURT: All right. Very good. Everybody have  
8 a great evening.

9 (Court recessed at 5:12 P.M., until Wednesday,  
10 August 7, 2019, at 11:09 A.M.)

11 \* \* \* \* \*

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I N D E X

STATE'S OPENING STATEMENT BY MS. KOLLINS. . . . . 9  
DEFENSE'S OPENING STATEMENT BY MR. HORVATH. . . . . 17

WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>REXCROSS</u>
<u>STATE'S WITNESSES:</u>				
ALEXIA MARTINEZ	31	130	167/175	171/176
MARIA NAVA	180	200		
	* * *	* * *		

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
<u>STATE'S EXHIBITS:</u>	
Exhibits 1 through 101. . . . .	34
Exhibits 103 through 122. . . . .	118
Exhibit 110. . . . .	118
Exhibit 123. . . . .	113

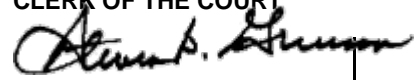
\* \* \* \* \*

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

*Julie Lord*

---

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RTRAN

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

THE STATE OF NEVADA,	)	CASE NO. C-17-324535-1
	)	
Plaintiff,	)	DEPT. NO. XX
	)	
v.	)	
	)	
MAURICE TERRANCE MOORE,	)	
	)	
Defendant.	)	
_____	)	

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE  
FRIDAY, AUGUST 9, 2019

**RECORDER'S TRANSCRIPT OF HEARING:  
JURY TRIAL - DAY 5**

APPEARANCES:

FOR THE STATE:	STACEY L. KOLLINS, ESQ. Chief Deputy District Attorney
	WILLIAM JAKE MERBACK, ESQ. Chief Deputy District Attorney
FOR THE DEFENDANT:	ROBERT M. DRASKOVICH, ESQ. MICHAEL W. HORVATH, ESQ.

RECORDED BY: ANGIE CALVILLO, COURT RECORDER  
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1                   LAS VEGAS, NEVADA, FRIDAY, AUGUST 9, 2019

2                   [Case called at 11:07 A.M.]

3                   (Outside the presence of the jury)

4                   THE COURT: All right. Calling State of Nevada  
5 versus Maurice Moore, Case No. C324535. Counsel please note  
6 your formal appearances for the record.

7                   MS. KOLLINS: Stacey Kollins and Jake Merback on  
8 behalf of the State.

9                   MR. DRASKOVICH: Good morning. Robert Draskovich  
10 and Michael Horvath on behalf of Mr. Moore, who is present in  
11 custody.

12                   THE COURT: Okay. All right. Well, we've got the  
13 State's proposed instructions. I've got some proposed  
14 instructions from the Defense.

15                   Let's start with the State's. Is there anything in  
16 particular you have issue with, Mr. Draskovich, Mr. Horvath?

17                   MR. DRASKOVICH: There are, and would it be  
18 economical and the Court opinion if we just go instruction by  
19 instruction, and I'll voice --

20                   THE COURT: That's --

21                   MR. DRASKOVICH: -- either on objection or  
22 non-objection?

23                   THE COURT: I was going to do that eventually,  
24 anyway.

25                   MR. DRASKOVICH: Okay.

1 THE COURT: I usually do that at the end, but --  
2 MR. DRASKOVICH: Okay.  
3 THE COURT: -- we'll just -- any objection to one?  
4 MR. DRASKOVICH: No, Your Honor.  
5 THE COURT: Two?  
6 MR. DRASKOVICH: No, Your Honor.  
7 THE COURT: Three?  
8 MR. DRASKOVICH: Let's see. No.  
9 THE COURT: Four.  
10 MR. DRASKOVICH: No objection.  
11 THE COURT: Five?  
12 MR. DRASKOVICH: No objection.  
13 THE COURT: Six?  
14 MR. DRASKOVICH: Yes, I do have an objection as to  
15 the first line. It says you are here to determine --  
16 THE COURT: You mean, you want guilt -- determine  
17 whether defendant is guilty or not guilty?  
18 MR. DRASKOVICH: Correct.  
19 THE COURT: Okay. I -- a number of people have  
20 been doing that, and that's my preference, too. Determine  
21 whether -- determine whether the defendant --  
22 MS. KOLLINS: So that would also fix --  
23 THE COURT: -- is guilty or not guilty.  
24 MS. KOLLINS: And that would also alter line three,  
25 correct?

1 THE COURT: Yep.

2 MR. DRASKOVICH: Correct.

3 THE COURT: Guilty or not guilty --

4 MS. KOLLINS: The State's fine with that.

5 THE COURT: -- from the evidence in the case. All  
6 right. Verdict as to -- yeah, whether any other person is  
7 guilty or not guilty -- as to whether other -- any other  
8 person is guilty or not guilty. All right.

9 Let's see, any objection to seven?

10 MR. DRASKOVICH: No objection.

11 THE COURT: Eight? That's mine.

12 MR. DRASKOVICH: No objection.

13 THE COURT: Okay. I guess, I might as well ask the  
14 State now, do you have any objection to my eight?

15 MS. KOLLINS: No.

16 THE COURT: Okay. Nine, any objection?

17 MR. DRASKOVICH: No objection.

18 THE COURT: All right. Ten?

19 MR. DRASKOVICH: Yes. I think this will be known,  
20 I'm going objection and disagreement between the parties at  
21 line six, consent is not a defense to sexual assault of a  
22 minor under 16. I object to that line.

23 THE COURT: Okay. We're going to -- that's  
24 obviously going to be the debate of the day. Let's put that  
25 off.

1 MR. DRASKOVICH: Okay.

2 THE COURT: Well, we may not be able to put it off  
3 long, but let's put that off to the side for the moment.

4 MR. DRASKOVICH: Okay, Your Honor.

5 THE COURT: Any objection to 11?

6 MR. DRASKOVICH: I do have an objection to 11. And  
7 the basis for my objection is as follows: It appears that  
8 this is just -- it's an argument. It's a subtle argument,  
9 but it's an argument. It says, Physical force is not  
10 necessary in the commission of a sexual assault.

11 I would submit that if the State is intent on  
12 providing this, that there be an additional line, and then it  
13 should state, However, the use of force or the absence of  
14 force may be considered in rendering your verdict.

15 THE COURT: However the --

16 MR. DRASKOVICH: Use of force --

17 THE COURT: -- use of force --

18 MR. DRASKOVICH: -- or the absence of force --

19 THE COURT: -- or the absence of force. I'm sorry,  
20 I'm not that fast.

21 MR. DRASKOVICH: Sure. May be considered in  
22 reaching your verdict.

23 THE COURT: May be considered in reaching --

24 MS. KOLLINS: Court's indulgence.

25 THE COURT: Sure.



1 MS. KOLLINS: We have no objection to it as  
2 written, and requested by Mr. Draskovich.

3 THE COURT: I tend to favor saying, However the use  
4 of force or the absence of force is a circumstance that you  
5 may consider in reaching your verdict.

6 MR. DRASKOVICH: I agree with that. No objection  
7 to that. We agree.

8 THE COURT: Is the State okay with that?

9 MS. KOLLINS: The State is okay, and I just should  
10 probably make a record right now. So there is a body of  
11 instructive language where submission is not the equivalent  
12 of consent. And the State pulled those up because we're, you  
13 know, getting rid of the consent language. But if Your Honor  
14 rules in a different manner, then we're probably going to  
15 want to supplement this because there are instructions out  
16 there that say submission is not the equivalent of consent,  
17 and I know Mr. Draskovich is familiar with that.

18 But I pulled it out because I didn't want to use  
19 the consent language.

20 THE COURT: Okay. All right. We'll see what --  
21 all right. So at the moment, However, the use of force or  
22 the absence of force is a circumstance you may consider in  
23 reaching your verdict. Everybody is okay with that at the  
24 moment?

25 MR. DRASKOVICH: Yes, we are.

1 MS. KOLLINS: Yes.

2 THE COURT: You got that Skyler? Okay.

3 12, any objection?

4 MR. DRASKOVICH: No objection.

5 MR. MERBACK: Court's indulgence.

6 THE COURT: I left something on my printer. I'll  
7 be right back while they're talking.

8 (Pause in the proceedings; Court stepped off the Bench)

9 THE COURT: Did the State finish their conference?

10 MR. MERBACK: We did, Your Honor. We're fine with  
11 that.

12 THE COURT: Okay. All right.

13 13, any objection?

14 MR. DRASKOVICH: No, there is no objection.

15 THE COURT: Okay. 14, any objection?

16 MR. DRASKOVICH: No objection to instruction 14.

17 THE COURT: 15?

18 MR. DRASKOVICH: No. That's -- I don't believe  
19 that misstates law; however, we do -- we're going to have  
20 argument concerning knowledge, and that can be either  
21 addressed in this or --

22 THE COURT: All right.

23 MR. DRASKOVICH: -- in a later instruction.

24 THE COURT: Let's come back to that. All right.

25 MS. KOLLINS: But you would agree that's a accurate

1 statement of the law as it applies to lewdness, right?

2 MR. DRASKOVICH: On that sentence.

3 MS. KOLLINS: You're just checking it --

4 MR. DRASKOVICH: Yes, I -- yes.

5 MS. KOLLINS: Okay.

6 MR. DRASKOVICH: Yeah, I don't have an objection as  
7 to it being a misstatement of some dicta.

8 THE COURT: I mean, essentially it's -- it looks  
9 like it's almost a quote of the statute, so, I mean --

10 MR. DRASKOVICH: Yes. Yes.

11 THE COURT: All right. 16, any objection?

12 MR. DRASKOVICH: No objection.

13 THE COURT: 17?

14 MR. DRASKOVICH: No objection.

15 THE COURT: 18?

16 MR. DRASKOVICH: Yes, as to the consent language,  
17 which I know will be an issue of discussion.

18 THE COURT: All right. We'll come back to that.  
19 Didn't we have 19 already?

20 MR. DRASKOVICH: Yes. My objection is that's  
21 redundant.

22 THE COURT: Yeah. I think it is redundant. Didn't  
23 we just discuss this earlier? I forget what instruction it  
24 was.

25 MS. KOLLINS: We probably left it in twice. We can

1 pull it out.

2 THE COURT: Okay. Let's cross -- scratch out 19.  
3 20, any objection?

4 MR. DRASKOVICH: No objection.

5 THE COURT: 21?

6 MR. DRASKOVICH: No objection.

7 THE COURT: 22?

8 MR. DRASKOVICH: No objection.

9 THE COURT: All right. And 22 does include a  
10 paragraph --

11 MR. DRASKOVICH: Yes.

12 THE COURT: -- my first paragraph, I think -- I  
13 guess, I should ask the State on that one, too.

14 MS. KOLLINS: The State's fine, Your Honor.

15 THE COURT: Okay. And then 23?

16 MR. DRASKOVICH: No objection.

17 THE COURT: All right. Let me ask right now, any  
18 issue with the verdicts form?

19 MR. DRASKOVICH: No. No, Your Honor.

20 THE COURT: All right. Okay.

21 All right. And then we've got the Defense proposed  
22 instructions.

23 A, The State must prove beyond a reasonable doubt  
24 the defendant knew or should have known the alleged victim's  
25 age.

1           B, An act is willful or done willfully when done on  
2 purpose.

3           Just out of interest, what are you -- what are we  
4 going for with that one? I'm not necessarily saying it's  
5 wrong, but I'm like, is there a particular reason you want  
6 this in or where are you going to want it in? I tend to  
7 favor, if we're going to do it, that willful or done  
8 willfully is the intent to commit the act the Byford, but  
9 that I think that makes more sense. But, I mean, if you --

10           MR. DRASKOVICH: I -- I agree with the Court.

11           THE COURT: -- but, I guess, where's the concern  
12 here, and where would you want to insert it?

13           MR. DRASKOVICH: As written, we will withdraw this  
14 request.

15           THE COURT: Okay. All right.

16           MR. DRASKOVICH: It's jury -- proposed jury  
17 instruction B, we withdraw that.

18           THE COURT: And then C is a consent instruction.

19           And D is a knowingly. You don't have a knowingly  
20 somewhere in your -- the packet?

21           MS. KOLLINS: Well, knowingly is not an element of  
22 sexual assault.

23           THE COURT: Okay.

24           MS. KOLLINS: So, no, we don't superimpose upon  
25 what's required by the statute an additional element of

1 proof. So --

2 THE COURT: You don't need to know you're engaging  
3 in a sexual penetration?

4 MS. KOLLINS: Unless you're -- if you're going to  
5 try to argue that you involuntarily placed your penis  
6 somewhere.

7 THE COURT: I guess, you --

8 MS. KOLLINS: I've never had a case where someone  
9 alleged they didn't know where they were placing their body  
10 parts, so --

11 THE COURT: No, I agree with you, but, I mean,  
12 that's what I'm saying is, though, I mean, ultimately there  
13 is some element of knowledge here. I mean --

14 MS. KOLLINS: Not -- go ahead.

15 MR. MERBACK: Well, but the problem is is that the  
16 statute pretty clearly says against the will of a victim or  
17 under conditions.

18 THE COURT: Right.

19 MR. MERBACK: So there's under conditions argument.  
20 But the first section --

21 THE COURT: They need to know the conditions that  
22 -- and they need to have some belief that they're forcing --

23 MR. MERBACK: Well, but I don't think that  
24 that's --

25 THE COURT: -- they're -- they're acting against

1 the will of the person.

2 MR. MERBACK: Well, I don't think that that's what  
3 the statute says because it says that they make -- the thing  
4 they have to intend to do is they make -- they have to intend  
5 to make penetration, like Ms. Kollins said. That that part  
6 can't be an accident.

7 But if they're making penetration against the will  
8 of the victim, that's enough. That -- it stops right there,  
9 and then there's an "or" that talks about under the  
10 conditions in which the perpetrator knew or should have  
11 known.

12 So if you are sexually assaulting someone, and it's  
13 against their will, that's enough. Whether you knew their  
14 age, whether you didn't know their age, whether you thought  
15 they were consenting and didn't think they were consenting,  
16 if the -- if the jury believes that you sexually penetrated  
17 someone, and it was against that person's will, that's all  
18 the statute requires. Everything else is an "or".

19 MR. DRASKOVICH: Our response is, is that's  
20 actually a frightening argument to be made. Like, one  
21 apparently needs to be able to read the mind of an alleged  
22 victim. There needs to be some knowledge that it's contrary  
23 to the will of that person.

24 If you were to take the State's argument to its  
25 logical conclusion, two people could engage in active sex,

1 the second person who then claims rape, could come back and  
2 say, I didn't agree to that. And I guess, we're supposed to  
3 impute that person's knowledge on the defendant in that case  
4 when there was no manifestation of knowing.

5 I mean, it's -- the State's basically --

6 THE COURT: I mean, so you're saying as to no one  
7 -- under Nevada law, as to no one, whether it's an adult or  
8 under 16 or whether -- as to no one, good faith, belief, and  
9 consent is a defense?

10 MR. MERBACK: No, that's not -- that's not what I'm  
11 saying. What I'm saying is, is that if the jury believes  
12 that it was against the will of the victim that she did  
13 things -- that she did things at the time that made it  
14 against her will, that that's enough.

15 What this is saying is the defendant can't come in  
16 -- let's say that the jury believes that the victim didn't  
17 consent. She said no, she tried to push him away, whatever  
18 it is. The fact that the defendant might think in his mind,  
19 oh, she really wanted it, that's not a defense to that.

20 THE COURT: Well, I mean --

21 MR. MERBACK: The jury --

22 THE COURT: -- it's got to be -- it's got to be in  
23 good faith. I mean, the jury's got to make an evaluation as  
24 to whether or not the defendant under the circumstances had a  
25 good faith belief that the other party was -- the alleged



1 victim was consenting.

2 MR. MERBACK: But if you -- well, I think that  
3 there's a different argument also about this regards to the  
4 age of consent being 16, which we haven't really brought up  
5 yet.

6 THE COURT: Well, we haven't got do that yet.

7 MR. MERBACK: We're going to keep arguing that.

8 THE COURT: I mean, I -- this -- we're talking  
9 about a broader issue here, which is, under the statute, I  
10 mean, you're saying that -- that regardless of what the  
11 victim may say or do during the act, if in her mind it's  
12 against her will, that the defendant is guilty of sexual  
13 assault.

14 MR. MERBACK: No, no, that's not what I'm saying.  
15 You just paraphrased what I'm saying. What I am saying is,  
16 is that if the victim manifests things during the course of  
17 the sexual assault, that the jury believes shows that it was  
18 not consensual --

19 THE COURT: Right.

20 MR. MERBACK: -- the defendant can say, well, I --  
21 let's say that the victim says no, no, I don't want to do  
22 this, right? The defendant can't come in later on and say,  
23 well, I didn't think she really meant no, or I didn't really  
24 think that she didn't want me to do it, I thought she was  
25 playing around with me, something like that. But he -- the

1 fact that he -- he in his mind, that he's committing sexual  
2 assault, isn't an element of the offense. The element of the  
3 offense is that he sexually penetrates her and that it is  
4 against her will.

5 It -- because if you're saying his mind is  
6 important, that means that someone could say, I sexually  
7 assaulted this woman, she said no to me over and over and  
8 over again, but I thought that she really wanted it. So  
9 that's a defense, so there's no sexual assault. That's what  
10 it's saying.

11 It's saying that -- that whatever his mind is, is  
12 not the issue. The issue is did the victim manifest that she  
13 didn't want to do this? Was it -- did she manifest enough to  
14 show that it was against her will? And if the jury believes  
15 that he sexually penetrated her and she manifested enough to  
16 show that it was against her will, that's enough.

17 It's not a defense -- because otherwise, you could  
18 get somebody that comes in, maybe they're -- maybe they have  
19 such a great belief in what a amazing person they are, that  
20 they can't imagine anybody would not consent to them, and now  
21 you make that element of the offense, which it is not.

22 MS. KOLLINS: I was just going to add.

23 THE COURT: Okay. Go ahead.

24 MS. KOLLINS: So the Court posed the question that  
25 is consistent with Honeycutt and Carter, and that's an

1 instruction that you give when you're talking about somebody  
2 that's over the age of consent.

3           So if a defendant comes into court and the victim  
4 is 18 and -- or even 17, and he has a reasonable belief that  
5 her conduct evinces her consent to the act, that evidence has  
6 to come in, and then they're entitled to that instruction,  
7 and then the jury is almost directed essentially how to find.

8           That element of the defendant's quote/unquote  
9 "reasonable belief" about consenting conduct does not apply  
10 under the age of consent is the State's position.

11           THE COURT: Okay. And that's to me is a little bit  
12 a separate issue. But, I mean, all right, let's deal with  
13 the issue of age and consent and whether or not someone under  
14 the age of 16 can -- whether sexual assault applies to  
15 consensual conduct of someone under the age of 16 if they --  
16 if they do consent to the sexual conduct.

17           It's your position that, essentially, then, any  
18 sexual penetration of someone under 16 years of age,  
19 regardless of whether they consent or not, is sexual assault?

20           MS. KOLLINS: If it is against her will.

21           THE COURT: If it is against her will.

22           MS. KOLLINS: Not regardless of whether there's  
23 consent or not, because 16 is the age of consent. So if they  
24 are under 16, it has to be against her will. And I know it's  
25 a very fine distinction, but again --

1 THE COURT: So what is the distinction?

2 MS. KOLLINS: When -- so she goes there and she  
3 meets him. That prelude, that conduct that occurs  
4 beforehand, that cannot be deemed -- I don't believe that is  
5 consent to --

6 THE COURT: Well, I mean it's --

7 MS. KOLLINS: -- what transpires in the car. Well,  
8 against the will. Somebody says no. Somebody is crying.

9 THE COURT: I --

10 MS. KOLLINS: Somebody --

11 THE COURT: Those are circumstances which someone  
12 can, if they come up in the middle of -- I mean, you know,  
13 it's -- she says, I want to engage in sex, and they begin to  
14 engage in sex, and then she says no, I don't want to do this  
15 anymore and then, you know, she certainly has a right at any  
16 time to stop consent. The jury -- you know, it's -- but it's  
17 up to the jury to decide whether or not she's stopped consent  
18 from her acts.

19 MS. KOLLINS: Agreed.

20 THE COURT: So I'm not following the distinction  
21 you're making between someone under 16 as far as the sexual  
22 assault statute and someone over 18 as far as the sexual  
23 assault statute.

24 MS. KOLLINS: I guess I'm making --

25 THE COURT: I mean, the penalty is different. The

1 penalty different.

2 MR. DRASKOVICH: Absolutely.

3 THE COURT: I agree with that. I mean, but the  
4 conduct -- the -- what's required, how does it differ for  
5 someone under 16 to 14 as opposed to an adult?

6 MS. KOLLINS: Well, the age of consent is 16, so  
7 she's not -- does the conduct, does the physical conduct  
8 alter? No, but the case is very clear, 16 is the age of  
9 consent, so no matter what the --

10 THE COURT: Age consent for statutory rape or  
11 sexual seduction.

12 MS. KOLLINS: Well --

13 THE COURT: That's what the case says. It says in  
14 context the statutory seduction --

15 MR. DRASKOVICH: Correct.

16 THE COURT: -- 16 is the age of consent. It  
17 doesn't say in the context of sexual assault.

18 MS. KOLLINS: Well, it says in Nevada, 16 is the  
19 age of consent.

20 THE COURT: Well, hold on.

21 MR. DRASKOVICH: Are we talking about the Honeycutt  
22 decision?

23 MS. KOLLINS: No, we're talking about Manning.

24 MR. MERBACK: Talking about Manning.

25 MR. DRASKOVICH: Manning.

1 THE COURT: Manning. Hold on, let's see.

2 MS. KOLLINS: It is page -- it's page 5 of the  
3 copy.

4 THE COURT: Yeah. I always hate it when I get all  
5 my stuff here. It gets --

6 MS. KOLLINS: And it's going to be at it looks like  
7 849.

8 THE COURT: Did I not bring it out? I know I  
9 brought out my stuff.

10 MR. MERBACK: Do you need a copy of it, Judge? I  
11 have a copy here.

12 THE COURT: No, I -- I -- I brought -- I thought I  
13 had everything together, but I'm -- we may have put it back.  
14 Hold on, let me see if I've got it because I do have all my  
15 stuff sort of clipped together.

16 Anyway, read -- it's a footnote, so read the  
17 footnote.

18 MS. KOLLINS: It's actually, Your Honor, it's in  
19 the opinion. It says, "The fact the legislature chose the  
20 age of 16 for consent to sexual intercourse in no way  
21 diminishes its authority to determine that all minors should  
22 be protected under 201.190."

23 THE COURT: Right. That's in reference, but the  
24 law has changed since then. And wasn't that case in  
25 reference to the gross and -- lewdness with a minor?

1 MS. KOLLINS: Well, I think it was --

2 MR. MERBACK: Well, I think that the -- 201.190,  
3 that's the infamous crime against nature.

4 MS. KOLLINS: No.

5 MR. MERBACK: That's changed. But the --

6 MS. KOLLINS: Sexual intercourse.

7 MR. MERBACK: -- sexual -- but the ages of --

8 THE COURT: I'm sorry, you said you had an extra  
9 copy, Mr. Merback? I apologize. I had -- I thought I had --  
10 I was organized, and obviously, I'm not.

11 MR. MERBACK: So it talks about 201.190. That's  
12 what -- that's the infamous crime against nature. That's the  
13 statute the case is based on and it's talking about.

14 But the Court then uses the ages in the stat sex  
15 law and in the sex assault law to say the age of consent is  
16 16, and I don't believe that any of those laws have changed.  
17 The law that's changed is the infamous crime against nature.

18 THE COURT: Thank you.

19 MR. DRASKOVICH: I -- when the Court's ready, I  
20 actually have a counter argument to that, or a point.

21 THE COURT: I -- all right. Hold on just a second.

22 MR. DRASKOVICH: Sure.

23 (Pause in the proceedings)

24 THE COURT: Okay. I mean, looking at this, it  
25 looks like, essentially, the crime at the time of the act in

1 Manning, sexual -- or essentially, statutory rape, was upon  
2 anyone who was under 18 years of age. And it was broader  
3 than just -- and the statutory rape was more limited at that  
4 point in time to -- in terms of just sexual intercourse and  
5 was subsequently expanded.

6           You know, I'm not sure that that says -- let me  
7 just ask, and here's the way I look at it; I sort of go, I  
8 mean, the statute itself doesn't include anything in  
9 reference to the age of a child as far as the act of -- of a  
10 sexual assault. The age of a child is irrelevant as it  
11 relates to the penalty that applies in a particular case.

12   (Pause in the proceedings)

13           THE COURT: I was looking at -- if I can find it.  
14 I'm looking at -- and let me get your impression. How do you  
15 think Guitron versus State affects this? Because I'm looking  
16 at that, and the Supreme Court in that case is dealing with a  
17 12-year-old victim who was -- falls in love with her father,  
18 who she hadn't seen in a long time, and has sex with him.  
19 And then the -- it looks like the Court allowed the parties  
20 to argue whether there was consent under the sexual assault  
21 statute to the acts and, you know, allowed State to put on  
22 evidence that she was not capable of resisting or  
23 understanding the father's conduct.

24           But nonetheless -- and ultimately he was convicted  
25 the and they upheld the conviction. But nonetheless, nowhere



1 in that decision does it talk about that the fact that she  
2 was under 14 in and of itself was sufficient to establish,  
3 you know that she couldn't grant consent. There was argument  
4 that she was too young, and there was evidence introduced  
5 that she was too young, or incapable of giving her consent,  
6 and that defendant should have known or knew that she was  
7 mentally or physically incapable of resisting his conduct  
8 when engaging in sex with her, but nonetheless, this wasn't a  
9 no -- no underage that decides it sort of decision.

10           It appears that this Defense was allowed to argue  
11 consent to the jury, and the State was allowed to argue that  
12 she was incapable of granting consent.

13           And I look at that case, and then I look at the  
14 timing of the legislature in 2015, coming back and creating a  
15 separate provision in the statute, which does specifically  
16 seem to indicate that if you have sex with somebody under 14  
17 years of age, that in and of itself constitutes a sexual  
18 assault, making a legislative finding that someone under the  
19 age of 14 isn't physically or mentally capable of resisting  
20 or understanding the defendant's conduct.

21           So in doing that, the legislature seemed to express  
22 a clear delineation between the ability to give consent under  
23 14, versus the ability to give consent 14 and after, for the  
24 purposes of sexual assault. There's no doubt that you have  
25 sexual seduction if you have sex with somebody between the

1 ages of 14 to -- and 15. So where am I wrong?

2 MS. KOLLINS: So I think where we're kind of  
3 having, at least a parting of the ways, is consent is not an  
4 element, and there's cases that say that, to sexual assault  
5 under 16.

6 THE COURT: Okay. What cases?

7 MS. KOLLINS: Where they're free -- I'm sorry?

8 THE COURT: What cases?

9 MS. KOLLINS: Alotabai. So --

10 THE COURT: Okay. Where does it say that in  
11 Alotabai? It talks about how sexual assault is not -- or  
12 consent is not an element to statutory seduction.

13 MS. KOLLINS: So it says that there are two  
14 elements -- two statutory elements to sexual assault. One,  
15 that a defendant subjects another person to sexual  
16 penetration on himself or herself or another or on a beast  
17 and against the will of the victim or under conditions.

18 I think when you're permitting them to allow that  
19 conduct is consent -- evoking or consent in the defendant's  
20 mind, that falls under the second part of the statute,  
21 whether it was under circumstances he knew or should have  
22 known.

23 It doesn't mean consent is a complete defense  
24 because you can't justify that next to Manning, where it says  
25 16 is the age of consent. I don't think they get an

1 instruction that says consent is a defense. I think they can  
2 argue factually under the second part of what is required by  
3 the sexual assault statute, but I don't think they get an  
4 instruction that consent is a pure defense based on the  
5 elements because --

6 THE COURT: But isn't consent a defense to sexual  
7 assault in Nevada?

8 MS. KOLLINS: Yes.

9 THE COURT: And so unless there's a distinction by  
10 someone under the age of 18 or 16, that it would seem to  
11 apply here.

12 MR. MERBACK: Well, but I think that it doesn't  
13 count that second part of the statute said, so it says,  
14 mentally or physically incapable of resisting or  
15 understanding the nature of his or her conduct.

16 THE COURT: Well, I mean, and yeah -- I mean, and  
17 that's --

18 MR. MERBACK: So if -- so if --

19 THE COURT: -- and that -- you know, and like I  
20 said, looking at the Guitron case, I mean, they are argued  
21 consent. Defense argued consent. Nobody was saying that  
22 they couldn't. The State argued that she was incapable of  
23 giving consent because he knew or should have known that was  
24 mentally or physically incapable of resisting his conduct.  
25 The jury ultimately found that a 12-year-old child is not

1 capable -- was -- was -- the 12-year-old child in this  
2 instance with a incapable of consenting to the conduct, and  
3 -- and that the defendant knew or should have known she  
4 wasn't mentally or physically incapable of resisting him, and  
5 found him -- found him guilty.

6           The legislature clearly didn't want that to be a  
7 jury debatable issue after that point in time, and then  
8 modified the law so that it's clear that someone under the  
9 age of 14 is not someone who is capable of -- of mentally or  
10 physically resisting in the conduct when engaging in sex.

11           MS. KOLLINS: I don't have a copy of Guitron in  
12 from of me, if the Court can just indulge me for a just a  
13 minute.

14           THE COURT: I know, and that's all right. In fact,  
15 let me see. I'll send this to Kelly, and she can print this  
16 out real quick.

17           MR. HORVATH: Could the Defense also get a copy of  
18 that as well?

19           THE COURT: Sure.

20           MR. HORVATH: Thank you.

21           THE COURT: Hold on. Send it to you? All right.  
22 I'll send it to Skyler.

23           MS. KOLLINS: Well, and correct me if -- and I  
24 could be wrong because, you know, there's a lot of these  
25 cases that kind of smush together.

1           Didn't Guitron specifically discuss the victim's  
2 past sexual experiences and how that provided a basis of  
3 knowledge, and then the Defense was allowed to argue consent.  
4 But I don't know that the Nevada Supreme Court addressed that  
5 issue. Am I correct or incorrect on that proposition? I may  
6 be confusing the case.

7           THE COURT: Let's see. Let's see, Guitron argues  
8 he should not have been convicted on this charge because --  
9 sexual assault -- because the evidence showed the victim  
10 consented to having sex and did not support the jury's  
11 finding Guitron knew or should have known the victim did not  
12 understand the consequences of her conduct. At trial,  
13 Guitron did not dispute he and the victim had sexual  
14 intercourse or the victim's baby was his child. Instead, he  
15 asserted he committed a lesser crime of statutory sexual  
16 seduction. Victim testified at trial she was in love with  
17 him and he was in love with her. He and counsel argued the  
18 jury's -- to the jury the victim's intimate -- or initiated  
19 sex with the defendant. The State, however, countered the  
20 victim was vulnerable and unable to understand the  
21 consequences for her action, and because of her age and  
22 vulnerability, he manipulated the victim into having sex with  
23 him. The State presented evidence victim was like a kid in a  
24 candy store, a slow learner, was in a special program at  
25 school. He groomed the victim --

1           I mean, so essentially, the State presented  
2 significant evidence -- presented evidence the victim was  
3 initially reluctant to have sex with Guitron for fear of  
4 getting pregnant. He testified he had -- you know, and so it  
5 was certainly a contested issue at trial, and the jury -- and  
6 the Court -- and was argued to the jury, and the Court  
7 essentially found that there was sufficient evidence to  
8 support the jury's conclusion that she was not able to -- or  
9 -- and he should have known that she was not able to --  
10 mentally or physically to resist his conduct.

11           The point I'm getting at is looking at Guitron, it  
12 looks like this is a contestable issue. The legislature has  
13 changed that now, and essentially, this case came out in  
14 early May, and the legislature passed the amendment to the  
15 sexual assault statute, I think, in June of that year. I  
16 don't know if this case prompted that or not where it -- you  
17 know, the legislature made it clear that any sexual  
18 penetration of someone under 14 is -- is sexual assault,  
19 essentially, making a legislative determination that someone  
20 under that age is mentally or physically incapable of giving  
21 consent or being able to mentally or physically understand  
22 the conduct of the defendant.

23           By not -- by this case, which seems to make it  
24 debatable, even for someone under 14 at the time of the act,  
25 and by the legislature only acting on those under 14, and its

1 amendments to the 2015 amendment, I read this as essentially  
2 the legislature saying, sexual assault applies to anyone 14  
3 -- the basic definition of sexual assault applies to anyone  
4 over 14 years of age, and the issues of consent and ability  
5 to understand, physical and mental ability to understand and  
6 resist are issues for the jury to determine.

7           And -- and then the issue of under age 16 is an  
8 aggregated factor for the purpose of sentencing.

9           MS. KOLLINS: And I -- so I understand the Court's  
10 concern. And if we want to fashion something that defines  
11 the second portion of the statute, but just to leave it as  
12 consent is a defense, period, because that doesn't -- that  
13 overrides the entire second portion of "knew or should have  
14 known" language.

15           THE COURT: Well, I mean, I -- there are two ways  
16 to -- two ways to -- you know, to be guilty of sexual  
17 assault. To be guilty of sexual assault defendant at the  
18 time of the commission of the crime charged must either, one,  
19 have the intent to make essential sexual penetration against  
20 the will of the alleged victim. Or, two, have a sexual  
21 penetration -- make a sexual penetration of alleged victim  
22 under conditions in which the defendant knew or should have  
23 known the alleged victim was mentally or physically incapable  
24 of resisting or understanding the nature of his conduct.  
25 Those are the two ways that you can be guilty of sexual

1 assault.

2           The defendant's sexual penetration does not  
3 constitute a sexual assault if the defendant at the time of  
4 the sexual penetration had a reasonable and good faith belief  
5 that the other person voluntarily consented to engage in  
6 sexual intercourse or anal intercourse with fellatio, and was  
7 mentally and physically capable of resisting and  
8 understanding the nature of his conduct.

9           In that sense, a reasonable and good faith belief  
10 that there was voluntary consent and the alleged victim was  
11 mentally and physically capable of resisting and  
12 understanding defendant's conduct is a defense to such a  
13 charge, unless the defendant thereafter became aware or  
14 reasonably should have become aware that the other person no  
15 longer consented to the sexual activity or is no longer  
16 mentally or physically capable of resisting or understanding  
17 the nature of his conduct.

18           A belief, though, that is based upon ambiguous  
19 conduct by an alleged victim that is the product of the  
20 conduct by the defendant that amounts to force, violence,  
21 duress, menace, or fear of immediate or unlawful bodily  
22 injury on the person of the alleged victim is not a  
23 reasonable good faith belief.

24           MS. KOLLINS: Are -- you're reading from --

25           THE COURT: I mean, that's sort of the way I'm



1 looking at this statute, and the issue of consent and -- and  
2 mental or physical ability to resist and understand.

3 MS. KOLLINS: And are you reading that from  
4 Honeycutt?

5 THE COURT: No. I'm reading -- this is a  
6 modification from California Jury Instructions.

7 MS. KOLLINS: I just don't know how -- I understand  
8 your point, I don't know how you juxtapose that with what --  
9 with 16 being age of consent.

10 MR. DRASKOVICH: Let me -- let me ask this.

11 THE COURT: Well, I mean, the 16 -- you know,  
12 certainly, I mean, you know, and essentially, certainly  
13 someone who -- it's the age of consent under the statute. I  
14 mean, essentially, the legislature says that somebody is --  
15 you aren't supposed to engage in sexual conduct with somebody  
16 under the age -- or sexual intercourse or penetration on  
17 someone under the age of 16, no ifs, ands, or buts about  
18 that. That's the -- for the purposes of the sexual seduction  
19 statute.

20 That's what the sexual seduction statute provides.  
21 But that's as to that particular statute. We're talking here  
22 the issue of consent as to sexual assault. The sexual  
23 assault implicitly involves someone acting against the will  
24 of someone else or taking undue advantage against the will of  
25 someone else.

1 I mean, it's -- it is a more serious crime. And  
2 the fact the legislature plugs -- I mean, the legislature  
3 essentially says, if you're under 14, you are too young to be  
4 capable -- physically or mentally capable of resisting a  
5 defendant's advances.

6 But the fact that they've put it at 14 seems to say  
7 after that for you to be guilty of sexual assault, you've got  
8 to show either they acted unwillfully -- or against their --  
9 against their will or that you knew that they could -- you  
10 took unfair advantage of them.

11 And otherwise, you're guilty of sexual seduction.  
12 I mean, how do you explain the distinction the legislature  
13 makes in 2015 between those under 14 and everybody else? It  
14 does not make any distinction in terms of what the elements  
15 of sexual assault except for those under 14.

16 MS. KOLLINS: A last minute, not well thought out  
17 compromise by someone. That's how I explain that, because I  
18 think originally it wasn't like that.

19 THE COURT: But, I mean, the --

20 MS. KOLLINS: No -- and I understand and it's --

21 THE COURT: -- if that's your argument, though,  
22 then --

23 MS. KOLLINS: No.

24 THE COURT: -- how do you explain the Supreme  
25 Court's analysis in Guitron where they seem to indicate that

1 even under 14 it is an issue for the jury to decide whether  
2 or not someone consented or was physically or mentally  
3 incapable of consenting? The legislative decision seems to  
4 say we don't want that. We don't -- we don't want that,  
5 so --

6 MR. MERBACK: So with the way the Court's going,  
7 what if we just remove -- so from the instruction -- the  
8 State's instruction was objected to by the Defense. It talks  
9 about sexual penetration. I think it's number --

10 MS. KOLLINS: Ten.

11 MR. MERBACK: -- ten. What if at this point --  
12 because what I understand the Court to be saying is, is that  
13 it's up to the jury to decide whether or not the defendant  
14 knew or should have known either it was against her will or  
15 the defendant knew or should have known.

16 THE COURT: Right.

17 MR. MERBACK: So let's remove line six, consent is  
18 not a defense to sexual assault of a minor under 16 and just  
19 leave it as -- leave the rest of it as-is. Not have an  
20 instruction that says, consent is not a defense, and not have  
21 an instruction that says consent a defense. Simply allow the  
22 statute to read what it says, and then the Defense can argue  
23 what they want to in regards to whether she knew or should  
24 have known, and the State can argue the same.

25 But I think if we start putting in -- if we're

1 going to remove the consent is not a defense language and we  
2 start putting in consent is a defense, now we're messing with  
3 the language of the statute kind of in the opposite  
4 direction.

5 Let's let the statute stand and let both sides  
6 argue what they want to from the statute.

7 MR. DRASKOVICH: I agree to removing the language.  
8 However, you know, under Runyon, we have a right for our --  
9 the theory of the Defense to be presented to the jury.

10 THE COURT: I do think they have a right to have  
11 their theory of the defense. I mean, I think, you know,  
12 Runyon or Crawford --

13 MR. DRASKOVICH: Crawford, yeah.

14 THE COURT: -- they have a right to -- to present  
15 their theory of defense. Their theory of defense is that he  
16 had a reasonable good faith belief that she was consenting to  
17 the conduct, and that she was mentally and physically capable  
18 of resisting him and understanding the nature of his conduct.

19 MR. MERBACK: But the instruction -- as the Court  
20 mentioned, the instruction following the language of the  
21 statute allows for them to argue that. It's -- -- it's I  
22 agree --

23 THE COURT: Certainly, I mean -- I mean, the  
24 instruction here allows them, but, I mean, they're saying --  
25 they want to say -- and I think, you know, that if he has --

1 if he has a reasonable and good faith belief that -- that she  
2 was consenting or that she was mentally and physically  
3 capable of resisting or understanding, then you're -- he's  
4 entitled to a verdict of not guilty.

5 MR. MERBACK: Well, the problem is, is that -- and  
6 my argument continues to be the same, and that's that that  
7 interferes with that second part of the statute, that was she  
8 incapable of consenting?

9 So if -- I mean, if the jury --

10 THE COURT: See, I think you have to have some -- I  
11 don't agree that the defendant's intent is irrelevant. He  
12 has to have -- you know, he has to be acting in a way where  
13 he appreciates it's against the will of the other person or  
14 they -- they're physically or mentally incapable of resisting  
15 or understanding. There has to be some intent. It doesn't  
16 -- you know, we can argue whether it's general intent or  
17 specific intent, but he has to know that he is engaging in  
18 sexual penetration against her will or he has to know or  
19 should have known of facts which demonstrate that he should  
20 -- you know, that she was physically or mentally incapable of  
21 resisting or understanding.

22 MR. MERBACK: So is the Court --

23 THE COURT: I don't -- you know, crimes have mens  
24 rea, and the mens rea applies to the defendant.

25 MS. KOLLINS: I don't -- I don't disagree that he

1 has to know that he's committing a sexual penetration or --  
2 or, you know, under circumstances where he knew or should  
3 have known.

4           When we were talking about knowledge earlier, it  
5 was vis-a-vis her age. He does not have to have knowledge of  
6 her age. That is not an element. So that's the --

7           THE COURT: That, I agree.

8           MS. KOLLINS: -- distinction, only distinction.

9           THE COURT: She [sic] doesn't have to have  
10 knowledge of her age for -- on sexual -- we'll deal with it  
11 on the other -- on lewdness --

12           MR. DRASKOVICH: Yes.

13           THE COURT: -- in a second -- doesn't need to have  
14 knowledge of her age. Now, her age is relevant as to  
15 sentencing or punishment, but it's not an element of the  
16 issue of sexual assault. I mean, it can be a matter -- I  
17 mean, her age is obviously a factor in determining whether  
18 she was physically or mentally capable of -- of resisting or  
19 understanding the nature of her acts. I mean, that what was  
20 what was argued in --

21           MR. DRASKOVICH: Guitron.

22           THE COURT: -- in --

23           MS. KOLLINS: So --

24           THE COURT: -- in Guitron.

25           MS. KOLLINS: So what the Court is saying right now

1 is you want to give them basically a Honeycutt instruction  
2 that elaborates on the second portion of that statute? In  
3 other words, if he had -- because if he had a reasonable good  
4 faith belief that it was under circumstances where she was  
5 capable --

6 THE COURT: Well, if he had a --

7 MS. KOLLINS: -- and where --

8 THE COURT: -- reasonable good faith belief that  
9 she consented, she could -- if he thought she was consenting  
10 and had a good faith basis to believe that, it's not sexual  
11 assault. He did not have the -- he had the intent to engage  
12 in consensual sex. That's not sexual assault.

13 MS. KOLLINS: I understand what you're saying.  
14 What I'm asking you is how are we drafting the language  
15 because --

16 MR. DRASKOVICH: I think the language that the  
17 Court read was appropriate, and we'd agree with that being  
18 given --

19 MS. KOLLINS: Well, I need to --

20 MR. DRASKOVICH: -- as an instruction.

21 MS. KOLLINS: -- I need to read it or hear it  
22 again.

23 THE COURT: Well, I mean, yeah, we'll print that  
24 and pass it around. Let me -- hold on a second, let me look  
25 at something real quick. Yeah, I'll be right back.

1 (Pause in the proceedings; Court stepped off Bench)

2 MR. MERBACK: Your Honor, can I make a --

3 THE COURT: Yeah.

4 MR. MERBACK: -- proposition?

5 THE COURT: I mean, I'm not -- I wanted everybody  
6 to take a look at it. We'll talk about it. This is not  
7 anything written in stone. So, I mean, let's hear your  
8 thoughts.

9 MR. MERBACK: So my thought is, is that if the  
10 Court is going to give a consent is a defense instruction, I  
11 understand the Court's leaning that way.

12 The problem I see with this is that it's  
13 repetitious of some of what's already in the -- the sexual  
14 assault instruction. It doesn't necessarily come exactly  
15 from the Nevada statute like the sexual assault instruction  
16 does.

17 So my proposition would be to remove the, consent  
18 is not a defense to sexual assault of a minor under 16, line  
19 six, just take that out. And then -- and then the  
20 instruction follows the statute. And then create another  
21 instruction or another part of this instruction that says,  
22 consent is a defense; however, consent can be withdrawn at  
23 any time during the course of a -- of sexual conduct or  
24 something of that nature. So it's -- it's giving the Defense  
25 what they're asking for, the consent is a defense, it's



1 reminding them that consent can be withdrawn, but it's not  
2 repeating portions of the Nevada statute and adding in  
3 language that doesn't follow the Nevada statute.

4 MR. DRASKOVICH: And -- and, you know, a jury  
5 instruction does not have to follow the statute. It can't  
6 conflict it with it, but it can't --

7 THE COURT: No, I --

8 MR. DRASKOVICH: -- there's no requirement that  
9 it --

10 THE COURT: The goal is not to follow the statute,  
11 the goal is make it understandable to the jury --

12 MR. DRASKOVICH: Yes.

13 THE COURT: -- which most of the time when I go  
14 back and talk to the jury, they don't -- they talk about how  
15 bad the instructions are, and I tend to agree with them.  
16 Just following the statute or quoting Supreme Court  
17 decisions --

18 MR. DRASKOVICH: Dicta.

19 THE COURT: -- is -- it's great, maybe for  
20 attorneys, but it's not the best thing for people to  
21 understand what it is.

22 I mean, essentially, the crime of sexual assault is  
23 the defendant engages in a sexual penetration, and at the  
24 time he either knows or should know under the circumstances  
25 that it's against the will of the alleged victim, or he knows

1 or should have known -- should have -- whatever, that alleged  
2 victim was mentally or physically incapable of resisting or  
3 understanding the nature of his conduct.

4 He's got to know those things. He either needs to  
5 know them or should have known them under the circumstances,  
6 you know, for him to be guilty. Yes, I agree with you, if  
7 the defendant is -- or the victim is sitting there screaming  
8 no, don't do this, stop, and beating him, I would tend to say  
9 that that's not consent, and the jury, I would hope, would  
10 come back and say that's not consent.

11 But it still is a jury issue. They're the ones who  
12 decide whether or not the defendant, seeing all that conduct,  
13 is engages in -- is engaging in sexual penetration with  
14 someone against their will. So that -- you can argue that --  
15 you know, someone can argue, oh, she always said that over  
16 and over, and the next morning she said, oh, this was the  
17 greatest thing in all the world, so I just assumed that we  
18 were play at -- I mean, it's horrible, but there are plenty  
19 of sexual deviants out there that make this a possibility.

20 MS. KOLLINS: So this returns me to my initial  
21 concern that I expressed earlier. I have new instructions  
22 based on what I believe the Court's going to do that need to  
23 be offered. Submission is not the equivalent of consent.

24 THE COURT: I mean, I'll agree with you.

25 MS. KOLLINS: And that consent may be withdrawn.

1 THE COURT: And I -- well, and I think -- well,  
2 and, yeah, I mean --

3 MS. KOLLINS: Or terminate it. Whatever --

4 THE COURT: -- we can --

5 MS. KOLLINS: -- language.

6 THE COURT: -- I don't mind putting in a couple of  
7 instructions. I think that, you know, the instruction that I  
8 have, you know, does cover that, that the person no longer  
9 consents to sexual activity, or no longer, you know, so --  
10 but we can make that more explicit. I don't have a problem  
11 necessarily making that more explicit.

12 If you've got the instructions and want to run down  
13 to your office and grab those and come back up, we'll --  
14 we'll -- we'll dig into them.

15 MS. KOLLINS: I'm not in this building, so if  
16 you'll give me just a moment to send an e-mail, hopefully  
17 somebody's available.

18 THE CLERK: They can just send them to me and I'll  
19 print them.

20 MS. KOLLINS: Mr. Merback's going to get them.

21 MR. MERBACK: I'll just run to my office right now  
22 and get them.

23 (Pause in the proceedings; Mr. Merback exits courtroom)

24 (Ms. Kollins/Law Clerk conferring)

25 THE COURT: Are you going to --

1 MS. KOLLINS: Well, I think -- I think he copied a  
2 block, and it was easier because those are all the ones that  
3 cite to McNair, but I think you already have some of those.

4 THE COURT: Yeah, I mean, you've got some that are  
5 in there, but there's like two that are already in there and  
6 two that aren't.

7 MS. KOLLINS: Right. So two and four are already  
8 in there, so you can just disregard those.

9 MR. DRASKOVICH: Okay. Starting from the top, two  
10 and four?

11 MS. KOLLINS: Yes, sir.

12 MR. DRASKOVICH: Okay.

13 MS. KOLLINS: And then Mr. Draskovich and I have  
14 been having a discussion --

15 THE COURT: Okay. Let me just, sort of, finish one  
16 thought, I'm sorry.

17 MR. DRASKOVICH: Sure.

18 THE COURT: And don't worry, I -- I'll --

19 (Pause in the proceedings)

20 THE COURT: Okay. I'm sorry, Ms. Kollins.

21 MS. KOLLINS: Mr. Draskovich and I have had a  
22 moment to go over the Court's proposed instruction, and if  
23 you could indulge me just a moment.

24 THE COURT: I think I -- I generally do.

25 MS. KOLLINS: I'm trying to make quick in this.

1 THE COURT: Yeah. I've got all afternoon. I --  
2 and I usually stay here until past 5:00 o'clock on Friday  
3 afternoon, so it's not --

4 MS. KOLLINS: Skyler.

5 THE COURT: Well, I'm not saying my staff always  
6 stays here with me, but --

7 MS. KOLLINS: It might be easier if I showed you.  
8 If we might approach the bench. I know we don't generally do  
9 that in here.

10 THE COURT: Oh, I -- that's fine. Mr. Draskovich,  
11 you can come up. Let me pull up my sheet here.

12 MS. KOLLINS: So this is the Court's draft, and  
13 we've separated it into paragraphs.

14 THE COURT: Okay.

15 MS. KOLLINS: Paragraph one, as it is written.  
16 Paragraph two, we -- the parties would like that to be  
17 bifurcated because it's just long. So where it starts on  
18 line five, therefore, if that could be a new paragraph.

19 THE COURT: Okay.

20 MS. KOLLINS: And the parties would agree to strike  
21 paragraphs four and five.

22 THE COURT: Four is the "However"?

23 MS. KOLLINS: Yes. And five is the "if".

24 THE COURT: Okay. You good with that,  
25 Mr. Draskovich?

1 MR. DRASKOVICH: Yes, I am.

2 THE COURT: All right. Let me -- all right. Let  
3 me just cross -- I'll strike that, and then strike that.  
4 I've played around with this a little bit myself, and I'm  
5 going to have -- e-mail it to Skyler, and then see what you  
6 think. But I'll note the ones, the portions that you have  
7 striked out. Let me send -- can I have you print this out?  
8 Or I can send it to Kelly.

9 (Pause in the proceedings)

10 MS. KOLLINS: I don't think -- do you have  
11 Mr. Merback's e-mail? Oh, you do.

12 THE COURT: Yeah, I got it.

13 MS. KOLLINS: So we've numbered those one, two,  
14 three, four.

15 THE COURT: I've actually incorporated them into  
16 the instruction, what I feel is important into the  
17 instruction that I want to get to you that Skyler will hand  
18 you here in a second.

19 MS. KOLLINS: Okay.

20 MR. DRASKOVICH: Okay.

21 THE COURT: But, yeah, three I agreed needed to go  
22 in. And five --

23 MS. KOLLINS: Yes, five, I think there's a four  
24 that we already have and two we already have.

25 THE COURT: Okay. Well, actually -- well, Skyler's

1 going to come back --

2 MS. KOLLINS: Okay.

3 THE COURT: -- and in marking out, I marked out  
4 portions that I thought -- I was -- of your stuff, so we'll  
5 work it out here in a second.

6 (Pause in the proceedings)

7 THE COURT: Okay. So you are both good with  
8 including Mr. Merback's e-mail, paragraph one?

9 MR. DRASKOVICH: We are, and -- but we agreed as  
10 well as the other force instruction would -- I mean, I think  
11 it would be redundant. We had that previous physical force.

12 THE COURT: Okay. All right.

13 MR. DRASKOVICH: And we changed the language of  
14 previously. If the State wants to substitute this one for  
15 that one, I have no objection to it. It was instruction  
16 number 11.

17 THE COURT: All right. Okay. I'm going to combine  
18 some instructions here so we're going to -- oh, okay. Hold  
19 on, I just realized I was pulling this up off of a -- here,  
20 I'll send it to Sky. Skyler's like what did you do? And  
21 see, that's a fair question.

22 I'm going to send it to you if you're listening  
23 Skyler. I'm going to e-mail it to you right -- right now.

24 Okay. All right. Skyler will be out in just a  
25 second.

1 (Court/Law Clerk conferring)

2 (Pause in the proceedings; Court steps off Bench)

3 THE COURT: All right. Skyler will be out in just  
4 a second. I modified an instruction from a prior instruction  
5 and so I sent her back the entire packet of like 50 pages of  
6 instructions, and she's sort of like what -- what are you --  
7 what are you wanting me to do? That's fair on her part.

8 (Pause in the proceedings)

9 THE COURT: Thank you. Ignore the first sentence  
10 being modified. I pulled this case out of a prior  
11 instruction.

12 (Pause in the proceedings)

13 THE COURT: You had said strike out the "however"  
14 paragraph, and I quickly struck it out, but I had included in  
15 there, the submission is not the equivalent of consent, which  
16 I'm -- so if I'm reading it right, you would be striking  
17 out --

18 MS. KOLLINS: Well --

19 THE COURT: -- the first sentence, however, until  
20 not a reasonable good faith belief, and asking me to leave  
21 in, submission is not the equivalent of consent, and the next  
22 sentence, a person's not required to do more than her age,  
23 strength, surrounding facts.

24 MS. KOLLINS: That is correct. And --

25 THE COURT: And I don't have -- like I said, I



1 quickly struck that out when you came up to the bench, so --

2 MS. KOLLINS: And I know these are probably  
3 essentially the same, I think the parties really like the  
4 first version.

5 THE COURT: I like this version.

6 MS. KOLLINS: Okay.

7 THE COURT: I'll be frank. I think it makes it  
8 clearer to the jury.

9 MS. KOLLINS: My only objection is, then, that we  
10 have included the concept and the notion of reasonable doubt  
11 in here. We haven't done that regarding any other crime. We  
12 generally don't do that because we don't want to exalt the  
13 importance of reasonable doubt as it applies --

14 THE COURT: Well, I thought you agreed to strike  
15 out the last paragraph --

16 MS. KOLLINS: I --

17 THE COURT: -- where it talks about reasonable  
18 doubt.

19 MS. KOLLINS: I did, but the new version you gave  
20 me has reasonable doubt --

21 THE COURT: Oh --

22 MS. KOLLINS: -- on line three.

23 THE COURT: -- you have to -- well, you do have to  
24 find beyond a reasonable doubt two elements. And I've had  
25 lots of defendants come up and want the last paragraph, which

1 says, if you don't find all the elements beyond a reasonable  
2 doubt, you're required to find the defendant not guilty.  
3 That's their defense.

4 I'm not aware of any case that says we shouldn't  
5 use -- reference reasonable doubt much.

6 MR. DRASKOVICH: That's -- I agree, but we had done  
7 this in the spirit of compromise to agree upon this to -- but  
8 that's -- that's why.

9 (Pause in the proceedings)

10 THE COURT: (To Law Clerk) Well, I think that it  
11 may make it better to do a separate as to each one of the  
12 sexual -- sexual acts; one for fellatio, one for sexual  
13 intercourse and one for anal intercourse.

14 MR. MERBACK: Your Honor, just one proposal to this  
15 instruction --

16 THE COURT: Sure.

17 MR. MERBACK: -- in addition to what Ms. Kollins  
18 talked about, where it says -- it's right in the middle. It  
19 says, Physical force is not necessary, the crucial question  
20 is not whether the person was physically forced to engage in  
21 sexual assault, but whether the act was committed without her  
22 consent.

23 Can we change that language to, whether the act was  
24 committed against the will -- against her will? Because that  
25 -- that conforms to the language in the other -- in the other

1 instruction, and also conforms to the language of the  
2 statute.

3 THE COURT: Okay. I just was pulling actually your  
4 instruction for that.

5 MR. MERBACK: Is ours.

6 THE COURT: Now, one thing that I did not include  
7 from your instruction was the last sentence, there is no  
8 consent with a person is induced, because I would -- had --  
9 when I first pulled that, I had the other paragraphs that are  
10 struck out, and I felt that was encompassed in there. I  
11 don't have a problem adding in that last sentence either,  
12 there's no consent where a person is induced to submit to a  
13 sexual act through fear of death or serious bodily injury --  
14 through fear of death or serious bodily -- I don't know if  
15 you want that in there or not.

16 MS. KOLLINS: Well, there's --

17 THE COURT: I don't have a problem putting that in  
18 there.

19 MR. DRASKOVICH: I'd prefer to have that in.

20 THE COURT: Okay. So -- so, I mean, I -- how do  
21 you want to it changed or do you still want it changed?

22 (Pause in the proceedings)

23 MS. KOLLINS: Is the Court going to break these --

24 THE COURT: No, this is one instruction.

25 MS. KOLLINS: Okay.

1 THE COURT: I guess you need to add the concept --  
2 if you're -- if you're going to leave it -- because that does  
3 come from the an adult case, if we could make it against the  
4 will or without her consent, comma, against her will or  
5 without or her consent or --

6 I mean, I think against the will encompasses the  
7 idea without her consent. If it's against your will, you  
8 aren't --

9 MS. KOLLINS: Okay.

10 THE COURT: -- consenting.

11 MS. KOLLINS: Okay. That's fine. Just leave it in  
12 then.

13 THE LAW CLERK: I'm sorry, Ms. Kollins, you want it  
14 changed to against her will or left as without her consent?

15 MS. KOLLINS: We're --

16 THE LAW CLERK: Oh, you're still discussing. I'm  
17 sorry.

18 THE COURT: Discussing. I'd prefer against the  
19 will because that does comport with the statutory language.

20 MR. DRASKOVICH: We'd agree.

21 (Pause in the proceedings)

22 MS. KOLLINS: So we're going to have to --

23 THE COURT: Sorry?

24 MS. KOLLINS: We're going to have to define  
25 reasonable good faith belief now, I think, because we've said

1 it like twice now.

2 MR. DRASKOVICH: I think that's just open for  
3 argument.

4 THE COURT: I mean, do you have a definition for  
5 reasonable --

6 MS. KOLLINS: Well, we --

7 THE COURT: -- good faith belief?

8 MS. KOLLINS: I -- I took it out in the interest of  
9 compromising previously, and now, I mean, the Court had one  
10 that said a belief --

11 THE COURT: Well, this is -- now, this is language  
12 that -- this is California instruction language. I believe  
13 it's based upon ambiguous conduct by an alleged victim that  
14 is the product of conduct by the defendant that amounts to  
15 force, violence, duress, menace, or fear of immediate or  
16 unlawful bodily injured is not from a reasonable good faith  
17 belief.

18 I mean, I don't have a problem sticking that back  
19 in.

20 MS. KOLLINS: I'm sorry. All right. Okay.

21 THE COURT: I mean, my preference probably would be  
22 to stick that back in. I think, you know, it makes, you  
23 know, ambiguous conduct by -- you know, if it -- you know, if  
24 -- you know, I -- there's probably a basis to argue force,  
25 violence, and duress, and menace based upon the alleged

1 victim's testimony.

2 MS. KOLLINS: I'm going to defer to Mr. Merback  
3 just one moment.

4 THE COURT: Okay.

5 (Pause in the proceedings)

6 MR. MERBACK: All right. Mr. Merback says no, and  
7 leave it out, if we could.

8 THE COURT: No?

9 MS. KOLLINS: Mr. Merback says no. I'm deferring  
10 to him today.

11 THE COURT: Are you sure?

12 MS. KOLLINS: Yes.

13 THE COURT: All right. All right.

14 MR. MERBACK: Court's indulgence.

15 (Pause in the proceedings)

16 MR. MERBACK: We're not going to ask for it, Your  
17 Honor.

18 THE COURT: Okay. All right. Well, let's -- all  
19 right, we'll -- this -- so is charged and I can't remember  
20 counts X and Y with --

21 MS. KOLLINS: Sexual assault is --

22 THE COURT: -- with sexual assault involving sexual  
23 intercourse.

24 MS. KOLLINS: Is count two, count three --

25 THE COURT: I thought it was two, two, and one, but

1 I may be wrong. I probably am wrong.

2 MS. KOLLINS: Yeah, it is. Count two and count  
3 three are sexual intercourse.

4 THE COURT: Count two and three are sexual  
5 intercourse?

6 MS. KOLLINS: I'm sorry, two and four. No, two and  
7 five -- good Lord.

8 THE COURT: All right.

9 MS. KOLLINS: No, it's not. Wait a minute. Strike  
10 all of that.

11 THE LAW CLERK: No, two and three.

12 MS. KOLLINS: It's two and three. We were right  
13 the first time.

14 THE CLERK: Four and five are the anal intercourse  
15 and the first one is fellatio.

16 (Pause in the proceedings)

17 THE COURT: All right.

18 MR. DRASKOVICH: Just so -- I'm following, I'm  
19 sorry. The instruction that we've just -- the parties have  
20 reached with Your Honor's assistance, that applies to the  
21 sexual assault counts?

22 THE COURT: Sexual assault involving sexual  
23 intercourse.

24 MR. DRASKOVICH: Okay.

25 THE COURT: What I want to do -- I mean, I can do

1 three full instructions like this, but my general thought is  
2 have -- the defendant has been charged in count two and three  
3 of the Amended Information with sexual assault involving  
4 sexual intercourse, to find -- for you to find the defendant  
5 guilty of this charge, you must find beyond a reasonable  
6 doubt, one and two, and then right after that say, the  
7 defendant's been charged in counts four and five with sexual  
8 assault involving anal intercourse, and then say, first at or  
9 near the time alleged in the Information the defendant  
10 intentionally sexually penetrated the victim by inserting,  
11 however slight, his penis into the anal opening of the  
12 alleged victim. Is that -- everybody in concurrence with  
13 that?

14 MS. KOLLINS: Yes, Your Honor.

15 MR. DRASKOVICH: Yes.

16 THE COURT: Okay. Let's see. What's -- I don't  
17 have -- I'm getting disorganized here -- quickly. And then  
18 -- and then as for count one -- and then put right after  
19 that, defendant's been charged with count one with sexual  
20 assault involving fellatio. If you find defendant guilty of  
21 this, first in or near the time alleged in the Information,  
22 the defendant intentionally sexually penetrated victim by  
23 touching his penis by -- well, this -- the definition you're  
24 providing is touching of his penis to the mouth or tongue of  
25 the --



1 MS. KOLLINS: It should say placing his penis on or  
2 in the mouth of the victim. Is that not what it says?

3 THE COURT: Well, the -- the definition you  
4 provided at page 12 says fellatio is touching of the penis by  
5 the mouth or the tongue of another person.

6 MS. KOLLINS: Well, that's --

7 THE COURT: So you're saying, by placing his penis,  
8 however slight, on the mouth or tongue of the victim?

9 MS. KOLLINS: That is fine.

10 THE COURT: Okay. By placing his penis, however  
11 slight, upon the tongue -- now, is it just touching the mouth  
12 or does it have to go into the mouth?

13 MS. KOLLINS: Just touching, Your Honor.

14 THE COURT: Okay. Do you --

15 MS. KOLLINS: By statute.

16 THE COURT: -- agree with that Mr. --

17 MR. DRASKOVICH: That's --

18 THE COURT: -- Draskovich?

19 MR. DRASKOVICH: Legally, yeah, I'd --

20 THE COURT: Okay. I mean, I'm not --

21 MR. DRASKOVICH: I don't like it, but that's what  
22 the law is.

23 THE COURT: All right.

24 MR. DRASKOVICH: Yeah.

25 THE COURT: Placing upon the mouth or tongue.

1 Tongue of alleged victim. Okay. And then we'll go into the  
2 subsequent paragraphs.

3 MS. KOLLINS: Can you just read that back to me how  
4 the Court drafted it so I make sure?

5 THE COURT: Okay. Actually, I'm going to go in,  
6 ask you to stay here, and change that. Well -- all right.  
7 I'm going to go with Skyler and we'll get this pounded out  
8 and make sure we've got at least this thing done.

9 (Pause in the proceedings; Court stepped off Bench)

10 THE COURT: All right. Any comment from the State?

11 MS. KOLLINS: No, Your Honor.

12 THE COURT: At this point beyond what -- Defense,  
13 are you good with it, Defense?

14 MR. DRASKOVICH: We're -- we're good with this,  
15 Your Honor. Thank you.

16 THE COURT: All right. Let's turn to the next  
17 battle ground --

18 THE DEFENDANT: Thank you.

19 THE COURT: -- lewd and lascivious acts. And  
20 you're contending that we should have knowledge -- at least  
21 have knowledge that she was under 16?

22 MR. DRASKOVICH: Yes.

23 THE COURT: Is that what your contention is?

24 MR. DRASKOVICH: That he knew or should have known.

25 THE COURT: All right. I mean, Nevada doesn't have

1 anything on that. I did look at the, I think, Tennessee  
2 cases you provided. That -- those cases deal with specific  
3 rules that the state has as to the application of intent and  
4 knowledge as it relates to that state's crimes. I don't see  
5 a lot of application there.

6 I looked at California law, and California statute  
7 is essentially the same as the, in my opinion, as the Nevada  
8 statute which provides that, except as otherwise provided in  
9 (indecipherable) a person who willfully or lewdly commits any  
10 lewd or lascivious act, including any acts constituting other  
11 crimes provided in part one upon the body or in part of the  
12 member thereof, of a child who's under the age of 14 years  
13 with the intent of arousing, appealing, or gratifying the  
14 lust, passions, or sexual desires of the child is guilty of a  
15 felony.

16 The issue of good faith mistake of fact as to the  
17 age of a victim has been found in California to not be a  
18 defense to that charge, and the specific crime here of under  
19 the age of -- lewd and lascivious act under the age of 16 was  
20 another one of those crimes that was added by the legislature  
21 in 2015 at the same time that it broke out, a child under the  
22 age of 14 for the purposes of the sexual assault statute.

23 So my -- my inclination at this point in time is  
24 that good faith mistake as to the age of the victim is not a  
25 defense in Nevada as to lewd and lascivious act with a child

1 under the age of 16. But I'll be glad to hear more argument  
2 from you, if you want.

3 MR. DRASKOVICH: Just very briefly. Obviously, the  
4 Court has reviewed the -- our position. You know, our  
5 position's obviously, we believe that knowledge should be an  
6 element. It's addressed by our points and authorities, and  
7 we'll submit it on that basis.

8 THE COURT: Okay.

9 MR. DRASKOVICH: Our -- our --

10 THE COURT: You want to add anything for the  
11 appellate court record?

12 MS. KOLLINS: State concurs with the Court.

13 THE COURT: Well, good. But I am being serious, do  
14 you want to add anything to my analysis for the -- for the  
15 record?

16 MS. KOLLINS: No, I -- I concur with everything the  
17 Court --

18 THE COURT: Okay.

19 MS. KOLLINS: -- articulated regarding mistake of  
20 fact, regarding age.

21 THE COURT: All right. In that regard, let's see,  
22 where are the instructions that deal with -- oh, let me ask,  
23 on sexual assault, the age of the child is a sentencing  
24 factor --

25 MS. KOLLINS: Yes, sir.

1 THE COURT: -- the way we're dealing it. Do we  
2 need to have the jury make the decision, though, that the  
3 child was under 18 at the time of the incident or is that  
4 something that -- I mean --

5 MS. KOLLINS: Well --

6 THE COURT: -- obviously, if they're -- you know,  
7 based upon the allegations here, the child has -- I mean, if  
8 we were close to her 16th birthday, this might be an issue.  
9 But, I mean, based on the allocations, I think the Court can  
10 take judicial notice if they find her [sic] guilty of -- or  
11 the defendant guilty of --

12 MS. KOLLINS: And --

13 THE COURT: -- sexual assault, they're going to  
14 find --

15 MR. DRASKOVICH: I agree -- I agree --

16 THE COURT: -- that it's --

17 MR. DRASKOVICH: -- with the Court.

18 MS. KOLLINS: We've never highlighted for them.  
19 We've always just -- we've treated it to them like it's a  
20 portion of their findings. That's why we always go through  
21 the dates of birth and the timing and such.

22 THE COURT: Um-h'm.

23 MS. KOLLINS: It is -- it is technically not an  
24 element, but I think by their verdict, they make the finding,  
25 so I don't think we need to highlight the age factor, but

1 I'll submit it to the Court.

2 THE COURT: Well, I -- ultimately, if we don't give  
3 it to the jury, it's got to be a factor that I determine,  
4 which I don't have any problem determining if they come back  
5 with a sexual assault, it's going to be with a child under 16  
6 years of age for purposes of sentencing purposes.

7 I mean, Mr. Draskovich, do you want it to go to the  
8 jury or are you good with me making the decision?

9 MR. DRASKOVICH: I'm good with Your Honor making  
10 that determination.

11 THE COURT: Okay. State's good with that, too?

12 MS. KOLLINS: Yes, Your Honor.

13 THE COURT: Okay. All right. So then looking at  
14 instruction 15. All right. Yeah, I was going to say --

15 MR. MERBACK: Your Honor, just -- just so we're all  
16 on the same page, is the Court going to produce a numbered  
17 copy of all of these, and then we can have them just because  
18 when --

19 THE COURT: Yeah, we're going to --

20 MR. MERBACK: Okay.

21 THE COURT: -- do that.

22 MR. MERBACK: All right. Perfect.

23 THE COURT: Don't worry.

24 MS. KOLLINS: Yay, Skyler.

25 THE COURT: Yeah, Skyler's -- Skyler's wonderful,

1 yes. All right.

2 MR. DRASKOVICH: There was one other -- if Your  
3 Honor's reviewing an instruction, I'll wait.

4 (Pause in the proceedings)

5 MR. DRASKOVICH: Your Honor, there was one other  
6 instruction that based upon yesterday's testimony that we  
7 thought would be appropriate or issue of discussion as to  
8 that --

9 THE COURT: Okay. No, and I'm not --

10 MR. DRASKOVICH: Okay.

11 THE COURT: Do not -- don't lose that thought.

12 MR. DRASKOVICH: Okay.

13 (Pause in the proceedings)

14 THE COURT: All right. I want to talk about the  
15 lewd lascivious count, but what's the one you want to add or  
16 the parties are good with adding?

17 MR. DRASKOVICH: You know, I did some research  
18 trying to find basically returning to the scene. You know,  
19 how in many cases there's a flight instruction where a person  
20 leaves and --

21 THE COURT: Yeah.

22 MR. DRASKOVICH: -- in this case we kind of have  
23 something basically the opposite or at least it could be  
24 argued that he returned or remained. I -- I couldn't find  
25 any Nevada law on that subject last night. I do have the

1 State's general flight instruction that --

2 THE COURT: Do you want to include that?

3 MR. DRASKOVICH: I do.

4 THE COURT: Do you have a problem including your  
5 flight instruction?

6 MS. KOLLINS: Well, yes, because he didn't flee,  
7 so --

8 THE COURT: I'm not quite sure how it applies, but  
9 let me -- let me see the flight instruction.

10 MR. DRASKOVICH: Yes.

11 MS. KOLLINS: So he got caught on the scene and now  
12 we're going to use a flight instruction?

13 THE COURT: Well, I --

14 MS. KOLLINS: Oh, my goodness.

15 MR. DRASKOVICH: And our position that flight is  
16 indicative of consciousness of a guilt, then returning would  
17 be the opposite.

18 MS. KOLLINS: Really, I can -- and presence is  
19 indicative of --

20 MR. DRASKOVICH: Not guilt. I mean, that's --

21 MS. KOLLINS: Oh. Okay.

22 THE COURT: I have -- I mean, I'm not -- I'm not  
23 sure --

24 MS. KOLLINS: I've had that asked before. I've  
25 never seen it given, but I'll submit it.



1           THE COURT: I was going to say I -- I'm not going  
2 to -- I mean, there's no flight here. I mean, I -- they're  
3 going to be sitting here going what are you -- what are you  
4 talking about? I mean, you know, certainly it's an argument  
5 that you can say, if he thought that he raped her, he would  
6 never have come back.

7           MR. DRASKOVICH: Okay.

8           THE COURT: I mean, that's a legitimate argument,  
9 but I'm not going to give the flight instruction.

10          MR. DRASKOVICH: Okay. Thank you. Your Honor.

11          THE COURT: So --

12          MR. DRASKOVICH: Then I think we've concluded with  
13 our --

14          THE COURT: Well, do you -- here, why don't you  
15 give me that since you offered it, and I'm rejecting it, I  
16 will include that in your packet --

17          MR. DRASKOVICH: Okay. Thank you.

18          THE COURT: -- as part of the Court's -- court  
19 exhibits so that we have a record that you requested the --  
20 you know, make sure we have a copy of both sides submitted as  
21 part of the Court record. I'll get that to you for right  
22 now.

23          THE LAW CLERK: Okay.

24                           (Pause in the proceedings)

25          THE COURT: All right. Let's see.

1 MR. DRASKOVICH: Thank you.

2 THE COURT: All right. Has everybody had a chance  
3 to look at my proposed changes to the lewdness instructions?

4 MR. MERBACK: Yes, Your Honor.

5 MS. KOLLINS: Yes, Your Honor.

6 THE COURT: Okay. What's the State's comments?

7 MS. KOLLINS: The State's satisfied with the  
8 instruction as drafted by the Court.

9 THE COURT: Okay. Defense?

10 MR. DRASKOVICH: We'll submit it, Your Honor.

11 THE COURT: All right. I know you're not agreeing  
12 to the consent aspect as far as 16, but --

13 MR. DRASKOVICH: Yeah, outside of that --

14 THE COURT: -- I mean, outside of that --

15 MR. DRASKOVICH: Outside of that, we have no  
16 objection to it.

17 THE COURT: All right. On the one -- the bottom  
18 paragraph that a child under the age of 16 cannot consent to  
19 another individual, we need to modify it and I -- because  
20 I've got that with the genital area with the prior counts.  
21 So it would be child under the age of 16 cannot consent to  
22 another individual using his hands or fingers to touch, slap,  
23 grab, or fondle the child's breasts, buttocks, or body to  
24 arouse, appeal to, or gratify his own lust, et cetera.

25 Everybody okay with that change?

1 MS. KOLLINS: Yes, Your Honor.

2 MR. MERBACK: Yes, Your Honor.

3 MR. DRASKOVICH: Yes, Your Honor.

4 THE COURT: Okay. All right. And I'm going to  
5 have -- add the instruction 17 proposed by the State, which  
6 is it's constituted -- it's not necessary to have the bare  
7 skin be touched. Touching may be include the clothing of the  
8 child.

9 I'm going to just insert that at the bottom of this  
10 instruction so that essentially all the instructions relating  
11 to lewd or lascivious are under one instruction. Anybody  
12 have a problem with me doing that?

13 MR. DRASKOVICH: No.

14 THE COURT: State?

15 MR. MERBACK: No, Your Honor.

16 MS. KOLLINS: No.

17 THE COURT: Okay. All right.

18 (Pause in the proceedings; Court/Law Clerk conferring)

19 (Pause in the proceedings)

20 THE COURT: While Skyler is doing that, would now  
21 be a -- trying to put together a final packet for us to do a  
22 final run through, is it now an okay time for me to canvass  
23 the defendant?

24 MR. DRASKOVICH: It is, Your Honor.

25 THE COURT: Okay. All right. All right.

1 Mr. Moore, we've talked to you a lot of times during the  
2 hearings leading up to this and the times during the trial,  
3 but, you know, I don't think I've ever formally introduced  
4 myself. I'm Eric Johnson. I'm obviously, the trial judge  
5 responsible for your trial in this matter.

6           We're at a point in the trial, because you're -- on  
7 Monday when we all get back together, your side is -- has the  
8 time, if it wishes to do so, to present any evidence. And so  
9 we're at a point where I need to advise you of some rights  
10 that you have.

11           THE DEFENDANT: Yes, sir.

12           THE COURT: I want to make sure you understand  
13 those. Is it okay if we do that now?

14           THE DEFENDANT: Yes, sir, yes, sir. Thank you.

15           THE COURT: Okay. You have a right under the  
16 Constitution of the United States and under the Constitution  
17 of the State of Nevada not to be compelled to testify in this  
18 case.

19           Do you understand that?

20           THE DEFENDANT: Yes, sir.

21           THE COURT: That means no one can make you take the  
22 witness stand and make you answer any questions.

23           Do you understand that right?

24           THE DEFENDANT: Yes, sir.

25           THE COURT: Okay. You may, if you wish, give up

1 this right, and you may take the witness stand and testify.  
2 If you do, you will be asked questions by your attorney and  
3 be subject to cross-examination by the deputy district  
4 attorney.

5 Do you understand you have the right to testify and  
6 be subject to cross-examination?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You sort of hesitated. I mean, I don't  
9 -- do you -- or do you understand that -- let me read that  
10 again --

11 THE DEFENDANT: Yeah.

12 THE COURT: -- to make sure you understand.

13 THE DEFENDANT: Yeah.

14 THE COURT: You may, if you wish, give up this  
15 right, that being the right not to be compelled to testify in  
16 the case, you may give up this right, and you may take the  
17 witness stand and testify.

18 If you do take the witness stand and testify, you  
19 will be asked questions by your attorney --

20 THE DEFENDANT: Yeah.

21 THE COURT: -- and then you'll be subject, just  
22 like every other witness we've had in this case, you'll be  
23 subject to cross-examination by the deputy district attorney.

24 THE DEFENDANT: Right.

25 THE COURT: Do you understand you have the right to

1 testify, and if you do testify, you'll be subject to  
2 cross-examination?

3 THE DEFENDANT: Yes, I do understand. We -- we  
4 can't take that part out of when they're cross-examination?

5 THE COURT: No --

6 THE DEFENDANT: Okay.

7 THE COURT: -- you can't take that part out.

8 THE DEFENDANT: All right.

9 THE COURT: If you want to -- Mr. Draskovich, do  
10 you need to talk to him a little bit about --

11 MR. DRASKOVICH: We've discussed this at length.

12 THE DEFENDANT: Okay. All right.

13 MR. DRASKOVICH: In fact, I informed that if he --  
14 and I won't get into the subject, but I did tell him if he  
15 testified, he'd be subject to cross-examination. I actually,  
16 did a partial cross-examination of him that I would  
17 anticipate the State conducting.

18 THE COURT: Okay.

19 MR. DRASKOVICH: So he's well aware of --

20 THE COURT: There's no way -- just so you  
21 understand --

22 THE DEFENDANT: Okay.

23 THE COURT: -- that's -- that's part of the --

24 THE DEFENDANT: Gotcha.

25 THE COURT: -- part of the deal.

1 THE DEFENDANT: Part of the deal.

2 THE COURT: I mean, and if you remember --

3 THE DEFENDANT: If we were adding stuff earlier,  
4 moving stuff, I thought maybe we could take that out, but  
5 okay.

6 MR. DRASKOVICH: We can't take that out.

7 THE DEFENDANT: All right.

8 THE COURT: And if you remember, when I was giving  
9 my initial instructions to the jury, I --

10 THE DEFENDANT: Yes.

11 THE COURT: -- talked to them about the importance  
12 of not doing any sort of investigation or research on their  
13 own outside --

14 THE DEFENDANT: Yes.

15 THE COURT: -- the courtroom because the evidence  
16 that's presented here in the courtroom is presented under  
17 oath and is subject to the cross trial process, which means  
18 the cross-examination process --

19 THE DEFENDANT: Gotcha.

20 THE COURT: -- so that -- to help people determine  
21 the truth.

22 THE DEFENDANT: Yeah.

23 THE COURT: And so the theory of bringing people in  
24 here and having them be on the witness stand and testify --

25 THE DEFENDANT: Yes.

1 THE COURT: -- is they -- one side gets to ask them  
2 questions, but the other side gets to ask them questions, so  
3 that both sides have a -- the ability to bring out fully the  
4 testimony of a witness for the jury to evaluate and to  
5 determine the credibility that testimony.

6 Do you understand that?

7 THE DEFENDANT: Yes, sir. Yes, I do.

8 THE COURT: Okay.

9 THE DEFENDANT: Thank you.

10 THE COURT: All right. Now, if you do testify,  
11 anything that you say, whether it's in answers to questions  
12 put to you by your attorney, or to questions put to you by  
13 the deputy district attorney, will be the subject of fair  
14 comment when the deputy district attorney and your attorney  
15 speak to the jury in final arguments.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Your testimony will be available  
19 to the jurors to consider in their deliberations, and they  
20 will evaluate your testimony as any other witness and may  
21 believe all your testimony, part of it, or none of it. They  
22 can give it as much weight as they feel it deserves.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: If by chance you are convicted of any



1 crimes with which you are charged in this case, your  
2 testimony will be the subject of comment by the deputy  
3 district attorney and your attorney during any sentencing  
4 hearing, and the Court may consider your testimony in  
5 determining appropriate sentence.

6 Do you understand that?

7 THE DEFENDANT: Yes, I do. Thank you.

8 THE COURT: Your testimony will be recorded and be  
9 public record and available to anyone and could be used on  
10 your behalf or against you as the law permits in any  
11 personal, business, or legal matter, including any subsequent  
12 criminal or civil litigation in which your testimony would be  
13 relevant.

14 Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Now, if you choose not to  
17 testify, the Court will not permit the district attorney to  
18 make any comments to the jury concerning the fact that you  
19 have not testified.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If you elect to not testify, the Court  
23 will instruct the jury, if your attorney specifically  
24 requests such an instruction, an instruction which  
25 essentially states as follows: The law does not compel a

1 defendant in a criminal case to take the stand and testify,  
2 and no presumption may be raised and no inference of any kind  
3 may be drawn from the failure of a defendant to testify.

4 Do you understand that if your attorney requests --  
5 if you do not testify and your attorney requests it, I'll  
6 give an instruction similar to this?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Are you sure? Essentially --

9 THE DEFENDANT: The last part --

10 THE COURT: -- your --

11 THE DEFENDANT: -- I didn't.

12 THE COURT: -- entitled to -- if your attorney --  
13 if you don't testify --

14 THE DEFENDANT: Yes.

15 THE COURT: -- your attorney can request that I  
16 give appear instruction which tells the jury specifically  
17 that you have a right not to testify and that no presumption  
18 can be raised, and no inference of any kind can be drawn from  
19 the fact that you didn't testify.

20 THE DEFENDANT: Got it. It was the last part that  
21 I --

22 THE COURT: Do you understand that?

23 THE DEFENDANT: -- didn't -- yes, I do understand  
24 that part.

25 THE COURT: Okay.

1 THE DEFENDANT: It was the last -- you read the  
2 last sentence, I didn't seem to -- to --

3 MR. DRASKOVICH: And Your Honor, I did discuss this  
4 not in legalistic terms, but I did discuss this to him that I  
5 would be telling the jury in the event that he does not  
6 testify, that they cannot hold it against him.

7 THE DEFENDANT: He did, yes.

8 THE COURT: You didn't provide -- I mean, well,  
9 we'll come to the point where --

10 MR. DRASKOVICH: Yes.

11 THE COURT: -- later on that. But anyway, if you  
12 don't testify and your attorney requests it, I will give an  
13 instruction which essentially makes the jury, again, I think  
14 we've told them a number of times, but makes the jury again  
15 told that you do not have to testify, you have a right not to  
16 testify, and they cannot consider that, the fact that you  
17 didn't testify in any way in their deliberations and no  
18 presumption or inference of any kind can be drawn from the  
19 fact that you don't testify.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Now, do you have any questions  
23 that you'd like to ask me about your constitutional rights?

24 THE DEFENDANT: No.

25 THE COURT: Okay. Now, is there any prior

1 conviction that would be relevant in terms of impeachment  
2 with this defendant?

3 MS. KOLLINS: No, there is not.

4 THE COURT: Okay. So we don't need to go into any  
5 prior convictions? All right.

6 I don't want you to disclose any communication with  
7 your attorneys, but have you discussed with your attorneys  
8 your right to testify and your right not to testify in this  
9 trial?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Did they answer all your  
12 questions?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you feel you need any more time  
15 right now to speak with your attorneys about your right to  
16 testify or right not to testify?

17 THE DEFENDANT: Two minutes.

18 THE COURT: Two minutes.

19 THE DEFENDANT: Yeah.

20 THE COURT: Okay. Can he go back into the  
21 little --

22 MR. MERBACK: We can just leave, Your Honor, if  
23 that's easier. Whatever you want to do.

24 THE COURT: I'd actually prefer to go back in -- I  
25 just think it's always more --

1 THE DEFENDANT: I can do -- we can go right in this  
2 corner and --

3 THE COURT: -- more -- let's go back. I mean, it's  
4 -- I think it's just a freer atmosphere.

5 (Pause in the proceedings from 1:27 P.M., until 1:30 P.M.,  
6 Defendant/Mr. Draskovich/Mr. Merback exit to confer)

7 THE COURT: Okay. Mr. Moore, did you have  
8 sufficient time there to --

9 THE DEFENDANT: Yes, sir.

10 THE COURT: -- discuss any further issues or  
11 concerns --

12 THE DEFENDANT: Yes, sir. Thank you.

13 THE COURT: -- with your attorney?

14 THE DEFENDANT: Thank you, thank you.

15 THE COURT: All right. I mean, I want to make sure  
16 you understand you should discuss your options with your  
17 attorneys and listen carefully to their advice. However, the  
18 ultimate choice on whether or not to testify is your choice.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Have you made a choice, at  
22 least at this point in time, as to whether you're going to  
23 testify or not testify?

24 THE DEFENDANT: Yeah, I think so, yes, sir. Yes.

25 THE COURT: Okay.

1 THE DEFENDANT: Yes.

2 THE COURT: Well, then what is -- are you going to  
3 testify or not testify?

4 THE DEFENDANT: No.

5 THE COURT: Okay. Now, I want to make sure you  
6 understand on Monday, the State has rested. I'm going to  
7 turn to your attorney and say call your first witness. It's  
8 my understanding he plans to call Dr. --

9 MR. DRASKOVICH: Mark Chambers.

10 THE COURT: Mark Chambers. It's my understanding  
11 he's your only witness.

12 MR. DRASKOVICH: He's our only witness.

13 THE COURT: Okay. So when Mark Chambers --  
14 Dr. Chambers -- is he a doctor?

15 MR. DRASKOVICH: Doctor, yes.

16 THE COURT: Okay. Dr. Chambers finishes testifying  
17 and he gets off the stand and he's walking out the door --

18 THE DEFENDANT: Yes.

19 THE COURT: -- I'm going to turn to your attorneys  
20 and say, call your next witness.

21 THE DEFENDANT: Right.

22 THE COURT: At that point in time, they're going to  
23 stand up and say the Defense rests. That means they're done  
24 presenting evidence, the Defense rests.

25 Once either Mr. Horvath or Mr. Draskovich says the

1 Defense rests --

2 THE DEFENDANT: It's over.

3 THE COURT: -- you're done with the presentation of  
4 evidence. Up until they say at that point in time, you do  
5 have the right to change your mind.

6 THE DEFENDANT: I got you.

7 THE COURT: Do you understand that?

8 THE DEFENDANT: Yes, sir. Thank you.

9 THE COURT: All right.

10 THE DEFENDANT: Yeah.

11 THE COURT: So -- but I just want to make sure you  
12 understand --

13 THE DEFENDANT: I do.

14 THE COURT: -- that once Dr. Thomas (sic) gets off  
15 the stand, I turn --

16 THE DEFENDANT: Yeah.

17 THE COURT: -- and I'm assuming Mr. Draskovich is  
18 going to make the statement --

19 MR. DRASKOVICH: Yes.

20 THE COURT: -- on behalf of the Defense, and I look  
21 at him and say, call your next witness, and he stands up and  
22 says the Defense rests --

23 THE DEFENDANT: Our defense is -- we're  
24 basically --

25 THE COURT: -- that's --

1 THE DEFENDANT: -- the defense is basically over.  
2 THE COURT: -- you're -- you're done.  
3 THE DEFENDANT: Yeah. That --  
4 THE COURT: You can't at that point go, you know,  
5 wait --  
6 THE DEFENDANT: I got you.  
7 THE COURT: -- I want to testify.  
8 THE DEFENDANT: I got you. Yes, sir.  
9 THE COURT: You understand that?  
10 THE DEFENDANT: Yes, sir.  
11 THE COURT: Okay.  
12 THE DEFENDANT: I do.  
13 THE COURT: All right. Anything further I need --  
14 you think I need to canvass the defendant on?  
15 MR. DRASKOVICH: No, Your Honor.  
16 THE COURT: Anything further I need to canvass the  
17 -- the State thinks I need to -- not -- canvass the defendant  
18 on?  
19 MR. MERBACK: No, Your Honor.  
20 THE COURT: Okay. All right. We're good with  
21 that, then. Skyler hopefully is close to being done with  
22 updating the packets.  
23 MS. KOLLINS: She e-mailed them, Your Honor.  
24 THE COURT: Okay.  
25 MR. DRASKOVICH: There isn't -- Your Honor, I



1 apologize. I did intend to request that the --

2 THE COURT: We have one that's the standard one.

3 MR. DRASKOVICH: -- standard --

4 THE COURT: -- that I can have Skyler add.

5 MR. DRASKOVICH: And that concludes, then, our  
6 issue of jury instructions.

7 THE COURT: Okay. Well --

8 MR. DRASKOVICH: Yes.

9 THE COURT: -- I want to -- I'd want to bring --  
10 hopefully she can bring -- run in copies. I want to do one  
11 final run through --

12 MR. DRASKOVICH: Okay.

13 THE COURT: -- of these, and make sure we have a  
14 clear record so that come Monday morning we're just -- we're  
15 just going right into Dr. Chambers' testimony, and -- and  
16 then we'll move into me providing the law and closing --

17 MR. DRASKOVICH: Yes.

18 THE COURT: -- arguments.

19 THE CLERK: Okay. The Carter instruction is on the  
20 bench she said.

21 MR. DRASKOVICH: And we are, like I said, I  
22 anticipate --

23 THE COURT: Carter instruction's on the bench. Oh,  
24 here it is. She actually -- yeah, she is -- she already had  
25 it printed out and -- here, let me give one to each one of

1 you. Let me make sure -- yeah.

2 So this is what we've been giving.

3 MR. DRASKOVICH: We agree with this instruction,  
4 the wording of this instruction.

5 THE COURT: I'm sorry, what?

6 MR. DRASKOVICH: We agree, that we have no --

7 THE COURT: And you're -- and let me have a clear  
8 record. You're specifically requesting this?

9 MR. DRASKOVICH: Yes, we are.

10 THE COURT: Okay. We will add it in. Is there any  
11 place in particular you wanted it added into the packet? I  
12 usually add it in when we're discussing the evidence right  
13 around where we have the expert witness --

14 MR. DRASKOVICH: That's fine, Your Honor.

15 THE COURT: -- instruction.

16 MR. MERBACK: And we have no objection to it.

17 THE COURT: Okay. All right.

18 (Pause in the proceedings)

19 THE COURT: Okay. Let's go through these. If you  
20 need to stop and look at them again or to refer to something  
21 again, just so say, and we'll give you as much time as you  
22 need to review the instruction or whatever.

23 I know the State has submitted most of these, but I  
24 always like to get it on the record that the State doesn't  
25 oppose.

1           So instruction number one, It is now my duty as the  
2 Judge to instruct you in the law that applies to this case.  
3 Any objection, State?

4           MS. KOLLINS: No.

5           THE COURT: Defense?

6           MR. DRASKOVICH: No.

7           THE COURT: Instruction two, If in these  
8 instructions any rule, direction, or idea is repeated or  
9 stated in different ways, et cetera. Any objection, State?

10          MS. KOLLINS: No, sir.

11          THE COURT: Defense?

12          MR. DRASKOVICH: No.

13          THE COURT: Instruction three, An information is  
14 but a formal method of accusing a person of a crime, et  
15 cetera. Any objection, State?

16          MS. KOLLINS: No, sir.

17          THE COURT: Defense?

18          MR. DRASKOVICH: No, Your Honor.

19          THE COURT: Instruction four, To constitute the  
20 crime charged, there must exist a union or joint operation of  
21 an act forbidden by law and an intent to do the act, et  
22 cetera. Any objection, State?

23          MS. KOLLINS: No, sir.

24          THE COURT: Defense?

25          MR. DRASKOVICH: No.

1 THE COURT: Instruction five, The defendant is  
2 presumed innocent the contrary is proved, et cetera. Any  
3 objection, State?

4 MS. KOLLINS: No, sir.

5 THE COURT: Defense?

6 MR. DRASKOVICH: No.

7 THE COURT: Six, You are here to determine whether  
8 the defendant is guilty or not guilty from the evidence in  
9 the case. You are not called upon to return a verdict as to  
10 whether any other person is guilty or not guilty. So if the  
11 evidence in the case convinces you beyond a reasonable doubt  
12 of the guilt of the defendant, you should so find even though  
13 you may believe one or more persons are also guilty.

14 Any objection, State?

15 MS. KOLLINS: No.

16 THE COURT: Defense?

17 MR. DRASKOVICH: No.

18 THE COURT: Okay. Seven, The evidence which you  
19 are to consider in this case consists of the testimony of the  
20 witnesses, exhibits, and any facts admitted or agreed to by  
21 counsel, et cetera. Any objection, State?

22 MS. KOLLINS: No.

23 THE COURT: Defense?

24 MR. DRASKOVICH: No.

25 THE COURT: All right. Eight, in deciding the

1 facts of the case, you my have to decide which testimony to  
2 believe, which testimony not to believe. Any objection -- et  
3 cetera. Any objection, State?

4 MS. KOLLINS: No.

5 THE COURT: Defense?

6 MR. DRASKOVICH: No.

7 THE COURT: Nine, A witness who has special,  
8 knowledge, skill, experience, training or education, et  
9 cetera. Any objection, State?

10 MS. KOLLINS: No.

11 THE COURT: Defense?

12 MR. DRASKOVICH: No.

13 THE COURT: And then it will be here probably we'll  
14 add in the Carter instruction. Is that all right --

15 MR. DRASKOVICH: Yes.

16 THE COURT: -- State?

17 MS. KOLLINS: State's fine with that, Your Honor.

18 THE COURT: Defense?

19 MR. DRASKOVICH: No objection. So that Carter  
20 instruction will be number ten and the rest will be one  
21 ahead?

22 THE COURT: One ahead, yeah.

23 MR. DRASKOVICH: Correct. Okay.

24 THE COURT: All right. Instruction ten -- I don't  
25 think we need this anymore now that we have instruction

1 number 11 in. What's the State's position? We had included  
2 essentially all the relevant definitions --

3 MS. KOLLINS: Right.

4 THE COURT: -- in the specific instructions in 11.  
5 So I don't see any reason to continue to include number ten.

6 MS. KOLLINS: We're fine with that. Mr. Merback?

7 MR. MERBACK: Yeah.

8 MS. KOLLINS: Okay. That's fine.

9 MR. DRASKOVICH: We agree. Yeah.

10 THE COURT: Okay. So we'll strike number ten.

11 MS. KOLLINS: So now we're back on course with  
12 number --

13 MR. DRASKOVICH: We're back on course, yeah.

14 THE COURT: We're back on course on numbering.

15 MS. KOLLINS: That was so planned.

16 THE COURT: All right. And instruction 11, we've  
17 gone over, I provided a copy before. This is, Defendant's  
18 been charged with count one, et cetera. I mean, everybody  
19 has put on their concerns or issues. I mean, I guess,  
20 anything more that the State wants to contest or correct or  
21 has some issue with with 11 that hasn't already been  
22 expressed?

23 MS. KOLLINS: No. I don't believe so.

24 THE COURT: Any -- and now -- and let me just turn  
25 to you. Any objection from defense? I know the State

1 objects, you know, in terms of the issue of consent and good  
2 faith belief. But let me just add, any objection by defense  
3 at all to this instruction?

4 MR. DRASKOVICH: No objection whatsoever.

5 THE COURT: Okay. All right. I think -- it's not  
6 in there?

7 THE LAW CLERK: No, that's why I left it.

8 THE COURT: Okay.

9 MS. KOLLINS: So you're going to leave the  
10 submission on its own.

11 THE LAW CLERK: Oh, no, it's the last sentence  
12 of --

13 THE COURT: Yeah. It's --

14 MS. KOLLINS: Oh.

15 THE CLERK: -- the submission paragraph.

16 MS. KOLLINS: Oh, so this is a three-page  
17 instruction then?

18 THE COURT: Yeah.

19 MS. KOLLINS: Got ya, got ya. Okay.

20 THE COURT: Yeah. So we'll strike instruction  
21 number 12.

22 MR. DRASKOVICH: 12 is gone? Okay.

23 THE COURT: Yeah, 12 is gone.

24 13, There's no requirement the testimony of a  
25 victim --

1 MR. MERBACK: Oh, Court's -- Court's indulgence for  
2 one second.

3 MS. KOLLINS: Oh, okay. All right. Sorry.

4 MR. MERBACK: Sorry. We just want to make sure  
5 we're on the same --

6 THE COURT: That's fine.

7 MR. MERBACK: We're pulling out 12, is correct?

8 THE COURT: Yeah, well, 12, it's included -- that  
9 sentence is included in the instruction which is currently  
10 labeled number 11.

11 MR. DRASKOVICH: Correct.

12 MR. MERBACK: Got it.

13 THE COURT: Okay. All right. All right. Then  
14 instruction 13, There's no requirement the testimony of a  
15 victim of a sexual assault or lewdness be corroborated, et  
16 cetera. Any objection, State?

17 MS. KOLLINS: No, Your Honor. Is that going to go  
18 back to 12, however?

19 THE LAW CLERK: Yeah.

20 THE COURT: Well, yeah. All right. Skyler will  
21 renumber everything once we're done and send out a new --  
22 you'll do that; won't you?

23 MR. DRASKOVICH: Yes, thank you.

24 THE COURT: A new e-mail. So you'll have a -- have  
25 the correct numbers. I mean, I don't want to be -- for right



1 now I'll give this packet to Linda. I want -- well, you  
2 refer to it as 13. So any objection to --

3 MR. DRASKOVICH: No objection.

4 THE COURT: -- 13, State?

5 MS. KOLLINS: No.

6 THE COURT: Defense?

7 MR. DRASKOVICH: No objection.

8 THE COURT: Okay. 14, Where multiple sexual acts  
9 occurs as part of a single criminal encounter, et cetera.  
10 Any objection, State?

11 MS. KOLLINS: No, sir.

12 THE COURT: Defense?

13 MR. DRASKOVICH: No.

14 THE COURT: All right. This is the new 15 that the  
15 defendant has been charged in counts six and seven of the  
16 Amended Information with lewdness with a child under the age  
17 of 16. For you to find the defendant guilty of this charge,  
18 you must find beyond a reasonable doubt, first, at or near  
19 the time alleged in the Amended Information, the defendant  
20 used his hands or fingers to touch, grab, or fondle, the  
21 breasts or body of A.m. as alleged in count six, and to  
22 touch, slap, or fondle the buttocks and/or body of -- we'll  
23 just change that to not and/or, to just or -- the body of  
24 A.M. as alleged in count seven.

25 Second, defendant acted willfully to commit a lewd

1 or lascivious act. Third, the defendant in doing the act  
2 intended to arouse, appeal, or to or gratify his own lust,  
3 passion or sexual desires or A.M.'s lust, passions, or sexual  
4 desires. Four, A.M. was a child under the age of 16 years.

5 To prove the charge of lewdness with a child under  
6 the age of 16, the State does not need to prove either  
7 defendant or A.M.'s lust, passion, or sexual desires were  
8 actually aroused. A child under the age of 16 cannot consent  
9 to another individual's using his hands or fingers to touch  
10 and/or slap and/or fondle the buttocks and/or body of A.M. to  
11 arouse, appeal -- breasts should be in there -- to fondle the  
12 breasts and/or buttocks and/or body -- to fondle the breasts  
13 and/or buttocks and/or body of A.M. to arouse, appeal to or  
14 gratify his own lust, passion, or sexual desires or the  
15 child's lust, passions, or sexual desires, consent of a child  
16 under the age of 16 to such lewd and lascivious conduct is  
17 not a defense as charge of lewdness with a child under the  
18 age of 16.

19 I know the Defense objections. I mean, does State  
20 have any objection at all?

21 MS. KOLLINS: No, Your Honor.

22 THE COURT: Okay. Other than what you've already  
23 stated, anything further as to instruction number 15 --

24 MR. DRASKOVICH: No, Your Honor.

25 THE COURT: -- from defense? Okay. Okay. 16,

1 During the course of this trial in your deliberations you're  
2 not to communicate with anyone in any way or et cetera. Any  
3 objection, State?

4 MS. KOLLINS: No, Your Honor.

5 THE COURT: Defense?

6 MR. DRASKOVICH: No objection.

7 THE COURT: 17, When you retire to consider your  
8 verdict, et cetera, any objection, State?

9 MS. KOLLINS: No, sir.

10 THE COURT: Defense?

11 MR. DRASKOVICH: No.

12 THE COURT: Instruction number 18, if during your  
13 deliberations you should decide to be further informed on any  
14 point of law, et cetera. Any objection, State?

15 MS. KOLLINS: No, Your Honor.

16 THE COURT: Defense?

17 MR. DRASKOVICH: No.

18 THE COURT: And now you will listen to the  
19 arguments of counsel who will endeavor to aid you, et cetera.  
20 Any objection, State?

21 MS. KOLLINS: No.

22 MR. DRASKOVICH: No objection.

23 THE COURT: All right. Let's look at, again, at  
24 the Defense proposed instructions, if I can find them.

25 MR. MERBACK: And Your Honor, can I just ask an

1 administrative question. Do you give a copy of the  
2 instructions to each juror prior to arguing?

3 THE COURT: I will, because we'll have time. I  
4 mean, to be honest, there's been sometimes where we've gotten  
5 instructions done, and it's -- rather than spending 30  
6 minutes waiting for the machine --

7 MR. MERBACK: Copies, okay.

8 THE COURT: -- to print them, I'll go ahead and  
9 read them. But then once I'm done reading them, and they're  
10 printed, we'll hand them out before --

11 MR. MERBACK: Okay.

12 THE COURT: -- closings begin.

13 MR. MERBACK: Okay.

14 THE COURT: In this case, we'll have them done.

15 MR. MERBACK: But during closings they'll have a  
16 copy?

17 THE COURT: They'll have a copy. They will have a  
18 copy. All right. Let's again, defense proposed  
19 instructions.

20 All right, I've essentially rejected instruction A.  
21 Anything else you want to add to the record, Mr. Draskovich?

22 MR. DRASKOVICH: No. Outside of what's been  
23 addressed, our briefing, obviously, it's our position that  
24 knowledge is an element of each and every offense in a  
25 criminal statute.

1 THE COURT: Okay. No, I mean, I think that's an  
2 appellate issue, so you might have something there. But like  
3 I said, looking at -- looking at the case law out of  
4 California and then looking at the packet that was put  
5 together in 2014 -- I mean, 2015 legislature, I think it was  
6 the intent of the legislature that a mistake of fact is not a  
7 defense to this crime. So I'll -- and that a 16-year-old  
8 cannot consent. So I will not give that instruction.

9 Instruction B, now that -- we maybe should give  
10 this because we do make reference in --

11 THE LAW CLERK: Defense withdrew it.

12 THE COURT: Huh?

13 THE LAW CLERK: The Defense withdrew it.

14 THE COURT: Defense withdrew it? Do we need to  
15 give this because we do mention in new 15 that the defendant  
16 willful -- I mean, that's part of the statute -- willfully  
17 did a lewd act. So should we --

18 MR. DRASKOVICH: I --

19 THE COURT: -- explain to the jury that willfully  
20 means the intent to commit the act?

21 MR. DRASKOVICH: I -- now having -- given where we  
22 are now, I would again request the Court instruct the jury as  
23 to that instruction.

24 THE COURT: What's the State think?

25 MS. KOLLINS: Well, I thought it was withdrawn so I

1 hadn't really been thinking about it, so --

2 THE COURT: Okay. That's --

3 MS. KOLLINS: -- give me a moment to dig it back  
4 out of my "no" pile.

5 THE COURT: That's fine.

6 MR. MERBACK: Which one is it, the --

7 THE LAW CLERK: B.

8 THE COURT: It was Defense B. His says, an act is  
9 willful or done willfully when done on purpose. I tend to  
10 prefer the Byford language as willfulness is the intent to  
11 commit the act, which he notes down below.

12 MS. KOLLINS: Well, if you're going to --

13 THE COURT: But, I mean, I don't care whichever,  
14 and then do we think we need it with the reference in  
15 instruction 15, defendant acted willfully to commit a lewd or  
16 lascivious act? I tend to think we probably should include  
17 it in there --

18 MR. DRASKOVICH: I would request --

19 THE COURT: -- because willful -- willful in the  
20 state means something totally different than willful in the  
21 federal system, and who knows what someone else thinks  
22 willful means, so --

23 MS. KOLLINS: I don't believe it's necessary. I  
24 don't believe we should paraphrase it when done on purpose.  
25 If the Court's going to draft something regarding willful,

1 then I would ask that you do take it from the Byford  
2 decision.

3 MR. MERBACK: Which said willful means -- willful  
4 means intentional.

5 THE COURT: So --

6 MR. MERBACK: The other -- the other objection we  
7 would have --

8 THE COURT: Well, I mean, we could change 15 to  
9 just instead of where it says willfully, so the -- and just  
10 say the defendant intended to commit a lewd or lascivious  
11 act. I mean, is that --

12 MS. KOLLINS: No, because now you're changing it to  
13 a specific intent crime, and it's -- it's specific intent as  
14 to the second portion of the statute, but the first did  
15 willfully lewdfully [sic] and unlawfully, that is not a  
16 specific intent portion of the statute until you get to the  
17 second half with the intent to arouse, appeal, gratify.

18 So I would not like to alter the statutory  
19 language. If the Court wants to give a definition of  
20 willful --

21 THE COURT: You like the one -- what's the -- how  
22 -- what did you say Byford said, Mr. Merback?

23 MR. MERBACK: Well, I was just going to say, you  
24 know, Byford's discussing that element in terms of  
25 premeditated killing and first degree murder. So I don't

1 know that it necessarily applies -- the definition applies in  
2 the same in the same way to --

3 THE COURT: So do we just want to leave --

4 MR. MERBACK: -- to lewdness of a child, so --

5 THE COURT: -- Defendant acted willfully to commit  
6 a lewd or lascivious act?

7 MS. KOLLINS: That would be my preference to leave  
8 it to try --

9 THE COURT: Okay. Are you good with that,  
10 Mr. Draskovich?

11 MR. DRASKOVICH: Yeah, I would prefer to have the  
12 intent language, so.

13 MS. KOLLINS: But there's --

14 THE COURT: What's the statute? Let me look at the  
15 statute.

16 MS. KOLLINS: It is 200 --

17 THE COURT: All right.

18 MR. MERBACK: It's 201.230.

19 THE COURT: Okay. Of course, my screen is frozen.

20 MR. HORVATH: I'm sorry, that was 201 point what?

21 MS. KOLLINS: 230.

22 MR. MERBACK: 230.

23 MR. HORVATH: Thank you.

24 MS. KOLLINS: The statute's not particularly  
25 helpful. It just says what it says.



1 THE COURT: It says willfully -- actually, it says  
2 willfully and lewdly commits any lewd or lascivious acts. So  
3 it does say that you have to willfully commit --

4 MS. KOLLINS: And --

5 THE COURT: -- the lewd or lascivious act.

6 MS. KOLLINS: Well, and that's in the charging  
7 document. So I would agree with that. That's how it's pled.

8 THE COURT: Yeah. So, I mean, I'm not sure what  
9 lewdly means. I mean, it seems like the concept of willful  
10 and lewd -- I mean, if you willfully commit a lewd or  
11 lascivious act, you're lewdly committing the act.

12 MR. DRASKOVICH: Yes.

13 THE COURT: But, I mean --

14 MS. KOLLINS: Well --

15 THE COURT: -- it does seem like it needs to be  
16 done willful -- willfulness is the intent to commit the act.

17 MR. DRASKOVICH: Yes, sir.

18 THE COURT: All right. I'll -- an act is -- let's  
19 see.

20 MS. KOLLINS: Well --

21 THE COURT: An act is done willfully when done with  
22 the intent to commit the act.

23 MS. KOLLINS: Well, as long as we're not going to  
24 allow argument that says they had to be -- he had to be  
25 willful in terms of this kid's age because that's where I'm

1 afraid this is going.

2 MR. DRASKOVICH: I -- even without a jury  
3 instruction, Your Honor, I can argue that he didn't know. I  
4 mean, I -- that he didn't. I mean, I don't get -- we're not  
5 entitled --

6 MS. KOLLINS: Well, you can argue it, but you can't  
7 match it to an instruction and make it sound like the  
8 instruction is telling them --

9 THE COURT: Well, I mean, I -- if you -- I mean, I  
10 -- if we put -- well, is the intent to -- I mean, in the  
11 instruction 15, I mean, my mind is let's just change  
12 instruction 15 to say, second -- the defendant -- I mean,  
13 this breaks it down into the elements here and separates this  
14 from the -- he has to intend to commit the lewd or lascivious  
15 act. I mean, the child being under the age of 16 is a  
16 totally separate element of the offense.

17 MS. KOLLINS: Well, and it just -- it needs to be  
18 clear that it applies only to a certain portion of the  
19 instruction, not that it applies to her age. Because the  
20 second portion of the instruction talks about what lewd  
21 conduct is. You know --

22 THE COURT: No, yeah --

23 MS. KOLLINS: -- her body being touched for  
24 purposes of sexual gratification, et cetera, so --

25 THE COURT: Well, I mean --

1 MS. KOLLINS: I guess my concern is it -- we're  
2 going to be arguing willful, he had to willfully touch a  
3 child under 16, and that's what Mr. Draskovich is going to  
4 get up here and argue. And by modifying it, that's what it's  
5 going to make it sound like.

6 THE COURT: Well --

7 MS. KOLLINS: We've already decided that that's not  
8 accurate. So there's -- that's my concern.

9 THE COURT: I mean, I would suggest we just change  
10 15 to, second, the defendant intended to commit a lewd or  
11 lascivious act.

12 MR. DRASKOVICH: I'm fine with that, Your Honor.

13 MS. KOLLINS: It already says willful.

14 THE COURT: And then we don't put in a separate  
15 definition of willfulness.

16 MR. DRASKOVICH: I agree with that.

17 THE COURT: And then fourth, the -- you know, A.M.  
18 was a child under the age of 16. It doesn't say that he has  
19 to -- and, you know, if you make the argument that it's a  
20 defense --

21 MS. KOLLINS: Okay.

22 THE COURT: -- they would object, and I -- and I  
23 will --

24 MR. DRASKOVICH: I won't say it's (indecipherable)  
25 but I --

1 THE COURT: -- instruct the jury that -- that  
2 that's not a defense and to strike -- strike your argument.

3 MR. DRASKOVICH: But I -- just so we're clear, now,  
4 I mean, I intend to say that he didn't know -- he didn't know  
5 her age.

6 THE COURT: Well, I mean, that's fine to say he  
7 didn't know --

8 MR. DRASKOVICH: I'm not going to say this is --

9 THE COURT: -- her age.

10 MR. DRASKOVICH: -- a offense -- he's entitled to  
11 it, you know, because --

12 THE COURT: But, I mean, if you sit here and say,  
13 listen, you know, that mean he doesn't -- you know, if State  
14 doesn't prove the fourth element --

15 MR. DRASKOVICH: You're not going to --

16 THE COURT: -- I'm going to -- they're going to  
17 hopefully object, and I'm going to say, you know, sustain the  
18 objection, and instruct the jury that mistake of the age is  
19 not a defense.

20 MR. DRASKOVICH: I will not --

21 THE COURT: I mean, if you go that route, I'm --  
22 you know, if you want to argue he didn't know, and that's a  
23 -- that's part of the, you know, that he wasn't operating  
24 under the belief that he was, you know, engaging in force --  
25 you know, against will or with somebody who --

1 MR. DRASKOVICH: Yes.

2 THE COURT: -- was mentally or physically  
3 incapable, then that's fair. But if I'm -- I hear at all  
4 that he didn't know, so the State can't prove the fourth  
5 element or the State can't --

6 MR. DRASKOVICH: Not --

7 THE COURT: -- you know, establish, you know, the  
8 crime of child under the age of 16, you know, they're going  
9 to object, and I will instruct the jury then and there that  
10 mistake of fact as to age is not a defense to the crime -- to  
11 this crime, which I don't think will look good. But, I  
12 mean --

13 MR. DRASKOVICH: I -- I understand.

14 THE COURT: -- and so -- all right. So I'm going  
15 to change instruction 15 to where it says, second, the  
16 defendant intended to commit a lewd or lascivious act. We  
17 won't give --

18 MS. KOLLINS: We're talking about line eight,  
19 correct?

20 THE COURT: Right.

21 MS. KOLLINS: And we won't give defense instruction  
22 B. And then instruction C on consent we've already created  
23 something here. I don't see any reason to put in D. Is  
24 there any reason you see to put in D at this point in time?

25 MR. DRASKOVICH: No, Your Honor.

1 THE COURT: Does the State want D? I mean, I've  
2 seen you guys give this before, but --

3 MR. DRASKOVICH: Well --

4 THE COURT: -- I'll leave it up to you.

5 MR. DRASKOVICH: I'm sorry, are we talking -- I  
6 have here as four, is about knowingly imports knowledge of  
7 the facts exists which -- that one?

8 THE COURT: Yeah. Your knowingly instruction.

9 MS. KOLLINS: I thought we --

10 THE COURT: Your instruction, Proposed instruction  
11 D.

12 MS. KOLLINS: I thought we already decided this.  
13 So --

14 THE COURT: I -- I thought we did, too, but I can't  
15 remember what it was. So that's why I'm asking --

16 MS. KOLLINS: Well --

17 THE COURT: I don't see any reason for us to do  
18 that, but it's up to everybody else. I don't have a problem  
19 giving it.

20 MS. KOLLINS: Well, this is the whole thing we went  
21 through with consent, was it not? And we withdrew this  
22 because we were satisfied --

23 THE COURT: Yeah, I think we've defined --

24 MS. KOLLINS: -- with what language the Court gave.

25 THE COURT: -- the knowledge that every crime

1 requires, so I don't see a need to give it.

2 MR. DRASKOVICH: I know.

3 THE COURT: That's why I like to use the  
4 instructions that we're using here. It tells the jury here's  
5 what you got to find the defendant intended to do or  
6 understood.

7 MR. DRASKOVICH: Okay.

8 THE COURT: Rather than just a general willfulness  
9 or knowingly instruction.

10 MR. DRASKOVICH: I would agree.

11 THE COURT: So -- okay. So we won't give the -- so  
12 complete the hearing. This is the Defense packet.

13 THE CLERK: And I can just add this other one to  
14 it?

15 THE COURT: Yeah All right. So we'll put in the  
16 defendant constitutional right instruction right after, what,  
17 nine? Nine. And then we will -- and I said -- we've agreed  
18 ten is encompassed in 11. 12 is encompassed in 11. So we'll  
19 renumber everything and send them out. So everybody's good,  
20 again, with the verdict form proposed by the State? State?

21 MS. KOLLINS: Yes.

22 THE COURT: Defense?

23 MR. DRASKOVICH: Yes, Your Honor.

24 THE COURT: Okay. All right. Anything else we  
25 need to discuss before Monday morning?

1 MR. DRASKOVICH: No.

2 MR. MERBACK: No, Your Honor.

3 THE COURT: All right. Well, everyone, thank you  
4 for your time today, and we will try to get started at -- at  
5 9:00 in the morning with your Doctor.

6 Now, is there any -- I mean, guys have indicated  
7 you've generally talked in terms of the Doctor's testimony.  
8 Is there any issue I need to deal with on that at this point  
9 in time?

10 MS. KOLLINS: You know, I guess just for the  
11 record, I mean, obviously, Mr. Chambers has -- or  
12 Dr. Chambers hasn't met this kid. He knows he can't comment  
13 on her veracity, he knows that it's limited to the factors  
14 that are in the articles that Mr. Draskovich turned over to  
15 me that I don't have the titles for you right now, but I'll  
16 put them on the record. And he's done it enough times, I  
17 think we agree what the parameters are and --

18 MR. DRASKOVICH: Correct.

19 MS. KOLLINS: You know, he knows he can't get up  
20 there and say this kid's a liar and this kid did this and  
21 this.

22 THE COURT: Okay. All right.

23 MR. DRASKOVICH: That's not going to happen.

24 THE COURT: And I said I mean, just, you know, if  
25 there's something that's obviously lurking on either side on



1 this, I'd just like to know it now rather than Monday.

2 MS. KOLLINS: I don't doubt Dr. Chambers will  
3 attempt to push the envelope about what's appropriate, and I  
4 will object if that happens. But Mr. Draskovich and I have  
5 agreed, so.

6 THE COURT: Okay.

7 MR. DRASKOVICH: That is correct. And I've -- I've  
8 elicited testimony from Dr. Chambers probably 30 or 40 times,  
9 30 or 40 different trials, and I -- we haven't had an issue  
10 yet, and I don't expect to change that.

11 THE COURT: All right.

12 MR. DRASKOVICH: So --

13 THE COURT: Very good. Okay. Everybody. Well,  
14 have a great weekend.

15 MR. DRASKOVICH: Thank you. You as well.

16 MS. KOLLINS: Thank you, sir.

17 (Court recessed at 2:00 P.M., until Monday,  
18 August 12, 2019, at 9:00 A.M.)

19 \* \* \* \* \*

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

23

24

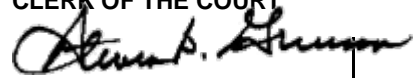


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RTRAN

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

THE STATE OF NEVADA,	)	CASE NO. C-17-324535-1
	)	
Plaintiff,	)	DEPT. NO. XX
	)	
v.	)	
	)	
MAURICE TERRANCE MOORE,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE  
MONDAY, AUGUST 12, 2019

**RECORDER'S TRANSCRIPT OF HEARING:  
JURY TRIAL - DAY 6**

APPEARANCES:

FOR THE STATE:	STACEY L. KOLLINS, ESQ. Chief Deputy District Attorney
	WILLIAM JAKE MERBACK, ESQ. Chief Deputy District Attorney
FOR THE DEFENDANT:	ROBERT M. DRASKOVICH, ESQ. MICHAEL W. HORVATH, ESQ.

RECORDED BY: ANGIE CALVILLO, COURT RECORDER  
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1                   LAS VEGAS, NEVADA, MONDAY, AUGUST 12, 2019

2                   [Case called at 9:00 A.M.]

3                   (Outside the presence of the jury.)

4                   THE COURT: All right. Calling State of Nevada  
5 versus Maurice Moore, Case No. C324535. Counsel, please make  
6 your formal appearances for the record.

7                   MR. MERBACK: Stacey Kollins and Jake Merback for  
8 the State.

9                   MR. DRASKOVICH: Morning, Michael Horvath, Michael  
10 Horvath on behalf of Maurice Moore, who is present.

11                  THE COURT: Okay. Just we're waiting on a couple  
12 more jurors last I heard. There were two issues that came up  
13 with the jury instructions over the weekend. Apparently, in  
14 moving everything together into one lewdness instruction, I  
15 failed to include the one instruction that had been agreed  
16 upon earlier about how lewdness can include touching over the  
17 clothes.

18                  I want to -- we're going to add those two sentences  
19 to the end of the consolidated lewdness instruction. Any  
20 objection with us doing that by State?

21                  MR. MERBACK: No, Your Honor.

22                  THE COURT: Defense?

23                  MR. DRASKOVICH: No. Your Honor.

24                  THE COURT: Also, the State shockingly forgot to  
25 include their common sense and judgment as reasonable men and

1 women instruction in the packet. And I didn't catch that it  
2 wasn't in there. I can't think of a case we haven't had this  
3 read. Do you have any objection to it, Mr. Draskovich?

4 MR. DRASKOVICH: No, Your Honor.

5 THE COURT: Okay. We're going to add that right  
6 before 15, which is the instruction that talks about how all  
7 the jurors are deliberating, they shouldn't talk with anyone  
8 else or do any outside research or investigation or  
9 experimentation on their own.

10 Any problem with that, State?

11 MR. MERBACK: No, Your Honor.

12 THE COURT: Defense?

13 MR. DRASKOVICH: No, Your Honor. And will we be  
14 provided the latest copy, the current copy that will be  
15 presented to the jury?

16 THE COURT: Right. I mean, what we'll do is we'll  
17 put the witness on. As soon as we get done with that, I  
18 think I'll go ahead and read the instructions. At that  
19 point, we'll take a break for the restroom with the hope that  
20 maybe we can get through the instructions -- I mean, the  
21 arguments before they need another restroom break.

22 How long do you think you will be Mr. Merback?

23 MR. MERBACK: Probably 45 minutes.

24 THE COURT: Okay. How long do you think you'll be  
25 Mr. Draskovich?

1 MR. DRASKOVICH: 20, 25. We don't intend on being  
2 lengthy.

3 THE COURT: Okay. And then Ms. Kollins will be  
4 approximately a third of whatever time you use. You know  
5 that.

6 MS. KOLLINS: I just don't know where it comes  
7 from. I know it, I just don't know where it comes from.

8 THE COURT: Well, it comes from me. So anyway, all  
9 right. Anything else before we get started? Your witness is  
10 here?

11 MR. DRASKOVICH: Is here present. He's in the  
12 courtroom. Or actually, in the courthouse. I --

13 THE COURT: I was going to say, he's gotten --

14 MR. DRASKOVICH: I believe he was downstairs.

15 THE COURT: He's a small witness.

16 MS. KOLLINS: He's small. In your pocket?

17 MR. DRASKOVICH: He's in the courthouse, and he  
18 should be outside the door.

19 THE COURT: Okay.

20 MR. DRASKOVICH: Down the hall.

21 THE COURT: All right.

22 (Pause in the proceedings)

23 THE COURT: We're still missing a couple or a one?

24 THE MARSHAL: Just two, Judge. I'm guessing  
25 they're probably still downstairs on the --

1 THE COURT: Okay.

2 THE MARSHAL: -- long lines. So I'll give them a  
3 call.

4 THE COURT: Okay.

5 (Pause in the proceedings)

6 THE COURT: Mr. Draskovich --

7 MR. DRASKOVICH: Yes, Your Honor.

8 THE COURT: -- could you just ask the doctor to  
9 walk in and then you can put him in the ante room.

10 MR. DRASKOVICH: Thank you.

11 THE COURT: I want to thank him for arranging his  
12 schedule so he could be here at 9:00.

13 (Pause in the proceedings)

14 THE COURT: Actually, if you could have him just  
15 step in real quick. Dr. Chambers, you can just wait there.  
16 I -- just while we were waiting on the jury, I just wanted to  
17 thank you for rearranging your schedule so we could get  
18 started at 9:00 o'clock this morning.

19 THE WITNESS: No problem, sir. I just --

20 THE COURT: I really appreciate it, and I know that  
21 the jurors appreciate, you know, not having to have that  
22 downtime. I wanted just to thank you while we were waiting  
23 and no one was in here.

24 THE WITNESS: I appreciate that, sir.

25 THE COURT: Thank you.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: All right. As soon as we get our  
3 missing two, we'll get started. I assume you're doing the  
4 opening close?

5 MR. MERBACK: I am, Your Honor. I should just let  
6 the Court know, I got here early to try to get the computer  
7 up and connected. It was -- it's -- it was struggling, so  
8 the IT department came up. They've taken it, and are working  
9 on getting it connected. So I'm in the middle of that right  
10 now.

11 THE COURT: Okay. Well, I mean, we're in the --  
12 like I said, my plan is we'll finish the evidence, I'll read  
13 the jury instructions and then we'll take a break before the  
14 openings. So hopefully, they'll be -- they'll be fired up by  
15 then.

16 MR. MERBACK: It shouldn't be an issue. They've  
17 got the computer and they're working on it right now.  
18 Apparently, it's having a problem with the reconnect and the  
19 -- from that particular laptop.

20 MS. KOLLINS: I think it's something to do with the  
21 old security cards in some much those laptops that we have.  
22 Like, some of them fire right up, and some of them don't, so  
23 I don't know. That's just my guess.

24 (Pause in the proceedings)

25 (Off the record at 9:07 A.M., until 9:17 a.m.)

1 (Outside the presence of the jury.)

2 (Pause in the proceedings)

3 THE MARSHAL: All rise for the jury.

4 (In the presence of the jury at 9:18 A.M.)

5 THE COURT: All right. Let the record reflect the  
6 presence of the attorneys for both sides, the presence of the  
7 defendant. Do the parties stipulate to the presence of the  
8 jury panel?

9 MS. KOLLINS: Yes, Your Honor.

10 MR. DRASKOVICH: Yes, Your Honor.

11 THE COURT: All right. Good morning, ladies and  
12 gentlemen. It's good to see you bright and early on Monday  
13 morning, first day of school. I haven't had to worry about  
14 that for eight years. But I have a grade school right behind  
15 my house, so it was a little bit more noisy than it usually  
16 is as I was getting ready to get in here this morning. But I  
17 appreciate everybody getting here, and we're going to put in  
18 a full day.

19 And I think we'll get -- as I told you before, I do  
20 think we'll get the case to you today for your deliberations.

21 If you remember on Friday -- or Thursday, when we  
22 stopped, the State had just rested. That mean he is State  
23 has concluded its presentation of the evidence. The defense  
24 has an opportunity to present evidence, if it chooses to do  
25 so.



1           As I emphasized on Thursday, and I've emphasized  
2 throughout the trial, the burden of proof in a criminal case  
3 always lies upon the State to prove the elements and the  
4 crimes charged beyond a reasonable doubt. Defense has no  
5 obligation to prove innocence or provide any evidence. But  
6 we do give them the opportunity to do so, if they would like.

7           Mr. Draskovich on Thursday indicated that he wished  
8 to present some evidence to you today. Does that continue to  
9 be the case, Mr. Draskovich?

10           MR. DRASKOVICH: Yes, it is, Your Honor.

11           THE COURT: All right. Call your first witness.

12           MR. DRASKOVICH: The defense calls Dr. Mark  
13 Chambers.

14           THE COURT: All right. Doctor, if you'd come up to  
15 the witness stand. There are a couple steps. When you get  
16 to the top, stay standing for just a second and our Clerk  
17 will swear you in.

18           DR. MARK CHAMBERS, DEFENDANT'S WITNESS, SWORN

19           THE CLERK: Please be seated.

20           THE WITNESS: Thank you.

21           THE CLERK: Please state your name, and spell your  
22 first and last name for the record.

23           THE WITNESS: Mark Chambers, M-a-r-k,  
24 C-h-a-m-b-e-r-s.

25           THE COURT: Whenever you're ready, Counsel.

1 MR. DRASKOVICH: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. DRASKOVICH:

4 Q Dr. Chambers, why don't you tell us a little bit  
5 about yourself, starting with your education?

6 A Well, I -- my undergraduate education was at  
7 Stanford University where I majored in psychology with a  
8 minor in biology, graduated from there with distinction of  
9 phi beta kappa.

10 I also earned a master's degree from Stanford  
11 University in education, and then went on to earn my Ph.D. at  
12 Northwestern University in clinical psychology.

13 Q Following your graduation with your Ph.D. in  
14 clinical psychology from Northwestern University, could you  
15 just give us a brief summary of your work experience?

16 A Certainly. I -- first of all, part of the Ph.D.  
17 program requires what's called an internship, which is  
18 essentially, kind of a hand-on learning experience in a  
19 clinical setting. So my placement was at a facility called  
20 the Dallas Child Guidance Clinic in Dallas, Texas. So that's  
21 a full year -- full-time, one-year program.

22 So that was technically part of my education,  
23 although, I had completed all of my classes at that time.  
24 But following the completion of that internship, then I was  
25 awarded my Ph.D., and my first job out of college, out of

1 graduate school, was back at Stanford University where I  
2 worked in a clinical setting and also did research for about  
3 four years.

4           Then came here to Las Vegas in 1993, and was a  
5 clinical director for a private clinical facility here in Las  
6 Vegas. And I did that until 1999, and then since 1999, I've  
7 been in practice as a clinical and forensic psychologist.

8           Q     You've been called today to give testimony as a  
9 forensic psychologist. This isn't the first time you've  
10 appeared and testified in court, is it?

11          A     It is not, no.

12          Q     What is -- if we could just first back up just a  
13 little bit. What is, in essence, psychology?

14          A     In the simplest form, psychology is simply the study  
15 or science of behavior. A lot of times people think of it as  
16 the science of the mind or the brain, and I suppose the brain  
17 at some level can be of interest to psychologists, but we  
18 can't really study the mind directly. We can only look at  
19 the mind in terms of its manifestations of behavior.

20                 So a true scientist looks at psychology in terms of  
21 how people behave and then we often make inferences about  
22 what's going on in their mind or their brain based on their  
23 behavior.

24                 But ultimately, the only thing we can study  
25 scientifically is people's or sometimes in some cases

1 animals' behavior or actions.

2 Q So in its most simple terms, we can say that  
3 psychology is the study of human behavior?

4 A Yes.

5 Q Now, you had testified that you have experience both  
6 as a clinical psychologist and a forensic psychologist?

7 A Yes, correct.

8 Q If you could explain to us just briefly clinical  
9 psychology.

10 A A clinical psychologist is the type of psychologist  
11 you might likely encounter if you went to see one for some  
12 sort of personal or family problem. So typically, a clinical  
13 psychologist will do psychological assessments, including  
14 psychological testing, and then provide treatment services  
15 most of the time in the form of some sort of therapy or  
16 counseling.

17 Q And if we could turn our attention now to forensic  
18 psychology. What is forensic psychology?

19 A Forensic psychology is the application of  
20 psychological research in principles to the court setting.

21 So essentially, any time a court matter could  
22 benefit from an understanding of a particular psychological  
23 issue, then a psychologist -- a forensic psychologist might  
24 provide some sort of insight when it comes to that.

25 When I say court related settings, it could be a

1 lot of different types of court setting. It could be  
2 criminal court, as we're in today. It could be also a civil  
3 court matter, so the if somebody sues somebody else for  
4 something, there could be psychological issues there.

5 For instance, if somebody's in a car accident and  
6 they sue the other driver, and one of their claims is not  
7 just physical injuries, but some sort of psychological  
8 trauma, then you could bring a forensic psychologist in a  
9 case like that to help explain how trauma occurs and the  
10 effects and symptoms that are associated with trauma.

11 And then another setting that might employ a  
12 forensic psychologist would be family court. So very often  
13 forensic psychologists are involved in child custody matters  
14 or assessing the psychological fitness of the litigants or  
15 the parents involved in that.

16 So there's a variety of different kinds of  
17 functions that a forensic psychologist can serve, but  
18 ultimately, it comes down to applying psychological research  
19 to court related matters that help, what we call, the trier  
20 of fact, whether it's a jury or a judge, to understand the  
21 facts in a way that will help them make the best decision.

22 Q And when you talk about this psychological research  
23 that is applied to specific facts in a courtroom setting, are  
24 these studies or this research that you rely upon, is there  
25 any controversy or are these generally accepted research

1 studies or things of that nature?

2 MS. KOLLINS: Well, objection. Vague and  
3 foundation.

4 THE COURT: Sustained. I -- I'll sustain it on  
5 vagueness.

6 BY MR. DRASKOVICH:

7 Q Dr. Chambers, you had said that forensic psychology  
8 is taking basically psychology and applying it to specific  
9 facts in a courtroom setting?

10 A Yes.

11 Q This psychology, these studies, is there any dispute  
12 or is it recognized, the principles you apply?

13 A Well --

14 MS. KOLLINS: Same objection, Your Honor.

15 THE COURT: And I'll -- if you want to get into --  
16 I know you're looking at a particular area. Why don't you  
17 move toward that area and then ask him if there's dispute in  
18 that area.

19 I'm going to guess that, you know, in context of  
20 all psychology, there's going to be disputes and issues  
21 somewhere.

22 MR. DRASKOVICH: And with the Court's permission, I  
23 wanted to kind of start speaking generally, and then address  
24 the very specific issues in this case. So I --

25 THE COURT: Let's just start to move towards the

1 specific issues.

2 BY MR. DRASKOVICH:

3 Q In reference to the studies that were reviewed in  
4 this case, were you involved in those studies?

5 A Directly, no.

6 Q Is that uncommon for a person in your area or line  
7 of work?

8 A No. Even somebody who does research in a particular  
9 area, they are still going to be reliant on public --  
10 published research as well. So essentially, how most science  
11 works and psychology is no exception, is that there are  
12 research studies done under scientific and controlled  
13 conditions, and then the findings from those research is --  
14 that research is published in scientific journals.

15 And there's a very specific process through which  
16 that happens to help guarantee or at least ensure that  
17 there's some degree of reliability in the findings of that  
18 research. Because I, I think, probably most people know that  
19 the way in which you ask a question or where you get the  
20 information or who you talk to could have an effect on the  
21 results that you get.

22 And so there are standards that are set in the  
23 scientific community as to how you conduct research, how you  
24 do data analysis and statistics, and so when you publish a  
25 study in a scientific journal, there is a review process that

1 goes on where the research that you're proposing to publish  
2 is then passed along to other experts in the area who review  
3 that research and then they'll give feedback and  
4 recommendations as to whether that study should be published  
5 or not.

6           So it's essentially quality control in the  
7 scientific process to make sure that if a research study is  
8 published in a scientific journal that it's been essentially  
9 vetted by experts in the field who kind of know what they're  
10 talking about and make sure that any problems or flaws or  
11 errors in the data analysis or statistical calculations have  
12 been eliminated or at least corrected before it gets  
13 published.

14           Q     Thank you. Now, you were contacted by myself in  
15 reference to this specific case, the case of the State of  
16 Nevada versus Maurice Moore?

17           A     Yes, correct.

18           Q     Discovery materials were provided to you?

19           A     Yes.

20           Q     And you were asked to review the discovery in this  
21 case?

22           A     That is correct, yes.

23           Q     Were you ever asked to reach a specific conclusion  
24 or a finding?

25           A     Yes. Not necessarily a specific conclusion or



1 finding. I think that I was given the materials specifically  
2 to be familiar with the facts of the case to know what type  
3 of testimony regarding the research might be relevant for  
4 this particular case because, obviously, I'm just going to --  
5 not just going to get up here and talk about every piece of  
6 research I know.

7           We want to make sure that whatever I might discuss  
8 as part of my testimony is in some way relevant and helpful  
9 to the jury in making their decision.

10           Q     And in reviewing the discovery in this case, did  
11 there -- were there some issues, and we're not going to get  
12 to credibility or anything like that, but were there some  
13 issues that basically called your attention?

14           A     Well, certainly any time there's an allegation of a  
15 sexual assault or some sort of sexual offense, one of the  
16 issues is whether or not it's even likely or possible that  
17 somebody might fabricate that type of allegation.

18                     And so the first question is does that happen?  
19 Well, yes, it does happen. But what's more important is why  
20 or under what circumstances do those types of false  
21 allegations happen? And it turns out that there is a body of  
22 research on that very question that helps us at least  
23 understand what circumstances might lead to somebody making a  
24 false allegation of sexual assault or sexual offense of some  
25 sort.

1 Q There's been some talk, I'll inform you Doctor,  
2 through the course of this trial concerning deflection,  
3 attention seeking, things of that nature by the complaining  
4 witness in this case.

5 Is there research specifically on those issues?

6 A Yes.

7 Q And did you find evidence or issues in reference to  
8 that in this case?

9 A Potentially, yes.

10 Q Okay. If you could explain to this jury what  
11 deflection is and what the studies are concerning deflection  
12 that you reviewed in preparation for your testimony?

13 A All right. First of all, I should say just as a  
14 preface that when we're dealing with something like the  
15 subject of false allegations, it's a difficult area to  
16 explore because, as you probably could figure out for  
17 yourself if you thought about it long at all, is determining  
18 what's true and what's false is not always that easy.

19 And researchers are certainly sensitive to that  
20 issue. So if you're studying the issue of false allegations,  
21 you are first tasked with the fairly difficult proposition of  
22 figures out which allegations are false and which aren't.  
23 And obviously, none of us are psychics or tea leaf readers  
24 and we certainly can't read people's minds, but at least when  
25 studies are published in this area, one of the things that

1 the researchers have to do is decide how to make that  
2 determination of what -- whether a particular allegation is  
3 false or not.

4           And there's a couple of different methodologies  
5 that have been used to do that. The -- kind of the weakest  
6 form of it is just looking at the strength of the evidence.  
7 And some researchers will look at it and say, well, there's a  
8 lot of contradictions here, there's no physical evidence, and  
9 -- and the victim is a little iffy on some of the details of  
10 -- of the case, so, you know, we're going to categorize this  
11 as a false allegation.

12           That's not really the best kind of research because  
13 there's all kinds of reasons why an absolutely true,  
14 legitimate allegation might still have some of those problems  
15 in the case.

16           So other researchers have tried to use a little bit  
17 more stringent methodology by either looking only at cases  
18 where the victim has made a definitive statement of saying,  
19 yes, I made this up, none of it happened, it's totally no  
20 true. So that there's a complete essentially reversal on the  
21 part of the alleged victim regarding the allegation.

22           And then there's some research out there also that  
23 has even taken a step farther than that and only looked at  
24 cases where an individual was prosecuted for having made a  
25 false allegation. So in other words, police took that

1 seriously enough not just to drop the original allegation,  
2 but also to pursue charges against the accuser for having  
3 made a false allegation.

4 Q Doctor, you agree with me that you have not been  
5 called upon to come here and say this did not happen?

6 A No. I would -- it's something that I would never  
7 do. I wouldn't be allowed to do it, but I wouldn't be  
8 inclined to do it, even if I were allowed to do it because,  
9 first of all, it's not my job. And second of all, I'm not in  
10 a position to be able to tell with any degree of certainty  
11 just because I'm a psychologist whether somebody's telling  
12 the truth or not telling the truth.

13 The best I can do is identify for the jury or for  
14 the trier of fact of the circumstances under which a false  
15 allegation might be made, the reasons why people make false  
16 allegations, and then let them use that information however  
17 they see fit.

18 Q Why are false allegations made or how do they come  
19 about?

20 A Well, the research has identified a few basic  
21 categories of reasons why. And essentially what's happened  
22 in this research is that the researchers have taken these  
23 cases where they have identified an allegation to be false,  
24 and then gotten information, either directly or indirectly,  
25 from the accuser to discern what the -- what motivated their

1 allegation.

2           And sometimes it's not just one thing. It can be  
3 more than one thing. But what researchers do, then, is that  
4 they take all the different reasons why somebody is motivated  
5 to make a false allegation and then try to categorize them,  
6 and generally, what the research has done is found several  
7 general categories in which you can put those of those  
8 reasons.

9           So there -- I'm sorry, go ahead.

10          Q    I was going to say, what are the general categories  
11 at issue in this --

12          A    I was --

13          Q    -- case or --

14          A    -- getting to that but I figured that was your  
15 question, so --

16          Q    Okay.

17          A    Well, the first compelling -- the first compelling  
18 study on this subject, at least that I'm aware of, goes back  
19 to 1994. A researcher by the name of Kanin -- and by the  
20 way, that's K-a-n-i-n, not like the cannon that goes boom.

21                But Kanin looked at a fairly large set of false  
22 allegations, and -- and then, like I said, gathered up all  
23 the different rationales and reasons for the victim making  
24 those allegations, and he found that there were three basic  
25 categories of why somebody would do it.

1           The most common category or common type of  
2 motivation was what he called alibi, but you used the word  
3 deflection before, and deflection would really just be a  
4 synonym for that.

5           And essentially, what that is is that the -- the  
6 accuser makes the allegation in a way to deflect or take  
7 attention away from her own bad behavior in one way or  
8 another.

9           And I'm going to use the female pronouns as we talk  
10 about this if for no other reasons because the research shows  
11 that most of these false accusers are female, not male.

12           But I think Kanin found that 40 percent or so of  
13 those cases of false allegations were motivated by some form  
14 of deflection or alibi.

15           So for instance, I'll give you a couple examples so  
16 you know what I'm talking when I use those terms. It might  
17 be that a married woman gets caught with another man or she  
18 gets pregnant by another man, and so she has to explain that  
19 behavior somehow. And she'll -- so an example of alibi or  
20 deflection would be, well, but -- well, I -- it wasn't  
21 something I wanted. He forced me into it, and that's the  
22 reason that it happened.

23           The most common type of alibi case that I see in my  
24 work usually involves a teenager who's in a home with a  
25 stepfather, and she gets caught sneaking out to see a

1 boyfriend or having inappropriate text messages or something  
2 like that, and she'll make an allegation against the  
3 stepfather saying, oh, well, you know, he -- you know, he was  
4 touching me when he shouldn't have been, so now all of a  
5 sudden all the attention is on that, and not on her bad  
6 behavior and the things that she is being confronted with and  
7 likely going to get in trouble for.

8 Q So if I understand your testimony correctly, the  
9 alibi deflection is to deflect problems from one's self --  
10 deflect blame from one's self?

11 A Yes. The accuser has been caught in some sort of  
12 inappropriate behavior for which there may be consequences,  
13 and so the allegation serves a as function of deflecting  
14 attention away from her wrongdoing and onto the person that  
15 she's accusing.

16 Q Doctor, if you could briefly describe the other  
17 basis or reasonable that false allegations are made.

18 A Well, according to the Kanin study, the second most  
19 common type of false allegation is what's called revenge or  
20 anger. And so that happens when the accuser is angry at the  
21 person that she accuses for, you know, a reason that may or  
22 may not be valid. She thinks he was cheating or he had sex  
23 with her and then he didn't call her the next day or, again,  
24 going back to the example of the stepfather. She gets mad at  
25 the stepfather because he punished her and took away her

1 phone because she wasn't, you know, doing her homework or she  
2 was talking to boys or whatever it might be. And then she  
3 gets mad about that, and so it's just kind of almost an  
4 impulsive sort of I'm going to get you sort of reaction, and  
5 then she'll make an allegation just to get back at him for  
6 doing something she didn't like.

7 Q And the third category?

8 A Third one is attention or sympathy. So you will see  
9 cases where an alleged victim might make up a sexual assault  
10 just because she, you know, likes the fact that people are  
11 going to feel sorry for her and pay attention to her and, you  
12 know, this might happen in a case, for instance, where a --  
13 you know, again, if we take a teenage girl as an example.  
14 She's upset because her mom is paying attention to her new  
15 boyfriend and not to her, and so, you know, she wants it  
16 get some of the attention back on her, so she'll say oh,  
17 well, this boy at school, you know, sexually assaulted me,  
18 and then all of sudden now, you know, she's the focus of  
19 attention instead of, you know, whoever else was getting  
20 mom's attention.

21 Q Has there been any research in reference to the age  
22 of the accuser in this dynamic of false allegations?

23 A Well, I will say that when it comes to children, and  
24 when I use the term children now, I'm talking about anybody  
25 under the age ever 18, there do seem to be two distinct



1 categories of that.

2 The stuff that I'm talking about, the research that  
3 I just referenced, we're talking about adolescence on up.

4 Q Okay.

5 A But there also is a different type of false  
6 allegation that may be made by younger children, so younger  
7 school-aged children and below. And most of the time that's  
8 not motivated by the sorts of factors that we just talked  
9 about, but instead is usually the result of some sort ever  
10 intervention or influence by an adult.

11 So for instance, we may have false allegations when  
12 mom and dad are involved in a custody dispute. Mom doesn't  
13 want dad to get custody, and so she might either directly or  
14 indirectly suggest to a child that maybe that dad did some  
15 inappropriate things to her, and so then the child starts  
16 talking about that and that results in allegations against  
17 dad.

18 But that doesn't fit into those three categories  
19 that we're talking about because these are younger children,  
20 don't really quite have the cognitive ability, nor do they  
21 have the motivation to make that sort of false allegation as  
22 would adolescence on through adulthood.

23 Q In reference to reviewing evidence in this case and  
24 in others, do you look at things that cause concern, let's  
25 say, asymmetry or detail, if you could explain that to us.

1           A     Well, you know, any time somebody tells a story  
2 about something that happened to them or something that  
3 they're familiar with, over time that story may change and  
4 that doesn't necessarily mean that the story is untrue  
5 because our brains just work that way. Our memories are far  
6 from perfect and this is big problem, a big difficulty in  
7 terms of trying to determine reality in facts especially in a  
8 courtroom because we're often reliant on people's memory in  
9 terms of providing testimony or giving facts.

10                     So we know that memory changes and deteriorates  
11 over time. And generally, then, what we expect with memory  
12 is that over time that it degrades, it gets worse. We  
13 remember fewer and fewer details of certain things the longer  
14 the time period is between when the telling is and when the  
15 incident occurred.

16                     The issue of asymmetry of details is just one  
17 example of something that we look for as kind of a red flag  
18 to indicate possible fabrication of an allegation. And what  
19 that refers to is when a small detail or a number of small  
20 insignificant details, such as, you know, the color of a  
21 bedspread or the exact time of day or an exact date, or  
22 things like that, are remembered, but major events, things  
23 that are key and essential to the allegation itself are not  
24 remembered.

25                     Those things are not consistent with how we know

1 memory to work, which is just the opposite. That the big  
2 important details are the things that tend to persist over  
3 time, whereas, the smaller, less significant details are the  
4 things that are forgotten.

5           So since that's contrary to how we know that memory  
6 works when people are remembering little details and not the  
7 big ones, that certainly can raise a red flag as to the  
8 credibility of that report.

9           Q    In your review of this case, did you see any  
10 evidence or indication of asymmetry of detail?

11           A    Well, one of the things that I did notice is that  
12 the alleged victim's memory for certain things seemed to get  
13 over time rather than worse. If I recall correctly, just as  
14 an example, I think that when she was first interviewed about  
15 this by police, she said that she didn't know or didn't think  
16 that he had ejaculated during the incident, and then I  
17 reviewed her testimony here in court, and if I'm getting it  
18 right, and I could be wrong, but this is my recollection,  
19 that she indicated that he did or she thought he did  
20 ejaculate.

21           So again, that's something that doesn't get better  
22 on its own, that kind of memory. If you didn't remember it  
23 before right after it happened, then why would you remember  
24 it two years later? That's certainly an example of a memory  
25 that's contrary to how we know memory to work.

1 Q Thank you. Finally, in conclusion of your direct,  
2 you've testified on a number of different cases, concerning a  
3 number of different issues?

4 A Yes, I have.

5 Q And it's dealt with your field of forensic  
6 psychologist?

7 A Yes. One of the things about forensic psychology is  
8 because there are lots of different kinds ever issues that  
9 can arise in a court case, it's necessary for a forensic  
10 psychologist to be familiar with a lot of different areas of  
11 psychology.

12 So we deal with, for instance, things like we're  
13 talking about today, memory and false allegations and  
14 motivations for making false allegations.

15 But in other cases I might need to talk about the  
16 effects that drugs or alcohol has on somebody's perception or  
17 memory or behavior. Or in another case, it may be something  
18 about mental illness and how a person's mental state might  
19 have affected the way that they perceived a situation and how  
20 they reacted to it.

21 So, you know, when we're talking about the courts,  
22 almost anything that humans can do could potentially be a  
23 matter of some consideration and discussion in the case and  
24 therefore, as a forensic psychologist, it's important for me  
25 to at least have some familiarity with all of those potential

1 areas so that I can provide some sort of guidance and help in  
2 understanding those issues.

3 Q In giving us guidance, help, and understanding, have  
4 you testified for both prosecutors or State, and defense  
5 attorneys and the Defense?

6 A Yes, I have.

7 Q Thank you.

8 MR. DRASKOVICH: I have no further questions.

9 THE COURT: All right. Cross-examination?

10 CROSS-EXAMINATION

11 BY MS. KOLLINS:

12 Q Good morning, Doctor.

13 A Good morning.

14 Q Stacey Kollins, the DA's Office. Do you remember  
15 me?

16 A Of course.

17 Q Okay. Just to touch on a couple things. I know  
18 Mr. Draskovich asked you these questions, but just to make it  
19 clear today, you cannot comment directly on whether Alexia  
20 Martinez is telling the truth?

21 A I cannot, no, and I would not.

22 Q And that is beyond your scope of expertise and  
23 always would be?

24 A Yes.

25 Q Fair? Did you generate a report in this case?

1 A I did not, no.

2 Q What did you review in case, other than the victim's  
3 statement and the victim's testimony?

4 A Well, I reviewed the original charging documents and  
5 then the police report that resulted from the allegation and  
6 the arrest, and the police report, I believe, summarized  
7 interviews with Alexia, the alleged victim, and I believe  
8 they also talked to Mr. Moore, and then there was a -- I  
9 think, a summary of the interview with Alexia.

10 But I also had -- was provided a transcript of that  
11 interview with Alexia, and --

12 Q I'm sorry, go ahead.

13 A -- and then I believe I also had a transcript of  
14 Alexia's testimony at the preliminary hearing for this case.  
15 And then I reviewed the actual video from her testimony at  
16 trial here this week -- or last week.

17 Q So did you begin your preparation several months  
18 ago?

19 A I don't know exactly when it was. Probably not  
20 several months ago, but maybe a month ago or so.

21 Q Okay. And you have testified for Mr. Draskovich  
22 before; is that correct?

23 A Yes, I have.

24 Q Probably about a dozen times?

25 A I think it's somewhere around there, yes.

1 Q Okay. As a criminal defense attorney, correct?

2 A He is a criminal defense attorney, yes.

3 Q You have testified in the areas of defense as to  
4 competency?

5 A Yes.

6 Q Eyewitness identification?

7 A Yes.

8 Q False confessions?

9 A Correct.

10 Q This asymmetry of detail, false memory that we  
11 talked about just a moment ago, both of those things?

12 A Oh, okay, yeah, because they're not the same. Yes.

13 Q Suggestibility?

14 A Correct.

15 Q Source amnesia?

16 A Yes, all those are part of false memories,  
17 essentially.

18 Q Tainted disclosures of sexual abuse victims?

19 A Same thing, but, yes.

20 Q Okay. And all those on behalf of the defense?

21 A Yes. I've done it for prosecution, too, but, yes.

22 Q Okay. Here in Nevada -- here in Clark County,  
23 anyway, you've only testified for the prosecution about three  
24 times; is that fair?

25 A Three or four times, yes.

1 Q Okay. And you're paid to be here today, obviously?

2 A I would hope so.

3 Q Okay. Last time you checked?

4 A Sometimes they're a little slow, but eventually the  
5 check comes, yes.

6 Q This notion of deflection and alibi and attention  
7 seeking, you testified to that before, correct?

8 A Yes.

9 Q You testified to that just recently State of Nevada  
10 versus Brett Theil back in February of 2019 --

11 A I didn't.

12 Q -- for Mr. Mueller?

13 Okay. Now, those categories of what you say -- I  
14 want to make sure I say it right -- Kanin has put together  
15 for what may motivate a false allegation, those are things  
16 that generally motivate lies in humans, aren't they?

17 I mean, would you not agree that humans lie to get  
18 attention on just about any topic?

19 A Sometimes, yes, sure.

20 Q Okay. And humans would lie to deflect on just about  
21 any topic, not just sexual assault?

22 A Correct.

23 Q And humans would lie to get revenge on just about  
24 any topic?

25 A Yes, they could, sure.



1 Q Okay. So those aren't categories that are unique to  
2 false allegations of sexual assault?

3 A Not necessarily. I think the research is more that  
4 they seem to be limited mostly to those three categories, and  
5 the help research kind of helps us understand the  
6 distribution of those three categories in terms of how common  
7 they are.

8 Q Well, we have to call them something in order to  
9 talk about them in some format, correct?

10 A Correct, right.

11 Q But again, those are motivators for humans to lie  
12 for just about anything, not just sexual abuse --

13 A They could be, sure.

14 Q -- sexual assault.

15 I mean, kids would lie about doing homework to deflect  
16 attention off of a bad grade; is that right?

17 A I'm not sure I understand your question, but I  
18 think, yeah, sure.

19 Q Well, kids would lie to get out of trouble?

20 A Yes, of course.

21 Q Okay. About things other than sexual abuse is my  
22 question.

23 A Yeah, of course.

24 Q Okay. This Kanin study in 1994, are you aware in  
25 that study that it said that all the false allegations

1 involved penis/vagina sex and none of them involved oral or  
2 anal intercourse?

3 A I don't recall that specifically, but that wouldn't  
4 surprise me.

5 Q Would it refresh your recollection to look at a  
6 copy?

7 A I trust you on that.

8 Q Okay. Since 1994, I know you quoted Kanin's study  
9 saying there was about a 40 percent false allegation rate; is  
10 that what you said?

11 A No, no, no, that's not what I said. Oh, yeah, well,  
12 yes. Well, Kanin -- I don't think that's what I said, but  
13 that's true. According to Kanin, I think Kanin did find of  
14 all the studies he -- what he did in that study is he just  
15 looked a continuous sequence of rape allegations or sexual  
16 assault allegations over a period of time. I think they  
17 looked at like 50, if I remember correctly, somewhere in that  
18 -- in that range.

19 Q It looked at 109 --

20 A Hundred -- okay.

21 Q -- reports of --

22 A Sorry.

23 Q -- rape and concluded that 45 --

24 A All right. So, yeah, there was --

25 Q -- were false.

1           A     -- yeah, about 50 false allegations. So that's the  
2 number I'm thinking of. So, yeah, so they just looked at a  
3 bunch of cases and then they followed them through. And as I  
4 said before, those that where the victim later said, okay,  
5 you know what, I'm sorry, I made it up, it's not true, didn't  
6 happen, then they took those cases and then looked at what  
7 the motivations were among those cases of -- for making the  
8 false allegation.

9           Q     And that 40 percent number that -- or 41 percent,  
10 maybe, number, that has not remained constant over a course  
11 of time; is that fair? There are other studies out there  
12 that show a far lower percentage of false allegations?

13          A     There have been a lot of studies on that subject and  
14 that number is wide ranging in terms of how often cases are  
15 identified as being false. Kanin is one of the higher ones,  
16 yes.

17                   Now, Kanin replicated his own results. So he redid  
18 the study again with a different sample and got pretty much  
19 the same results, and then some years later in around 2000,  
20 another researcher, Kennedy, tried to replicate his study.  
21 And when I say replicate, by the way, all that means is that  
22 another researcher says, oh, this guy did this study, he  
23 found this, we need to make sure that wasn't just an  
24 accident, what he found.

25                   Maybe the way he asked the question or the people

1 that he talked to weren't representative of the overall  
2 population. So very often scientists do what we call  
3 replication. They'll try and replicate the same study to see  
4 if they get the same result.

5 That's why it's really important when the  
6 researcher publishes their results, they don't just publish  
7 the results, but they publish also their methods, how they  
8 did it so other people can redo it the way they did it.

9 And so Kennedy redid his study in the year 2000 and  
10 found very similar kinds of findings. But, yes, it's true  
11 that there are other studies that have looked at the issue of  
12 false allegations and found, you know, false allegation rates  
13 all over the map. And some -- some very low, you know, one  
14 to three percent. And Kanin's, I think, certainly was one of  
15 the higher ones. It's fairly surprising, to be honest with  
16 you, how high that number was.

17 Q And that's a 25-year-old study?

18 A Yes, but again, like I said, that's been replicated.  
19 So it wasn't just an accident. There could still be issues  
20 of methodology, but it certainly wasn't just an accident.

21 Q Well, and certainly, you don't mean to comment that  
22 any of the other studies that come through with the lower  
23 numbers, one percent, five percent, perhaps eight percent,  
24 those aren't erroneous studies?

25 A I -- again, it's all about methodology. So, you

1 know, your subject pool and the way in which you determine  
2 whether an allegation was false, those can make a big  
3 difference.

4 Q Doctor, is it fair to say that your only clinical  
5 interaction with juveniles that were victims of sexual abuse  
6 was back in your internship?

7 A No, that's not true at all.

8 Q And what would have been the latest?

9 A The latest?

10 Q I'm just looking at your CV, so maybe I -- I'm  
11 missing something, I don't know.

12 A Okay. Well, I've been in clinical practice since  
13 1993. So -- so I've seen plenty of juveniles that were  
14 victims of sexual assault.

15 Q Did you treat them for that victimization?

16 A Yes, certainly.

17 Q Okay. From '94 to 2004, you were involved in a  
18 sleep clinic; is that correct?

19 A I started private practice in 1999. I was still  
20 doing some sleep related work after that. But most of my  
21 work from 1999 on was either clinical or forensic psychology.

22 Q Is it fair to say that the clinical work that you do  
23 now primarily deals with sex offenders and not sex victims?

24 A No, not fair at all.

25 Q Do you do evaluations for the State of Nevada for

1 risk assessment of sex offenders?

2 A I do risk assessments, yes.

3 Q Okay. And is it your testimony that actively now  
4 you treat victims of sexual abuse?

5 A No, that's not my testimony.

6 Q Okay. And when is the last time you did that?

7 A The last time I treated a victim of sex assault; is  
8 that what you're asking?

9 Q Yes.

10 A I -- I couldn't give you an exact date, but it's  
11 probably been more than five years, if that's helpful.

12 Q In a clinical setting?

13 A Yes.

14 Q Okay.

15 MS. KOLLINS: Nothing further, Your Honor.

16 THE COURT: All right. Redirect?

17 MR. DRASKOVICH: Very briefly.

18 REDIRECT EXAMINATION

19 BY MR. DRASKOVICH:

20 Q Dr. Chambers, whether or not you've treated any  
21 victims of sexual assault, does that in any way impact your  
22 opinion concerning the studies and the sciences on the  
23 subject?

24 A No. And I think it's important to point out that  
25 there's a reason why we do research. The purpose of research

1 is to make sure that the information that we have is  
2 collected in a systematic way that avoids any biases or any  
3 preconception that is we have.

4           Just because somebody has a Ph.D. after their name  
5 doesn't necessarily mean that their observations about the  
6 world are anymore valuable than the jurors or the judge or  
7 you or anyone else.

8           We do research because we need to control for the  
9 things that sometimes bias us in our perception of the world.  
10 I often get asked when I testify and talk about certain kinds  
11 of research whether the findings of the research makes sense  
12 or follow common sense.

13           And the answer that I give to that is that if  
14 common sense was the only thing we needed to understand the  
15 world, we wouldn't need science. The whole purpose of  
16 science is to help us understand those things about the world  
17 that don't conform with our common sense.

18           So, you know, a lot of the new discoveries that are  
19 being made in physics, for instance, you know, quantum  
20 physics and the behavior particles of distances and things  
21 like that, those things totally deny common sense. But  
22 research tells us that they're true and that they exist that  
23 way. And so -- so we need that science to tell us that.

24           Psychology is no different. As a matter of fact, I  
25 think in a lot of ways, psychology is more at risk for that

1 because we observe people every day, and we have our own  
2 impressions and we make our own conclusions about people and  
3 why they behave the way they do.

4           And very often those -- those impressions are  
5 correct. But every so often they are not. And it's when  
6 they're not, that the research is most valuable.

7           So one of the things we do know from research is  
8 that the kinds of observations that clinicians make in their  
9 treating of patients and the conclusions that they come to  
10 are very often erroneous because they're not done in a  
11 controlled setting, and they don't have all of the benefits  
12 of statistical analyses and -- and control groups and all the  
13 other things that make science work the way it does.

14           So if anything, having a lot of clinical experience  
15 working with patients can be a detriment because you can be  
16 at risk for bringing in your own personal biases and the  
17 flaws in which you observe certain things in a way that  
18 science prohibits.

19           And so science and research and the published  
20 articles that we have on these topics are way more important  
21 than clinical experience in terms of understanding human  
22 behavior.

23           Q Thank you. Finally, there was a question in your --  
24 in conclusion of my redirect, a question concerning vaginal  
25 sex versus anal sex or oral sex in the Kanin study.



1 A Yes.

2 Q Kanin study.

3 A Kanin, yeah.

4 Q Is there any body of research to say, well, people  
5 will make up allegations of vaginal sexual assault, but will  
6 never make up an allegation of anal sexual assault or oral  
7 sexual assault?

8 A No, I don't know of anything like that. And we also  
9 have to understand that there --

10 THE COURT: Hold on. You answered the question --

11 THE WITNESS: Oh.

12 MR. DRASKOVICH: Thank you.

13 THE COURT: -- but if you need to go with something  
14 further, I'll let you, but I -- I don't want to keep doing  
15 narratives.

16 THE WITNESS: Okay.

17 MR. DRASKOVICH: Thank you.

18 BY MR. DRASKOVICH:

19 Q Now, is there another concern or an issue in  
20 reference to the distinction between those sex acts and the  
21 science?

22 A Yes, because there's two types of false allegations  
23 that could be made. There's one that's made out of whole  
24 cloth. In other words, none of the stuff happened. There  
25 was no person, there was no sex, there was no assault, there

1 wasn't anything. This entire episode was fabricated by the  
2 accuser.

3 But then the other type of accusation is one where,  
4 yes, there was sexual contact. The issue was whether that  
5 sexual contact was consensual or not. And I gave an example  
6 of that earlier on in my testimony when I talked about the  
7 wife who has an affair and gets pregnant and then tells her  
8 husband, well, he raped me.

9 You know, that's an example where there was sexual  
10 contact, but not necessarily forced sexual contact, but  
11 rather, it was consensual, and so the lying isn't about the  
12 sex, the lying is about the consent.

13 Q And in this case, we had sexual contact that was  
14 anal, vaginal, and oral, based upon your review of the  
15 discovery?

16 A Those were the allegations, that's my understanding,  
17 yes.

18 Q Thank you.

19 MR. DRASKOVICH: I have no further questions.

20 THE COURT: All right. Redirect? I mean, recross,  
21 excuse me.

22 RECCROSS-EXAMINATION

23 BY MS. KOLLINS:

24 Q Doctor, you indicated to Mr. Draskovich that it's  
25 imperative that you rely on these studies; is that fair?

1 It's imperative that you rely on these studies to come in  
2 here and give an opinion because you don't do all this  
3 research yourself, right?

4 A Yeah, so that's -- if we didn't get the research, we  
5 wouldn't have anything to rely on.

6 Q Okay. So again, I'm pointing to the Kanin study, if  
7 I could, not one complainant mentioned forced oral or anal  
8 sex?

9 A Again, I don't know what your point is with that  
10 because you just argued yourself --

11 Q Well, you --

12 A -- that people can lie about anything, so why would  
13 they lie about --

14 Q Well --

15 A S -- vaginal sex but not about anal sex?

16 Q I appreciate your inquiry into why I feel a  
17 question's relevant.

18 THE COURT: Counsel, just ask the question.

19 MS. KOLLINS: I did, and he didn't answer.

20 THE WITNESS: Well, you didn't answer -- you did  
21 not actually ask me a question.

22 THE COURT: Well, Counsel, I'm not going to get --  
23 we're not going to get into an argument. He gave you an  
24 answer. If you don't feel the answer was adequate, ask  
25 another question.

1 BY MS. KOLLINS:

2 Q Not one complainant in that study mentioned forced  
3 oral or anal sex. And, in fact, Kanin went on to say that  
4 that was consistent with other studies.

5 A I don't know what studies there were prior to  
6 Kanin's studies, but there certainly have been studies since  
7 Kanin.

8 Q And he also said that in contrast those acts were  
9 included in 25 percent of the founded sexual assault  
10 accusations.

11 A Okay.

12 Q Are you familiar with that line in the study?

13 A I don't remember that specific statistic, no.

14 Q And you talked a little bit with Mr. Draskovich  
15 about sexual assaults that had cloth and no cloth; do you  
16 remember that? Like, where no sex happened and somebody just  
17 said there was sex but there was never any contact.

18 A Yes.

19 Q Do you remember that?

20 They actually didn't have any of those types of victims  
21 in the Kanin study that you've talked about today?

22 A Which types of victim?

23 Q The ones where there were no cloth, where they were  
24 just --

25 THE COURT: Totally fabricated is what you're

1 essentially asking.

2 MS. KOLLINS: Correct.

3 THE WITNESS: You're saying that Kanin didn't have  
4 any of those cases?

5 BY MS. KOLLINS:

6 Q Yes.

7 A I don't recall that.

8 Q Okay.

9 MS. KOLLINS: Nothing further.

10 THE COURT: Redirect?

11 MR. DRASKOVICH: I have no further questions. No,  
12 thank you, Doctor.

13 THE COURT: Does any member of the jury have a  
14 question for this witness? If you do, write it on a clean  
15 sheet of paper with your juror number. Okay. Not seeing any  
16 hands. Anyone?

17 All right. Thank you very much for your testimony.  
18 You're excused.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Defense may call its next witness.

21 MR. DRASKOVICH: Your Honor, the defense rests.

22 THE COURT: All right. That means the defense has  
23 concluded its presentation of evidence to you. The State at  
24 this point in time does have the opportunity, if it wishes to  
25 do so, to present rebuttal evidence. Does the State wish to

1 present any rebuttal evidence?

2 MS. KOLLINS: Not at this time, Your Honor. Thank  
3 you.

4 THE COURT: All right. With that, it means all the  
5 evidence that you are going to have for your deliberations  
6 has been presented to you.

7 What we're going to do at this point is move into  
8 me giving you your instructions on the law. Once I've  
9 concluded giving you the instructions on the law, we'll take  
10 a little bit of a break to let the parties get set up to do  
11 oral arguments, and then we'll go into the oral arguments, in  
12 which the State will present the initial oral argument,  
13 defense will have its argument, and then the State will be  
14 allowed some time for the rebuttal argument. And after that,  
15 you'll go back and start deliberations.

16 But at this point in time, don't begin to form any  
17 opinion or to go anywhere with the case. We've got a lot  
18 left to do before you get the chance to start deliberations.

19 And Skyler is going to hand out written copies of  
20 the instructions. These are your copies to take back to  
21 deliberations. So if during the course of the proceedings  
22 this morning you want to make notes on it, write on it, draw  
23 a picture on it, whatever you want to do during the course of  
24 closings, you're free to do that. You can take it back into  
25 the jury room, deliberation room with you.

1           You'll find during a lot of times in the closing  
2 arguments, the parties will refer to specific instructions.  
3 So if they do, you're free to flip over and follow along if  
4 one of them refer to an instruction or take a note.

5           The point I'm trying to make is you can write on  
6 it, do whatever you want and take it back to the jury  
7 deliberation room with you. All right.

8           (COURT READS JURY INSTRUCTIONS TO THE JURY)

9           THE COURT: All right. Did either party notice any  
10 error in my reading of the instructions; State?

11          MS. KOLLINS: No, Your Honor. Thank you.

12          THE COURT: Defense?

13          MR. DRASKOVICH: No, Your Honor.

14          THE COURT: Okay. Like I said, we're going to take  
15 a break now, and my hope is if we take a break now, then  
16 we'll be able to get through all of the closings before we  
17 need to take another break.

18          So while you are out there, I'll just -- let's see.  
19 Where is my stuff?

20          While you are out there, I know we're close, but do  
21 not talk to each other about it -- the case or about anyone  
22 that has anything to do with.

23          Do not talk with anyone else about this case or  
24 about anyone that has anything to do with it. Do not let  
25 anyone talk to you about the case or about anyone that has

1 anything to do with it.

2 If someone should try to talk to you, please report  
3 it immediately -- to me immediately by contacting the  
4 Marshal. Do not read any news stories or articles or listen  
5 to any radio or television reports about the case or about  
6 anyone who has anything to do with it.

7 Do not visit the scene of any events mentioned  
8 during the trial, undertake any investigation,  
9 experimentation, or research on your own, including the use  
10 of social media to in any way discuss the case or the use of  
11 the Internet or other reference materials to do any sort of  
12 investigational research.

13 And very, very important, we've got the closing  
14 arguments to be heard, do not form or express any opinion on  
15 any subject connected with this case until it is finally  
16 submitted to you, which will be very soon.

17 Thank you for your attention so far. As soon as  
18 you get back, we'll get started with the closing arguments.

19 THE MARSHAL: All rise for the jury.

20 (Outside the presence of the jury at 10:30 A.M.)

21 THE COURT: All right. Anything State needs --  
22 from the State before we break for -- to get ready?

23 MS. KOLLINS: No, Your Honor.

24 THE COURT: Defense?

25 MR. DRASKOVICH: No, Your Honor.



1 THE COURT: All right. As soon as they get back,  
2 we'll fire up.

3 (Court recessed at 10:31 a.m. until 10:46 a.m.)

4 (Outside the presence of the jury.)

5 (Pause in the proceedings)

6 THE COURT: Okay. State ready?

7 MS. KOLLINS: Yes, Your Honor.

8 THE COURT: Defense ready?

9 MR. DRASKOVICH: Yes, Your Honor.

10 THE COURT: All right. Let's bring them in.

11 THE MARSHAL: All rise for the jury.

12 (In the presence of the jury at 10:47 A.M.)

13 THE COURT: All right. Let the record reflect the  
14 presence of the attorney for both sides, the presence of the  
15 defendant. Do the parties stipulate to the presence of the  
16 jury panel?

17 MS. KOLLINS: Yes, Your Honor.

18 MR. DRASKOVICH: Yes.

19 THE COURT: Okay. I'll let everybody get situated  
20 with their notepads, instructions.

21 All right. Ladies and gentlemen, as I said, we're  
22 going to start the closing arguments. The State has the  
23 burden of proof, so it starts closing arguments. Defense is  
24 entitled to an argument and then State has an opportunity for  
25 a rebuttal argument.

1 I want to emphasize while we're going through the  
2 arguments, what the attorneys tell you in closing arguments  
3 is not evidence. As I've said before, they're not witnesses  
4 in this case, and consequently what they say in closing  
5 argument is not evidence.

6 If they say something about witness X said 1, 2, 3,  
7 and you remember witness X saying 5, 6, 7, it's your memory  
8 of the testimony that controls, not what the attorneys tell  
9 you the evidence that came in was.

10 But these arguments are very, very important. The  
11 attorneys will attempt to refresh in your recollections  
12 different things that were said by witnesses or different  
13 things that are presented in the evidence that's been  
14 admitted into the record, and will talk to you about how that  
15 evidence fits in with the elements of the of the crimes that  
16 are charged in this case, which you have had instructions on.

17 So these are very, very important, and I really  
18 hope that you pay close attention to them. We'll be pleased  
19 to hear from State.

20 STATE'S CLOSING ARGUMENT

21 MR. MERBACK: Thank you, Your Honor. Ladies and  
22 gentlemen, we appreciate your time over the last week and  
23 your patience.

24 "This isn't what I wanted to do. I wasn't looking  
25 for this. I don't want to do this. Please don't do this."

1 This case is about 14-year-old Alexia Martinez and the things  
2 that the defendant did to her in February of 2017.

3 Now, as the Court said, you have the law in your  
4 jury instructions, and what we're going to do is we're going  
5 to go through the two charges in this case, sexual assault of  
6 a minor under 16 and lewdness with a child under the age of  
7 16. We're going to go through those two charges, look at the  
8 law, and then the evidence as they apply to those charges.

9 Let's start with the first charge, sexual assault  
10 with a minor under 16. Now, there's an instruction,  
11 instruction 11. It's in your instruction packet. And this  
12 is a really long instruction so I'm not going to read the  
13 whole entire thing to you.

14 But we're going to use this instruction to  
15 determine what the elements of sexual assault with a minor  
16 under 16 are. Actually, the first page-and-a-half of this  
17 instruction talks to you about the elements of sexual  
18 assault. And if you look at it, it's divided into three  
19 different sections, one for each of the variations of sexual  
20 assault that we have in case.

21 So if you start on line two, that's the first  
22 section, and it's in reference to count one, which is the  
23 fellatio count or the oral count.

24 Then if you move onto line 13 on that first page of  
25 instruction number 11, that is the second section, and that's

1 in reference to counts two and three, which are the sexual  
2 intercourse or vaginal intercourse counts in this case.

3 And then finally, if you move to line 24 on that  
4 first page of instruction 11, that third -- that starts the  
5 third section, which is in reference to counts four and five,  
6 which are the anal intercourse counts.

7 And because all three sections are so similar,  
8 we're just going to look at one of them as we talk about what  
9 are the elements of sexual assault.

10 Now, one thing that's important to point out,  
11 you're going to notice through these instructions that  
12 there's a lot of "and's" and a lot of "or's". And those are  
13 important. When you see ands, obviously that means both,  
14 that means everything on the list or both of the things on  
15 the list are required. When you see ors, that means one of  
16 the items is sufficient.

17 So the second half of that instruction number 11  
18 says, The defendant has been charged in counts two and three  
19 of the Amended Information with sexual assault involving  
20 sexual intercourse. For you to find the defendant guilty of  
21 this charge, you must find beyond a reasonable doubt first,  
22 at or near the time alleged in the Amended Information the  
23 defendant intentionally sexually penetrated the victim by  
24 inserting, however slight, his penis into the genital opening  
25 of the alleged victim, and second, the defendant sexually

1 penetrating the victim either one, knew or acted under  
2 circumstances where he should have known that the sexual  
3 penetration was against the will of a victim, or, number two,  
4 knew or should have known the alleged victim was mentally or  
5 physically incapable of resisting or understanding the nature  
6 of its conduct.

7           Now that's -- that portion of the instruction as to  
8 the sexual penetration or the vaginal penetration, but it's  
9 the same essentially for the anal penetration as well as for  
10 the -- as well as for the fellatio.

11           But we can tell from that portion of that  
12 instruction that there are essentially two elements to the  
13 crime of sexual assault. One, that there's sexual  
14 penetration. And two, that it's against the victim's will.

15           Remember that Alexia told you that the defendant  
16 pushed her head down, brought her over the console of the  
17 car, pushed her head down and made her put her mouth -- his  
18 mouth -- her mouth on his penis. That's count one, the  
19 fellatio count.

20           Then he got on top of her, moved over to the  
21 passenger side of the car and inserted his penis in her  
22 vagina. That's count two, one of the sexual intercourse  
23 counts. He then turned her over and inserted his penis into  
24 her anus. That's count four, the first of the anal counts.

25           He then flipped her back over and inserted his

1 penis in her vagina again. That is count three, the second  
2 of the vaginal penetration counts. And then he turned back  
3 on her stomach once more and inserted his penis in her anus  
4 again, and that is count five, the second of the anal  
5 intercourse counts.

6 Now, one detail of that instruction number 11  
7 that's important to note, so this is instruction 11, the  
8 first page of instruction 11, line 17, it says, Intentionally  
9 sexually penetrated the victim by inserting, however slight,  
10 his penis into the genital opening of the alleged victim.

11 Now, if you look under the anal intercourse section  
12 of it, that's instruction 11, the second page, line two, it  
13 says the same thing, however slight.

14 Now, if you go to page 1 of instruction 11, line  
15 six, that's talking about the fellatio. You're going to  
16 notice that's different. It says intentionally sexually  
17 penetrated the victim bill placing, however slight, his penis  
18 upon the mouth or tongue of the alleged victim.

19 So what this instruction -- part of the instruction  
20 is telling you is that no specific amount of penetration is  
21 required. Any penetration of the vagina or the anus is  
22 sufficient.

23 And in regards to fellatio, there isn't even a  
24 requirement of penetration. The simple touching of the mouth  
25 or the tongue on the defendant's penis is sufficient.

1           Now, a different instruction that helps to define  
2 this element of sexual penetration, the first element of  
3 sexual assault is instruction number 13. And it says, where  
4 a defendant commits a specific type of act constituting  
5 sexual assault and/or lewdness, he may be found guilty or  
6 more than one count of that specific type of act of sexual  
7 assault and/or lewdness.

8           Now, there's a list of four things, if you look at  
9 that instruction. And there's an "or" there, so that means  
10 you only have to have one of the four. And the one that  
11 applies to this case is number two. It says where the acts  
12 of the same specific type are interrupted by a different  
13 specific type of sexual assault and/or lewdness.

14           So what does that mean? When the defendant  
15 initially sexually assaults Alexia's vagina, when he  
16 initially places his penis in her vagina, that is one count  
17 of sexual assault.

18           We know that he then turns her over and penetrates  
19 her anus. That is a count of sexual assault, anal  
20 penetration. He then turns her around again and penetrates  
21 her vagina again with his penis.

22           Now, there are two different counts of sexual  
23 assault of her vagina because the two counts are interrupted  
24 by a different count of a different type of sexual assault.  
25 And that's the anal intercourse. That's why you have two

1 counts of vaginal intercourse and two counts of anal  
2 intercourse.

3           Okay. So that's the sexual penetration element of  
4 sexual assault with a minor. Let's talk about element number  
5 two, the against the will of the victim element. So we're  
6 going to go back to instruction number 11. It that's that  
7 big three-page instruction. This is the first page of  
8 instruction number 11, line 19.

9           And it says, Second, the defendant in sexually  
10 penetrating the victim either, one, knew or acted under  
11 circumstances where he should have known that sexual  
12 penetration was against the will of a victim or two, knew or  
13 should have known the alleged victim was mentally or  
14 physically incapable of resisting or understanding the nature  
15 of his conduct.

16           And we can see from that part of the instruction  
17 that there are actually four options for proving that this  
18 was against her will. Number one, that the defendant knew it  
19 was against the victim's will. Or number two, that he should  
20 have known it was against her will. Or number three, that he  
21 knew that she was mentally or physically incapable of  
22 resisting or number four, that he should have known that she  
23 was mentally or physically incapable of resisting. Any of  
24 those four options are sufficient.

25           However, we know based on the facts of this case,



1 that defendant knew. He knew that his penetration of Alexia  
2 was against her will. Why? How did he know? Because she  
3 told him. She said, this isn't what I wanted to do. I  
4 wasn't looking for this. Please don't do this. I don't want  
5 to do this. He knew that his penetration of her was against  
6 her will.

7           Okay. Continuing on with instruction number 11.  
8 Here's another part. This is on the second page of  
9 instruction number 11, line 22. And this says, Therefore, a  
10 reasonable and good faith belief that there was voluntary  
11 consent and the alleged victim was mentally and physically  
12 capable of resisting and understanding the defendant's  
13 conduct is a defense to such a charge.

14           Now, listen to this part. Unless the defendant  
15 thereafter became aware or reasonably should have been aware  
16 that the other person no longer consented to the sexual  
17 activity or was no longer mentally or physically capable of  
18 resisting or understanding the nature of its conduct.

19           This is what we talked about in jury selection.  
20 That no means no. That a woman or that anybody has the right  
21 at any point to say no, I don't want to keep doing this. No  
22 matter what they have said, no matter what messages they have  
23 sent, no matter where they have gone, they have right to say  
24 no.

25           So in this case, even if the defendant believed

1 that Alexia wanted to have sex with him initially because of  
2 the text message -- because ever the Instagram and Tinder  
3 messages that she sent, because she showed up and met him at  
4 about midnight that night, even if he believed that she  
5 wanted to have sex with him, when she says to him, this is  
6 not what I want, this is not what I want to do, that's  
7 enough.

8           The fact that he tells her, it's okay, it's going  
9 to be okay, that doesn't make it okay. That doesn't change  
10 what she's saying. When he continues to sexually penetrate  
11 her after she objects, he is now aware or should be aware  
12 that she is not consenting to the things that he did to her.

13           Okay. Another part of instruction 11, physical  
14 force is not necessary in the commission of a sexual assault.  
15 The crucial question is not whether a person is physically  
16 forced to engage in a sexual assault, but whether the act is  
17 committed without her consent or under conditions in which  
18 the defendant knew or should have known the person was  
19 incapable of giving her consent or understanding the nature  
20 of her act.

21           Alexia told you that she froze. She said that she  
22 didn't fight back. She didn't scream out. She didn't yell.  
23 But that is not necessary. When she says, I don't want to do  
24 this, or please don't do this, that's enough, that is enough.  
25 The defendant at that point knows or should have known that

1 she is no longer consenting or is not consenting to the  
2 things he is doing.

3           Going on here to hopefully the -- I think the last  
4 part of instruction number 11. This is the on the third page  
5 of instruction number 11, starting on the first line. It  
6 says, Submission is not the equivalent of consent. While  
7 consent inevitably involves submission, submission does not  
8 inevitably involve consent. Lack of protest by the victim is  
9 simply one among the totality of circumstances to be  
10 considered by the jury. A person is not required to do more  
11 than her age, strength, surrounding facts and attending  
12 circumstances, make it reasonable for her to do to manifest  
13 opposition to the sexual assault.

14           The fact that Alexia froze, as I said, that does  
15 not mean she consented. That she didn't fight back does not  
16 mean that she consented to what the defendant did. Remember,  
17 that she was 14, she had just turned 14 that December. And  
18 the defendant was almost 42. He was about to turn 42 years  
19 old. Almost three times her age.

20           The law takes that into account. She is only  
21 required to manifest her opposition based upon what is  
22 required by her age, strength, surrounding facts and  
23 attending circumstances. Her age and the defendant's age is  
24 important when considering that.

25           The State has clearly proven both of the elements

1 of sexual assault with a minor under 16, that there was a  
2 sexual penetration and that was against the will of the  
3 defendant. Consequently, the defendant is guilty of all five  
4 of those counts.

5 The first count for fellatio or the oral  
6 penetration, the second -- the two counts for vaginal or  
7 sexual intercourse, and the two counts for anal penetration.

8 Now, let's go on to the second charge. That first  
9 charge is sexual assault on a minor. The second charge is  
10 lewdness with a child under 16, and there's two counts of  
11 that. And this is instruction number 14. We're going to  
12 talk about this one quite a bit. It helps to define this  
13 crime of lewdness with a child.

14 The defendant has been charged in counts six and  
15 seven in the Amended Information with lewdness of a child  
16 under the age 16. For you to find the defendant guilty of  
17 this, you must find beyond a reasonable doubt that first, at  
18 or near the time alleged in the Amended Information the  
19 defendant used his hands or fingers to touch, grab or fondle  
20 the breasts or body of AM -- and AM here is Alexia Martinez  
21 -- as alleged in count six, and to touch, slap or fondle the  
22 buttocks or body of Alexia Martinez as alleged in count  
23 seven.

24 Second, the defendant intended to commit a lewd or  
25 lascivious act. And third, the defendant in doing the act

1 intended to arouse, appeal to or gratify his own lust,  
2 passions or sexual desires or Alexia's lust, passions or  
3 sexual desires. And fourth, that Alexia was a child under  
4 the age of 16.

5           So from this instruction, we can clearly see that  
6 there are four elements to this crime of lewdness with a  
7 child under 16. There has to be some kind of a touching that  
8 -- that has to be an intent by the defendant to commit that  
9 touching or that lewd act. Number three, the defendant has  
10 to intend to arouse either his sexual desires or Alexia's  
11 sexual desires, and number four, you have to have a child  
12 under 16.

13           Let's talk about each of those elements. First,  
14 the touching. There are two different types of touching in  
15 this case. So there are two counts of lewdness. Alexia  
16 testified the defendant touched her breast over her clothes.  
17 In fact, in the defendant's own statement he admits that he  
18 touched her breasts. He admits that he touched her breast in  
19 her own statement.

20           She also testified that while she had him -- while  
21 the defendant had her flipped over on her stomach, he was  
22 slapping her buttocks and that that's that second touching  
23 for that second count of lewdness with a child under 16.

24           Let's go to elements two and three. And I'm going  
25 to kind of combine these together because they both deal with

1 intent. The intent of the defendant when he's committing  
2 this touching.

3 He has to intend to commit this lewd act and he has  
4 to intend to elicit the sexual desires of either himself or  
5 Alexia. Either one or the other is sufficient. Remember  
6 that "or" is important.

7 So the question becomes how can we tell -- how can  
8 you -- how can you as members of the jury know what the  
9 defendant's intent was? And the Court's provided you with an  
10 instruction that tells you about that. This is instruction  
11 number four, line four. It says, The intent with which an  
12 act is done is shown by the facts and circumstances  
13 surrounding the case.

14 How do you know what the defendant's intent was?  
15 How do you know that he intended to commit this lewd act?  
16 How do you know that he intended to arouse his sexual desires?  
17 You look at what he did. We know that he intended to commit  
18 the lewd acts of touching Alexia breasts because that's what  
19 he did. He said that he did it.

20 We know that he intended to touch the buttocks of  
21 Alexia because she said that's what he did. We also know  
22 that he intended to arouse himself because he became aroused.  
23 The instructions tell you that ejaculation is not necessary.  
24 The State doesn't have to prove ejaculation, but there's  
25 ejaculation in this case.

1           The defendant's intent was to arouse himself because  
2 he became aroused to the point that he ejaculated.

3           The defendant's sperm in this case was found both  
4 inside of Alexia in multiple places. It was found on the  
5 seat, the passenger side seat of the vehicle where Alexia  
6 said that the sexual assault occurred. It was also found on  
7 his sweat pants that he was wearing.

8           These things also show us -- these things also show  
9 that the defendant intended to arouse himself and Alexia when  
10 he was committing these touchings.

11           We also know what the defendant's intent was  
12 because he told us. He said in the messages to Alexia, "I  
13 want to hold you and kiss you and make love to you, hella  
14 bad. I don't care how late it is. I'll come to you, K?"

15           Alexia says, "Thank you."

16           The defendant says, "I promise, I'm going to hold  
17 you and kiss you and breastfeed on you and get your kitty so  
18 wet, mama."

19           These are all text messages that you'll have with  
20 you when you go back into the deliberations.

21           We know what the defendant's intent was in this  
22 case, both to commit the lewd act and as well as to arouse his  
23 sexual desires because that's exactly what he said. So  
24 that's elements two or three.

25           Let's look at that fourth element, the child under

1 16. This is pretty obvious. Alexia's birthday was December  
2 10th of 2002. She had been 14 for a couple of months, almost  
3 three months when this event occurred.

4 A couple other parts of instruction 14 that are  
5 important. This is instruction 14, line 12. It says, To  
6 prove the charge of lewdness with a child under the age of  
7 16, the State does not need to prove either the defendant's  
8 or Alexia's lusts, passions, or sexual desires were actually  
9 aroused. So we don't have to actually prove arousal. Simply  
10 his intent to arouse himself or Alexia is enough. But we  
11 clearly have actual arousal in this case to the point of  
12 ejaculation.

13 Another part of instruction 14. This is  
14 instruction 14, line 14. It says, The crime of lewdness with  
15 a child does not require that bare skin be touched. The  
16 touching may be through the clothing of the child. And  
17 Alexia told you when the defendant touched her breasts, it  
18 was over her shirt. That is sufficient. That's enough. He  
19 doesn't have to actually touch her skin. The fact that he  
20 touched her breasts and rubbed on her breasts over her shirt,  
21 that is sufficient.

22 Now, the last part of this instruction. It says a  
23 child under the age of 16 cannot consent to another  
24 individual using his hands or fingers to touch and/or slap  
25 and/or fondle the buttocks and/or breasts and/or body of --



1 and/or body of that person, of Alexia, to arouse, appeal to  
2 or gratify his lusts, passions, or sexual desires or lusts --  
3 or the child's lusts, actions, or sexual desires.

4           The consent of a child under the age 16 years to  
5 such lewd and lascivious conduct is not a defense to the  
6 charge of lewdness with a child under the age of 16.

7           So there's going to be all these arguments from the  
8 defense, and we've heard these questions from the defense  
9 about the issue of consent. That Alexia consented to the  
10 sexual penetration the defendant did to her in counts one  
11 through five.

12           That consent is not a defense to these counts, to  
13 the lewdness with a child count. Alexia, because she is  
14 under 16, cannot consent to the touching the defendant did to  
15 her.

16           The State has clearly proven all four of the  
17 elements of lewdness with a child under 16. That there was a  
18 touching, that the defendant's intent was to commit that  
19 touching, and to arouse himself or Alexia, and that Alexia's  
20 a child under the age of 16.

21           Consequently, the defendant is guilty of both  
22 counts, the touching for her breasts and the touching for her  
23 buttocks.

24           Now, another instruction. This is instruction 12.  
25 It says, there's no requirement that the testimony of a

1 victim of sexual assault or lewdness be corroborated. And  
2 her testimony standing alone, if believed beyond a reasonable  
3 doubt, is sufficient to sustain a verdict of guilty.

4           There does not have to be corroboration of Alexia's  
5 testimony. Her testimony alone can be sufficient. In this  
6 case, however, Alexia got up and testified to you and told  
7 you what happened. But in addition to that, there's a whole  
8 bunch of corroboration about what happened in this case.  
9 Let's look at some of that.

10           Let's start with the defendant's car. The status  
11 of the defendant's car corroborates Alexia's testimony. She  
12 said the passenger seat had been leaned all the way back.  
13 She said the passenger seat had been leaned all the way back.  
14 And if you look at the picture taken by the crime scene  
15 analyst at the Faustine address, you can see the seat leaned  
16 back.

17           In fact, when the officers first approached the  
18 defendant in the vehicle, they said that he was sitting in  
19 the passenger seat with the seat leaned all the way back,  
20 consistent with what Alexia had said.

21           The defendant's sperm is on one of the stains on  
22 that seat, that same passenger seat where Alexia said the  
23 defendant sexually assaulted her. That is also consistent  
24 with Alexia's testimony.

25           Even the smudges on the back dash of the car are

1 consistent with Alexia's testimony. As the defendant's  
2 sexually assaulting there, his hands are up on that dash.  
3 And look, there's at least two different places where you can  
4 see the defendant's hand kind of moving back and forth on  
5 that dash. Why? Because the defendant has his hands up  
6 there, he brings them down to turn Alexia over and then puts  
7 them back up there again or for part of the time while he's  
8 sexually assaulting her.

9 All of these things, the status of the car, are all  
10 consistent with Alexia's testimony.

11 The DNA results. The DNA results are consistent  
12 with Alexia's testimony. The DNA of Maurice -- on Maurice  
13 Moore's penis swab, we have the DNA of Alexia Martinez. On  
14 Alexia's vaginal swab, we have the DNA of Maurice Moore. On  
15 Alexia's cervical swab, we have the DNA of Maurice Moore.  
16 And on Alexia's rectal swab, we have the DNA of Maurice  
17 Moore.

18 Now, I want you to think about this. Before any  
19 DNA results come out, in fact, before the sexual assault  
20 samples are even taken, before the exam even occurs, Alexia  
21 talks to the sexual assault nurse examiner, Jeri Dermanelian,  
22 and she tells her, this is before she's even been swabbed,  
23 that the defendant forced her to put her mouth on his penis,  
24 that he put his penis in her vagina, and that he put his  
25 penis in her anus, perfectly consistent with what the DNA

1 says happened.

2           What she tells her before she's even swabbed is  
3 perfectly consistent with the results of this forensic  
4 testing.

5           She also told Detective Stark the exact same thing,  
6 that those are the things the defendant did to her well prior  
7 to any DNA results coming out of this case.

8           Those things, the DNA results, are consistent with  
9 what Alexia testified to you about, and what she said in her  
10 statement. They corroborate her testimony.

11           Now, I want you to compare the DNA results in this  
12 case with Alexia's testimony, and then the DNA results in  
13 this case with what the defendant said in his statement.

14           The defendant said, if it's my DNA, as far as oral,  
15 my DNA should not be in her mouth. You know, if, you know,  
16 if I jizzed is little bit in my pants or something, it could  
17 be -- there's no way she would have my -- any DNA inside her  
18 anywhere.

19           That is what the defendant said to the detectives  
20 when he was being interviewed. Compare what Alexia said from  
21 the very beginning to the results of the DNA to what the  
22 defendant said to the results of the DNA.

23           He actually completely denied even having sex with  
24 Alexia. He said, so she's saying we had sex in the car? And  
25 the defendant -- the detective says, she said you had sex in

1 the car in the passenger seat. The defendant says, wow, wow.  
2 He can't believe it.

3           Look at the other inconsistencies in the evidence  
4 with what the defendant says in his statement. He says, to  
5 be honest with you -- now, these are each different -- these  
6 are all quotes from the defendant each from different  
7 locations in his statement.

8           To be honest with you, I'm in the passenger seat,  
9 she tries to give me oral. I'm like, oh, my God, I'm cool,  
10 just, yeah, relax, why don't you? Because we were kissing.  
11 And then he also says, this is a different location, yeah,  
12 she -- she tried to suck the dick. I don't think I was fast.  
13 I don't -- I'm like, dude, mommy, relax.

14           He also says, she told me she would. Then I was  
15 like, nah, I'm good. Let's -- you know.

16           So this about this, so the defendant meets Alexia  
17 on Tinder, which he has acknowledged in his statement is a  
18 place for hooking up. That's where you go to hook up. He  
19 exchanges incredibly sexually explicit text messages or  
20 direct messages with her over that app and over Instagram.

21           He drives to her house well after midnight. He  
22 encourages her to sneak out and waits outside for her to  
23 sneak out of the house. But when -- but then is not  
24 interested, according to him, when she can't wait to perform  
25 fellatio on him. That is absolutely, totally, and completely

1 inconsistent with the evidence that you have in this case.

2           There is even evidence in this case that is  
3 inconsistent with what the defendant's -- the defendant's  
4 contention that he was not aware of Alexia's age. In fact,  
5 in some of the messages they exchange, there's some back and  
6 forth like this, Defendant, "Do you think it is possible  
7 tonight or no?"

8           Alexia, "I'll try."

9           The defendant, "K. Well, don't do it if you think  
10 you'll get caught."

11           So he's a little concerned about her getting  
12 caught. But then look how concerned he is in this next one.

13           Alexia, "Tonight maybe."

14           The defendant, "K. Well, let me know. I'll wait  
15 for your message, but, bae, make sure you get out without  
16 getting caught because if you get caught, we can't see each  
17 other, and I really want to see you and be with you."

18           He knows that if she gets caught, that's it, it's  
19 over. Is that consistent with somebody who's 18 years old?

20           Even in the statement the defendant gives to the  
21 police there's evidence that's inconsistent with his  
22 contention about what he believes her age to be.

23           He says in his statement, I said you probably need  
24 to go in the house, and um, you know, see what's going on.  
25 This is when they're hearing -- they're seeing the truck

1 driving back and forth. Alexia's stepdad driving back and  
2 forth.

3 He says, I'm not thinking at first when I think  
4 she's underage, I'm thinking she maybe could have, you know,  
5 she snuck out the back and maybe now her grandfather's  
6 looking for her, and I'm like thinking, now, these two other  
7 trucks that she has, but she's telling -- I mean, she's  
8 saying everything is cool.

9 Even in his statement to the detectives there's  
10 evidence of -- it's consistent with the defendant's  
11 contention about what he believes Alexia's age to be.

12 The condom. The defense asked a bunch of questions  
13 about this -- this text she said asking about the condom,  
14 that she brought that up. And that's absolutely true. There  
15 are definitely some sexually explicit messages from Alexia.  
16 And she's the one that brings up the condom.

17 He says, "K."

18 And I'm not super good with the abbreviations, but  
19 "I'm on my way now, is it cool?"

20 And Alexia says, "I don't know, we'll see."

21 And the defendant says, "So don't -- so don't leave  
22 now? I shouldn't leave now?"

23 And Alexia says, "You can."

24 And the defendant says, "K, I'm going to get ready  
25 now."

1           And then Alexia says, "Bring confoms."

2           And she agreed that the emphasis of typo she meant  
3 condoms.

4           The defendant says , "K, I will."

5           She brings up the condoms. She talks about the  
6 condoms.

7           Remember, she had taken an eighth grade health  
8 class where there had been discussions in the class about  
9 sexual topics in that eighth grade health class. She knew  
10 she barely knew the defendant. Potentially things were going  
11 to happen. She knew that they were going to use a condom.  
12 That they needed to use a condom. That's what she needed to  
13 do.

14           But guess what? The condom was never used. We  
15 find that the -- the crime scene analyst finds the condom in  
16 the center console. And guess what? It's not open. It's  
17 never been touched.

18           So we would have to believe that Alexia after  
19 asking for the defendant to bring the condom, then had  
20 consensual oral, twice vaginal, and twice anal sex, in which  
21 she had ten different lacerations, and that she did all of  
22 this consensually without even bringing up the condom that  
23 she had the foresight to text -- to message him to bring.

24           So this is all happening consensually, and the  
25 condom is sitting there totally unopened. Do you know why



1 the condom is not being used? Because this is not consensual  
2 sex. The defendant is sexually assaulting her. That's why  
3 the condom's not being used. That's why the condom is  
4 sitting there being unopened, the one that she asked him to  
5 bring.

6 This is consistent, absolutely consistent, with  
7 what Alexia testified to, with what she told you happened,  
8 with what she said the defendant did to her.

9 This is last instruction. I appreciate your  
10 patience. I know that there's a lot of them, but it's  
11 important we go over them and break them down for your  
12 understanding of what the law says. This is the last one.

13 Although you are to consider only the evidence in  
14 the case in reaching a verdict, you must bring to the  
15 consideration of the evidence your everyday common sense and  
16 judgment as reasonable men and women. Thus, you are not  
17 limited solely to what you see and hear if the witnesses  
18 testify. You may draw reasonable inferences from the  
19 evidence which you feel are justified in light of common  
20 experience.

21 Ladies and gentlemen, use your common sense and  
22 judgment as reasonable men and women. Consider the evidence  
23 in this case. Consider the testimony of Alexia. Consider  
24 the testimony of the other witnesses. Consider the DNA  
25 evidence. Consider the pictures that you saw of the condom

1 and the vehicle and the status of the vehicle and the patrol  
2 officers. Consider what Officer Brumaghin, and I know I said  
3 his name wrong a couple of times, but consider what Officer  
4 Brumaghin said about as soon as he had Alexia out of that  
5 house away from her mom, almost immediately she tells him  
6 about what happened.

7           Consider the things you have heard, and consider  
8 them in light of your common sense and judgment as reasonable  
9 men and women. And if you do this, the verdict that you will  
10 reach in this case is that the defendant is guilty of counts  
11 one through five, sexual assault with a minor under 16. And  
12 remember count one is the fellatio count. Count two and  
13 three are the two vaginal intercourse counts, and counts four  
14 and five are the anal intercourse counts. And then count six  
15 and seven, the lewdness with a child under the age of 16.  
16 Count six for the breasts. And count seven for the buttocks.  
17 Thank you.

18           THE COURT: Thank you, Counsel. We'll be pleased  
19 to hear the closing argument of the defense.

20                           DEFENDANT'S CLOSING ARGUMENT

21           MR. DRASKOVICH: Thank you. The defense, too,  
22 would like to thank you for the attention. It's been very  
23 clear that you've paid close attention to the evidence as  
24 it's been presented to you from this witness stand.

25           This case is entitled the State of Nevada versus

1 Maurice Terrance Moore. It was said in opening that this  
2 case is about Alexia Martinez. It's not. It's the  
3 defendant. It's Mr. Moore that's on trial, and nobody else.

4 This case is not about no means no. Of course, no  
5 means no. This isn't a case about a person deserves to get  
6 sexually assaulted if they engage in sexually with the  
7 explicit texts. That's offensive, and that's not our  
8 position, nor has it been through the course of this case.  
9 And that's not our position as I stand before you here today.

10 This case is not about, well, we don't agree with  
11 the judgment of this young woman. We don't agree with the  
12 judgment of Mr. Moore, we should convict him. It's not.

13 The question is whether or not you can follow the  
14 instructions that Judge Johnson has given you, whether you  
15 can apply the facts to the circumstances and to the elements  
16 of this case and for you to render an appropriate verdict.

17 What brought us to this point? Why are we here? I  
18 would submit to you that the defense and the explanation of  
19 why we're here was brought forth today from Dr. Chambers and  
20 has been a topic throughout the course of this case.

21 Ms. Martinez was on Tinder, she was engaging in  
22 explicit texts, intended to have sex, had sex. And I would  
23 submit to you, and we'll address this, although I'm not going  
24 to beat this point. You've been here, you've seen the  
25 evidence. She got caught coming in, ultimately the phone was

1 taken. It was learned that she engaged in sexually active  
2 sexual conduct with Mr. Moore, and this case became multiple  
3 allegations of sexual assault and of rape and of lewdness.

4 I would briefly like to address some of these  
5 instructions, and as the judge has said, these will be the  
6 instructions that you will follow and this will be the laws  
7 that applies to this case.

8 Instruction number five is the standard that you  
9 are to apply throughout the course of your deliberations,  
10 through weighing and evaluating each piece of evidence that  
11 has been presented to you. And it's so important, I need to  
12 read it to you. Indulge me just a moment, for my time to  
13 speak with you is short.

14 It states, The defendant is presumed innocent until  
15 the contrary is proved. This presumption places upon the  
16 State the burden of proving beyond a reasonable doubt every  
17 element of the crime charged and that the defendant is the  
18 person who committed the offense. A reasonable doubt is one  
19 based on reason. It is not mere possible doubt, but is such  
20 a doubt as would govern or control a person in the more  
21 weighty affairs of life. If the minds of the jurors after  
22 the entire comparison and consideration of all the evidence  
23 are in such a condition that they can say they feel an  
24 abiding conviction of the truth of the charge, there is not a  
25 reasonable doubt. Doubt to be reason [sic] must be actual,

1 and not mere possibility or speculation. If you have a  
2 reasonable doubt as to the guilt of the defendant, he is  
3 entitled to a verdict of not guilty.

4           In the American legal justice system reasonable  
5 doubt is the highest standard. I would submit to you that it  
6 borrows from the old English common law tradition that it is  
7 better to let a guilty man go free than wrongfully convict an  
8 innocent one. It places solely upon the State and the State  
9 alone the burden.

10           As it was told to you at the beginning of this  
11 trial, the defense is under no burden whatsoever. We don't  
12 have to present a single witness or ask a single question of  
13 a witness. And if you have a reasonable doubt, the defendant  
14 is entitled to an acquittal of each and every charge.

15           In reference to the jury instructions -- and  
16 Mr. Merback did an able job of addressing these jury  
17 instruction, but I wanted to focus in on something that's  
18 quite important, and I would respectfully submit to you  
19 should be considered in your deliberations.

20           It's jury instruction number 11, page 14. It's at  
21 the bottom of the page. I'll be addressing myself and your  
22 attention to lines 17 through 27: "The defendant's sexual  
23 penetration does not constitute a sexual assault if the  
24 defendant at the time of the sexual penetration had a  
25 reasonable and good faith belief that the other person

1 voluntarily consented to engage in sexual intercourse or anal  
2 intercourse or fellatio and was mentally and physically  
3 capable of resisting and understanding the nature of his  
4 conduct. Therefore, a reasonable and good faith belief that  
5 there was voluntary consent and the alleged victim was  
6 mentally and physically capable of resisting and  
7 understanding defendant's conduct is a defense to such a  
8 charge."

9           Then, again, we have, "Unless the defendant  
10 thereafter became aware or reasonably should have been aware  
11 that the other person no longer consented to the sexual  
12 activity or was no longer mentally or physically capable of  
13 resisting or understanding the nature of his conduct."

14           And if you'll flip the page, to page 15.  
15 "Submission is not the equivalent of consent. While consent  
16 inevitably involves submission, submission does not  
17 inevitably involve consent. Lack of protest by a victim is  
18 simply one among the totality of the circumstances to be  
19 considered by the jury."

20           And I would respectfully submit to you to focus on  
21 that totality of the circumstances language in this case.

22           I'm not going to spend a great deal of time on  
23 this, but we have heard testimony, and it's been  
24 uncontroverted, concerning Tinder as a hookup site. You've  
25 seen pictures, although State didn't present them to you in

1 their closing, her profile, she's 18, on multiple posts she  
2 states she is 18. That's how she's presenting herself on  
3 this Tinder app.

4 She states she's interested. You heard testimony,  
5 and it's uncontroverted that she and Mr. Moore engaged in  
6 multiple conversations through Tinder and ultimately  
7 Instagram.

8 It was she that brought up the issue of maybe we  
9 can have sex in your car. I would submit to you that this is  
10 proof, although we're not required to present to you any  
11 proof whatsoever, of her intent, both prior to getting in the  
12 vehicle, while in the vehicle, and leaving the vehicle, it  
13 was she that talked about having sex in the car.

14 On Instagram, the night of, shortly before meeting  
15 she states, I'm thinking about you in me. Question was asked  
16 whether is this something that she learned in high school or  
17 junior high school or health class, and it wasn't. She  
18 initiates the conversation concerning sexual organs. She  
19 asks him how big are you? And once again, I would  
20 respectfully submit to you that that goes to what her  
21 intentions truly were before, during, and after this  
22 encounter.

23 And as Mr. Merback pointed out, and there's no  
24 argument whatsoever, she tells him to bring condoms. So she  
25 knows that they're going to engage in sex. And once again,

1 our argument isn't well, she deserved. No, our argument --  
2 and I would submit to you a common sense take on the  
3 testimony that you heard is that she consented to this  
4 conduct, and didn't bring up this specter of sexual assault  
5 until it was discovered that she was having sex with  
6 Mr. Moore in his car.

7 I would respectfully submit to you that there are  
8 points for you to consider. And this is really the crux of  
9 this case. You've heard from the State, and it's in the jury  
10 instructions, consent is a defense. The law allows for  
11 counts one through five that consent is a defense to sexual  
12 assault on a minor under 16.

13 As you recall, there was testimony that was  
14 elicited from her concerning he pushed the seat back.  
15 Remember that testimony? She claims that she was in the car,  
16 things got out of hand, and he pushed the seat back. And  
17 before she got in his car do you remember testimony that the  
18 house was asleep or her sister knew that she was leaving, her  
19 grandfather was asleep on the couch as she slips out of the  
20 house to meet Mr. Moore.

21 She ultimately makes contact with him in the  
22 street. They get in the car and they talk. She then claims  
23 that he forces her head down upon his penis, forces her to  
24 commit fellatio on him, and then he pushes her seat back.

25 Do you recall testimony elicited from her that it



1 was actually an electric seat? That she may have reclined  
2 that seat back. And I'd like to draw your attention to  
3 Exhibit 66. And this confirms -- this is it?

4 (Colloquy Mr. Draskovich/Court Recorder/Court)

5 MR. DRASKOVICH: With the Court's permission, I  
6 know --

7 THE COURT: You can stand and show it.

8 MR. DRASKOVICH: Thank you.

9 THE COURT: I'll -- remember how far -- close you  
10 can get, but I'll let you stand.

11 MR. DRASKOVICH: This is Exhibit 66. It shows the  
12 passenger seat in the reclining condition, and there you see  
13 the buttons. I would submit to you that this indicates her  
14 intention and her consent. She reclined that seat back. And  
15 we all know how electric seats go, they go slow.

16 She had testified consistently that this passenger  
17 compartment, the front and back seat were tiny. We're all  
18 adults. We are. And I would submit to you that common sense  
19 would dictate that this sexual contact, this sexual conduct  
20 that occurred between the two of them was consensual. It  
21 wasn't forced. Whether it be the actual sex acts or the  
22 removing of the clothes, it took two parties. This was sex  
23 in the front seat of a car.

24 You had seen from both their respective height,  
25 weight, this was consensual. We heard testimony that she had

1 been slouched, and this is from her direct. "I had been  
2 slouched through the time that I was in the car with  
3 Mr. Moore." Do you recall testimony that we heard from both  
4 her mother and her stepfather that they had learned that she  
5 was gone, that she had snuck out, they were alarmed.

6 Mom went to the closet to make sure that her  
7 clothes weren't gone, her shoes were there. If you recall,  
8 she left the house without her shoes on. This isn't a case  
9 about a pointing the finger at the accuser. These are just  
10 the facts of this case. And my comments in no way are meant  
11 to demean Ms. Martinez. But these are facts that you must  
12 consider because he and he alone is on trial. She left the  
13 house without her shoes on.

14 I would submit to you that that's indicative of  
15 what her intent was once she got in Mr. Moore's car.

16 We had heard testimony that upon learning that she  
17 had snuck out of the house, stepdad goes, gets in the car,  
18 takes mom, and is driving around in this truck. And we heard  
19 from Mr. Moore's statements that there's this truck driving  
20 around crazy, lights flashing. We heard from Ms. Martinez,  
21 the alleged victim in this case, that her stepdad was driving  
22 around with a spotlight.

23 I would submit to you that the facts in this case,  
24 regardless of her denials, that she was slouching down not to  
25 be seen. I would submit to you that a reasonable and

1  
2 IN THE SUPREME COURT OF THE STATE OF NEVADA  
3

4 MAURICE MOORE,	)	No. 79817
	)	
5 <i>Appellant,</i>	)	
	)	
6 <i>Vs.</i>	)	Dist. Ct. No. C-17-324535-1
	)	
7 THE STATE OF NEVADA,	)	
	)	
8 <i>Respondent.</i>	)	
	)	
9	)	
10	)	
11	)	
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15  
16  
17 **APPELLANT'S APPENDIX II**

18 (Appeal From Judgment Of Conviction)

19  
20 ROBERT M. DRASKOVICH, ESQ.

21 Nevada Bar No. 6275

22 815 S. Casino Center Blvd.

23 Las Vegas, Nevada 89101-6718

24 (702) 474-4222

25 Attorney for Appellant

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Clark County District Attorney

200 Lewis Avenue, 3<sup>rd</sup> Floor

Las Vegas, Nevada 89155

(702) 455-4711

Counsel for Respondent

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1 objective review of her testimony and all the facts, the  
2 totality of the circumstances in this case there was consent  
3 to fellatio, to vaginal/penile sex and anal sex.

4 She did testify that once the sex was done, they  
5 had been in that car for roughly an hour. She comes back  
6 into the house, comes back around the house. You heard  
7 testimony that the lights were on both in the top story and  
8 the bottom story, and she had to collect herself.

9 I would submit to you that common sense would  
10 dictate that she had to collect herself because she realized  
11 that she had been caught. She knew that when the driving  
12 around with the spotlight, but she came back to the house and  
13 everybody was up. She was about to get in trouble, big  
14 trouble.

15 She testified that it was a possibility that she'd  
16 be sent to Arizona to live with her natural father, which is  
17 something she did not want to do. As you recall, this entire  
18 communication, everything that led up to this occurred on a  
19 phone because her phone had been taken away from her.

20 I would submit to you that the reason that we're at  
21 this point is because Alexia Martinez got caught sneaking out  
22 and having sex with a male. She testified, and occasionally  
23 the truth will kind of poke through, kind of like mountains  
24 through the clouds, that it was at this point that she  
25 decided to make this allegation, and it wasn't before.

1           When asked, your decision to come forward happened  
2 when you were confronted with these sexual texts, as you  
3 recall, she comes to the house, gets in an altercation with  
4 mom, mom slaps her once, pushes her towards the stairs,  
5 pushes her to the bedroom, slaps her again. Mom's on the  
6 phone for the second time with the police, she's saying,  
7 yeah, have the police come because I'm going to have you in  
8 trouble and arrested for slapping me. She's more concerned  
9 about accusing mom of slapping her than she is of Mr. Moore,  
10 who you, State would have you believe, has brutally raped  
11 her.

12           When asked, Your decision to come forward happened  
13 when you were confronted with these sexual texts, her answer  
14 is, yes. I would submit to you that the science on this case  
15 and the testimony that you have heard is un -- it's not  
16 contradicted this is deflection. This is alibi. She's  
17 gotten in trouble. She wants to deflect the negative  
18 attention away from herself. And that's how we got to this  
19 point.

20           Which heard from Detective Stark, who I would  
21 submit to you does the best he can and through jury selection  
22 and through the course of this trial there's been an  
23 agreement that police officers can make mistakes, detectives  
24 can make mistakes. Sometimes they suffer from confirmation  
25 bias and make up their mind at the get-go, and it's you, the

1 jury, after hearing all the facts and circumstances, it is up  
2 to you to make a determination as to guilt.

3           Nonetheless, we heard a truthful statement, and I'm  
4 not saying this detective lied as to anything except for when  
5 he was interviewing Mr. Moore. But he had said that the  
6 suspect was on the scene, and that was unusual.

7           You recall the testimony from both Jose Nava and  
8 Maria Nava or Carrillo. Actually, they're both going by the  
9 last name of Carrillo. There had been texts sent by either  
10 mom or stepdad to Maurice Moore to have him return, and he  
11 was there. He did not flee.

12           I would submit to you that that's clear proof,  
13 although we have no burden whatsoever to present proof, but  
14 that shows what went on inside of that car. So we have the  
15 texts before, we have the seat, tiny passenger compartment,  
16 acts that are occurring with her, coming out to the car with  
17 her shoes off, and we have him returning that shows you this  
18 consent. It wasn't withdrawn. There was a good faith belief  
19 on Mr. Moore's part, and it continued that this sex, all  
20 three sex acts, were consensual.

21           We heard from Alexia herself that she did not seek  
22 counseling or further medical treatment as a result of this  
23 alleged sexual assault.

24           I would submit to you that this is an indication,  
25 resounding indication, of whether or not she consented to

1 these acts inside the car.

2 We heard from the sexual assault nurse examiner,  
3 Ms. Dermanelian. She had testified, and this is the science  
4 on the fact, and we heard from Dr. Chambers, sometimes the  
5 science is contrary to what common sense is, and that's why  
6 it's so important. But she has testified that there is no  
7 statistical difference in the presence of injury between the  
8 consensual and nonconsensual sex.

9 So these tears, these anal tears are not clear and  
10 convincing proof of a rape. That used to be the common sense  
11 view, but science rejects that. We should take science into  
12 account in reaching our verdicts and our decisions in life  
13 and especially through the course of this trial. Those tears  
14 are not indicative. They do not show that she was sexually  
15 assaulted anally, vaginally, or otherwise.

16 Additionally, you had heard from Nurse Dermanelian  
17 that the level of examination, remember this was the first,  
18 second, and the third, the third being the most intrusive.  
19 She said that there was no indication whether a sexual  
20 assault occurred based upon the choice, one, two, or three,  
21 of the person to be examined. Once again, we have science,  
22 we have statistics that are contrary to what we generally  
23 would believe or common sense would dictate.

24 As you recall, we did hear from Detective Stark,  
25 that didn't want to admit that, and maybe he didn't know.



1 Remember, he was the self-processed expert? But apparently,  
2 that stopped a year-and-a-half, two years ago when he stopped  
3 investigating these cases. I would submit to you, he made  
4 his mind up, and that mind, his mind, was made up on false  
5 ideal and false evidence. It wasn't based on the science or  
6 the truth.

7 I would respectfully submit to you that based upon  
8 all of the evidence, based upon the standard, based upon the  
9 law, based upon what's required of the state, the State's not  
10 met the burden.

11 Mr. Moore -- back to the age -- did not know her  
12 age. Not once did you hear anywhere, any kind of direct  
13 evidence or circumstantial evidence, that he knew of her age.  
14 In fact, I would submit to you that her statements and her  
15 actions speak otherwise. She posted repeatedly that she was  
16 18 on Tinder. She was on Tinder to begin with, which is  
17 understood, is an adult hookup site.

18 She's not small. And once again, I'm in no way  
19 trying to demean her. They get in the car. She talks about  
20 college and college classes. She doesn't talk about oh, I'm  
21 in junior high. There was a discussion on the -- both Tinder  
22 and Instagram about her sneaking out. There was a statement  
23 made through the course of Mr. Moore's interview that he's  
24 met with other people that have snuck out that have strict  
25 parents.

1           You may not like Mr. Moore, or what he did, to find  
2 him not guilty of these counts. I would submit to you,  
3 though, that the facts in this case have shown counts one  
4 through seven, that he didn't know her age.

5           You may not like what Mr. Moore did, the lifestyle,  
6 the promiscuity, the quick hookups on Tinder, but  
7 nonetheless, I would respectfully submit to you, and it's  
8 within the province of you and you alone, I would  
9 respectfully submit to you that should not preclude you  
10 finding him not guilty of these counts.

11           And because the State carries the burden, and it's  
12 their burden alone, they get the opportunity to speak to you  
13 twice. Mr. Merback gave his closing, I stand before you and  
14 give the defense's closing, and we will not speak to you  
15 again through the course of this trial.

16           My arguments are not testimony. They're just to  
17 direct your attention, which the judge had said may be  
18 important to certain facts and to highlight certain things,  
19 because we've all had this case much longer than you have.

20           But Ms. Kollins is going to stand now, and she's  
21 going to give you a rebuttal. There's always things that are  
22 overlooked through the course of the defense in this case,  
23 and if there's things that she brings up that I haven't,  
24 please don't hold that against Mr. Moore. Hold that against  
25 me.

1           If there's something that I've failed to address,  
2 which has been come from the witness stand or that you've  
3 heard, don't hold that against Mr. Moore. You go through  
4 applying the standard, the reasonable doubt standard to  
5 determine whether the State has proven each and every element  
6 beyond a reasonable doubt.

7           Instruction No. 15 states that a verdict may never  
8 be influenced by sympathy, prejudice, or public opinion, it  
9 shouldn't be. Finding Mr. Moore not guilty of these counts  
10 does not mean that you think kids, young adults, deserve  
11 being sexually assaulted because they get in over their head.  
12 That's not the point. No does no mean. It does mean no.  
13 That's not our position that it's anything else.

14           But I respectfully submit to you, you are duty  
15 bound to reach a verdict of not guilty on each and every  
16 count on be this case, and I thank you for your attention.

17           THE COURT: All right. Thank you, Counsel. All  
18 right.

19           Ladies and gentlemen, we're going to hear the  
20 rebuttal argument of the State now. The argument will  
21 probably be about eight to nine minutes in length. Is  
22 everybody good with sitting here for that time or does  
23 anybody need to take a break? Not seeing any hands. All  
24 right. We'll be pleased to hear the rebuttal argument of the  
25 State.

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STATE'S REBUTTAL CLOSING ARGUMENT

MS. KOLLINS: Very briefly, ladies and gentlemen, thank you again on behalf of Mr. Merback, myself and the District Attorney's Office.

Mr. Draskovich stands up here in a very measured tone and tells you that he's not putting the victim on trial. But in the content of his very measured tone all he had you do was look at the actions of Alexia Martinez. And I submit, those actions are tough to swallow. Those text messages for you are tough to swallow, and he points them out because he knows that when you go back there to deliberate, that is the only evidence that you can point to that is the fault of Alexia. The condom messages, the sexually explicit messages.

And he wants to use those to presuppose that the 41-year-old that is on trial here today has a reasonable belief in consent.

What you have in this case, I submit to you, is a kid that got on the Internet, not like -- not unlike a lot of other individuals, and she held herself out from a position of safety. You can talk anything you want over the Internet or direct messaging, and she did, and it was poor judgment, and she told you that.

But everything changed when she got in that car. Even if you believe that she wanted to be kissed or held, even if you think that's how it started, it certainly went

1 wrong when she began to say no, and he anally penetrated her.  
2 Do you think the messages asking for a condom, asking for  
3 those things, signed up for repeated unprotected anal  
4 penetration?

5           Mr. Draskovich is right, we can't say injuries are  
6 or are not from consensual sex because nobody was there but  
7 the two parties. But you can tell that ten anal lacerations  
8 are horrific. She told you it felt like she was being  
9 stabbed, and she cried, and he knew that. Those things go to  
10 his reasonable belief. His reasonable belief is not captured  
11 in all of those messages. It's captured in what happened in  
12 the front compartment of that car.

13           And you know what? The State doesn't have to prove  
14 he knew how old she was. That is not in our burden of proof.  
15 Yes, she held herself out to be 18. Did he have a reasonable  
16 belief that she was 18? Go back and look at his statement.  
17 Well, the girl I hooked up with the other day, but she told  
18 me 25. I knew when I got on Instagram that those -- there  
19 would be younger girls on there. And we know there are no  
20 age or sign-up limitations on Tinder because he called  
21 himself 23-year-old Nathaniel Malero. And nobody stopped him  
22 from holding himself out as someone he wasn't.

23           So for him to say he had a reasonable belief in  
24 this girl being 18, that just simply isn't the case.  
25 Alexia's a big girl. She's tall, she's probably my height,

1 she's probably my weight. That doesn't mean she's an adult.  
2 And the law doesn't see her as an adult based on her body  
3 size. Defendant's belief is unreasonable.

4           One of the slides the defense had up there was that  
5 as soon as she was confronted with the text messages, was --  
6 that she made a disclosure. That is not what the patrol  
7 officer told you. I told you he had not seen the text  
8 messages, the direct messages. He went outside, and he  
9 talked to Alexia and she disclosed.

10           So she -- this is not a situation factually where  
11 she was confronted with text messages, direct messages,  
12 whatever you want to call them, and came up with a story of  
13 sexual assault. That's what they want you to believe because  
14 that dovetails into the deflection she's trying to get out of  
15 trouble. But that's not what happened here.

16           Patrol officer took her outside, he hadn't seen the  
17 texts, he initiates a conversation, and then she tells.

18           You know, this notion of deflection and alibi, you  
19 know, this kid trying to get herself out of trouble, there is  
20 no pot of gold at the end of the sexual assault rainbow for  
21 this kid. She didn't gain anything. What they want you to  
22 believe is that oh, well she didn't have to go live with dad.  
23 She told you in here she just got her phone back. It's been  
24 two years. What did she gain? What did she really gain?

25           She got to go to a medical exam. She got to

1 testify in the face of her rapist on two occasions. She got  
2 to speak to police officers. She got to come to court.  
3 There's no pot of gold for her. There is no alibi deflection  
4 motivation for her.

5           When Mr. Moore gets that message to return to the  
6 residence from Alexia's mom, he's not napping in the front  
7 seat. I'd submit to you he's hiding in the front seat  
8 because now he's seen the cops. What are the cops doing  
9 here? He's hiding because he knows he shouldn't be there, he  
10 shouldn't be in the neighborhood, he shouldn't have returned.

11           Now, why after what transpired, he returned? I  
12 don't know. Or if he just pulled around the block. For the  
13 defendant to say that he had a reasonable belief that this  
14 kid was coming out to have consensual sex when he knew  
15 repeatedly that she had to sneak out, he knew she didn't have  
16 permission, is it reasonable, even if you're on a hookup,  
17 that you can't just pull up to the front door and pick  
18 somebody up? Is that reasonable?

19           Or do you go over, you know, in sweats and a hoodie  
20 in this like covert meeting around corner? Doesn't put him  
21 on notice that something's wrong? He said she can't call me,  
22 something's weird. Mentions her being underage in his  
23 statement. He knew that she was underage.

24           There's a notion called victim precipitation. And  
25 it's kind of what's going on here. It's like she brought it

1 on herself, that her actions brought this on. And while,  
2 again, Mr. Draskovich stands up here in a very measured tone,  
3 very compassionate and tells you that's not what we're doing,  
4 that's exactly what they're doing.

5 She got herself in and she deserved what she got,  
6 and that is not the case. She did not deserve what she got.  
7 You are talking about the actions of a 41, weeks shy of  
8 42-year-old man holding himself out as 23, and luring this  
9 kid there by flattery and chatting and sexual chat. And she  
10 goes in. She goes in.

11 But everything that transpires in those messages  
12 does not mean that she consented to fellatio or anal sex  
13 repeatedly, unprotect vaginal sex repeatedly.

14 THE COURT: Counsel, I need you to bring things to  
15 a close.

16 MS. KOLLINS: I took a long period of time during  
17 voir dire, and there was not one juror that disagreed that  
18 consent, if you think it's there to begin with, can be  
19 withdrawn. And I submit to you, if for reason you think it  
20 was there, that his belief was unreasonable when she withdrew  
21 it, and that is not a defense to what happened to Alexia  
22 Martinez in that car in those early morning hours of February  
23 27th.

24 I concur with Mr. Merback, please return guilty  
25 verdicts against the defendant.



1 THE COURT: All right. Thank you, Counsel.

2 All right. Ladies and gentlemen, that concludes  
3 the closing arguments. It's now time for you to get together  
4 and go back as a group to begin jury deliberations.

5 Unfortunately, in going back, two of your members  
6 won't be going back. In every case we always select two  
7 people to be alternate jurors. The reason for that is it's  
8 not uncommon during the course of a trial that somebody may  
9 become ill or a family emergency may arise, which precludes  
10 somebody from being able to participate as a juror, and in  
11 which case we're able to put an alternate in.

12 So two of you won't be going back. And the two  
13 alternate jurors in this case are Ms. Eckel and Mr. Gallardo.  
14 I know that you probably would have liked to have gone back.  
15 You put a lot of time in this case in the last eight days,  
16 and so I'm sorry that you won't be going back. But I hope  
17 you do appreciate you did have a very important role as  
18 alternates in this case.

19 I'm not going to discharge you at this point in  
20 time. The reason for that is it's not necessarily unheard of  
21 that during the course of jury deliberations somebody may  
22 become ill or a family emergency or something may arise. In  
23 fact, I had a situation earlier this very year in which jury  
24 deliberations had started, and one of the juror's wife called  
25 in and was in the emergency room at the hospital, had an

1 emergency, and we had to release that juror, and we were able  
2 to bring in an alternate juror to begin deliberations again.

3           So I'm not going to release you at this time. In  
4 fact, I'm going to give you the admonitions that I've given  
5 you in the past. And that is do not talk to each other about  
6 this case or about anyone who has anything to do with it  
7 until you have been discharged. Do not talk with anyone else  
8 about this case or about anyone who has anything to do with  
9 it until you have been discharged. Anyone else includes  
10 members of your family, your employer and your friends.

11           You may tell them that you are a juror in a  
12 criminal case, but don't tell them anything else about it  
13 until after you've been discharged by me. Do not let anyone  
14 talk to you about the case or about anyone who has anything  
15 to do with it. If someone should try to talk to you, please  
16 report it to me immediately by contacting the Marshal.

17           Do not read any news stories or articles or listen  
18 to any radio or television reports about the case or about  
19 anyone who has anything to do with it. Do not visit the  
20 scene of any events mentioned during the trial, undertake any  
21 investigation, experimentation or research on your own  
22 including use of social media to in any way discuss the case  
23 or the use of the Internet or reference materials to do any  
24 investigation or research.

25           And do not begin to form or express any opinion on

1 any subject connect with this case until it's finally  
2 submitted to you.

3 I'll ask that the Clerk swear in Skyler to take the  
4 alternate jurors.

5 (CLERK SWEARS IN LAW CLERK)

6 THE COURT: All right. If you go with Skyler, I  
7 would appreciate it. Of and leave your notepads or anything  
8 on that. She'll make sure we have contact information in  
9 case we need to get in touch with you during to deliberations  
10 or to discharge you when they're done.

11 Again, I want to thank you both for your time here.  
12 I know the parties thank you for that. And hopefully you did  
13 get something out of your experience here as jurors. Thank  
14 you.

15 All right. I ask that the Clerk swear in the  
16 Marshal to take the jurors back and begin juror  
17 deliberations.

18 (CLERK SWEARS IN THE MARSHAL)

19 THE COURT: All right. If you'd grab your notes  
20 and your jury instructions and follow the Marshal, they'll  
21 take you back to the jury deliberation room. We should have  
22 lunch for you here pretty soon so you can deliberate through  
23 lunch. Thank you, ladies and gentlemen.

24 (Jury retires to deliberate at 11:59 P.M.)

25 MR. MERBACK: Do you also want printed copies of the

1 Power Points? Do you --

2 THE COURT: Yes.

3 MR. MERBACK: -- collect those?

4 THE COURT: We usually do ask that you provide  
5 either a printout copy or a digital copy.

6 THE CLERK: I have the Defense.

7 THE COURT: You have the Defense?

8 THE CLERK: Um-hum.

9 THE COURT: All right.

10 MR. MERBACK: Okay. I'll bring you down a copy of  
11 mine.

12 THE CLERK: Okay.

13 MR. MERBACK: I showed it to Mr. Draskovich  
14 beforehand, so.

15 MR. DRASKOVICH: That's correct.

16 THE COURT: All right.

17 Well, we'll see what the -- they do. We have all,  
18 I know, your contact information. If they by chance go past  
19 tonight, is there anyone who wants me to bring in -- have you  
20 all come over and bring them all in and excuse them for the  
21 evening in front of you or is it all right if I just release  
22 them and tell them to come back tomorrow? State?

23 MS. KOLLINS: I'm fine if you release them, Your  
24 Honor.

25 MR. DRASKOVICH: We are as well, Your Honor.

1 THE COURT: All right. And let me just double  
2 check, then, when they come back tomorrow, is it all right if  
3 I have the Marshal gather them together and take them back to  
4 the jury deliberation room or do you want me to bring them  
5 all in here and have you here and send them back to  
6 deliberate with you all present? State?

7 MS. KOLLINS: That's fine, Your Honor.

8 THE COURT: Well, which one is fine?

9 MR. MERBACK: We're fine with you doing it outside  
10 of our presence.

11 THE COURT: Okay. Thank you.

12 MR. DRASKOVICH: We are as well.

13 THE COURT: Thank you, Mr. Merback. Good catch.  
14 And Mr. Draskovich?

15 MR. DRASKOVICH: We're -- you can do it in our  
16 absence, Your Honor.

17 THE COURT: Okay. All right. Very good. Anything  
18 else from the State before we break?

19 MS. KOLLINS: Not that I can think of, Your Honor.

20 THE COURT: All right. Anything else from defense  
21 before --

22 MR. DRASKOVICH: No, Your Honor.

23 THE COURT: -- we break.

24 THE COURT: All right. We'll let you know what  
25 happens.

1 (Court recessed at 12:02 P.M., until 5:29 P.M.)

2 (Outside the presence of the jury.)

3 THE COURT: All right. State of Nevada versus  
4 Maurice Moore in Case No. C324535. Counsel please  
5 approximate note your appearances for the record.

6 MS. KOLLINS: Stacey Kollins and Jake Merback on  
7 behalf of State.

8 MR. DRASKOVICH: Robert Draskovich and Michael  
9 Horvath on behalf of Mr. Moore, who is present.

10 THE COURT: Okay. I've been informed that the jury  
11 has reached a verdict. The jury foreman is number six,  
12 Daniel Buck is there any reason we shouldn't go ahead and get  
13 the verdict? State?

14 MS. KOLLINS: No, Your Honor.

15 THE COURT: Defense?

16 MR. DRASKOVICH: No.

17 THE COURT: Okay. As soon as he tells me he's got  
18 them lined up, he will bring them in.

19 (Pause in the proceedings)

20 THE MARSHAL: All rise for the jury.

21 (In the presence of the jury at 5:31 P.M.)

22 THE COURT: All right. Let the record reflect the  
23 presence of the attorneys for both sides, the presence of the  
24 defendant. Do the parties stipulate to the presence of the  
25 jury?

1 MS. KOLLINS: Yes, Your Honor.

2 MR. DRASKOVICH: Yes, Your Honor.

3 THE COURT: Okay. Well, good -- well, close to  
4 evening. We'll call it evening. Good evening, ladies and  
5 gentlemen. It's my understanding, Mr. Buck, that you've been  
6 selected as the foreperson; is that correct?

7 JUROR NO. 6: Yes.

8 THE COURT: It's also my understanding that the  
9 jury has reached a verdict; is that correct?

10 JUROR NO. 6: Yes, sir.

11 THE COURT: And is that -- that as to all counts?

12 JUROR NO. 6: Yes, sir.

13 THE COURT: And is the verdict as to all counts  
14 unanimous?

15 JUROR NO. 6: Yes, sir.

16 THE COURT: Have you filled out the verdict form  
17 and signed and dated it?

18 JUROR NO. 6: Yes, sir.

19 THE COURT: Could you hand it to the Marshal,  
20 please? All right. The Clerk will read the verdict.  
21 Defendant, please rise.

22 VERDICT

23 THE CLERK: District Court, Clark County, Nevada,  
24 the State of Nevada, plaintiff, versus Maurice Terrance  
25 Moore, defendant. Case No. C324535, Department No. 20.

1           Verdict. We the jury in the above-entitled case  
2 find the defendant, Maurice Terrance Moore, as follows:

3           Count one, sexual assault with a minor under 16  
4 years of age; not guilty.

5           Count two, sexual assault with a minor under 16  
6 years of age; not guilty.

7           Count three, sexual assault with a minor under 16  
8 years of age; not guilty.

9           Count four, sexual assault with a minor under 16  
10 years of age; not guilty.

11           Count five, sexual assault with a minor under 16  
12 years of age; not guilty.

13           Count six, lewdness with a child under the age of  
14 16; guilty of lewdness with a child under the age of 16.

15           Count seven, lewdness with a child under the age of  
16 16; guilty of lewdness with a child under of age of 16.

17           Dated this 12th day of August, 2019, Daniel Buck,  
18 foreperson.

19           Ladies and gentlemen of the jury, are these your  
20 verdicts as read? So say you one so say you all.

21           THE JURY: Yes.

22           THE COURT: Does either side wish to have the jury  
23 polled? State?

24           MS. KOLLINS: Not by the State, Your Honor. Thank  
25 you.



1 THE COURT: Defense?

2 MR. DRASKOVICH: Not by the defense.

3 THE COURT: All right. With that, ladies and  
4 gentlemen, you are discharged. I want to thank you for your  
5 service here these last well, week and a day. I do really  
6 appreciate it. I know the parties appreciate it. I know the  
7 citizens of Clark County appreciate it.

8 If you have just a few -- I know it's late. If you  
9 have just a very few minutes to go back to the jury  
10 deliberation room, I'd like to run back there and personally  
11 thank you for your service and find out if you have any  
12 suggestions as to how the Court might improve itself in terms  
13 of future jury trials.

14 If you don't have time, I realize that we are  
15 talking 5:30, and you need to get out of here, I totally  
16 understand, and you leave with my thanks and everybody else's  
17 thanks, and I hope that it was an important experience for  
18 you that gave you an appreciation of the justice system.

19 You are now free to talk about the case with  
20 whoever you want to. You're free to talk about what you saw  
21 here in the trial, what happened in the jury deliberations.  
22 That's total up to you. But you're free to talk about the  
23 case if you want to talk about the case. You also are free  
24 to not talk about the case. And if you should not want to  
25 talk about the case with anyone, just tell them, and I'll

1 tell you in the years that I've done this, 35 years, I  
2 haven't had any juror who's told me that they've told someone  
3 they don't want to talk about the case, that they continue to  
4 be bothered by it.

5           So I have no doubt if you tell them -- someone that  
6 they -- you aren't interested in talking, that they won't  
7 leave you alone. But you are free to talk about the case  
8 with whoever you want. And it's very possible that some of  
9 the attorneys in the case or their staff may try to talk to  
10 you about the case so that they can find out what you thought  
11 was good or bad about their presentations and how they could  
12 possibly could improve. And so it's up to you if you want to  
13 do that.

14           As I said, if you have a couple minutes, I would  
15 appreciate the chance to thank you. But if you don't, thank  
16 you for your service and have a good remainder of your  
17 summer.

18           THE MARSHAL: All rise for the jury.

19                           (Jury is excused at 5:35 P.M.)

20                           (Outside the presence of the jury)

21           THE COURT: All right. Is there anything further  
22 from the State's position at this point?

23           MS. KOLLINS: Yes, Your Honor. We'd ask now that  
24 the verdict is returned, that you remand him no bail. These  
25 are non-probationable offenses.

1 THE COURT: Okay. Defense position.

2 MR. DRASKOVICH: We are going to file a bail  
3 motion, and we'll put our request that he be released pending  
4 sentencing in writing.

5 THE COURT: Okay. Well, we'll wait until we deal  
6 with it at that point. At this point in time, I will remand  
7 the defendant without bail.

8 MS. KOLLINS: Thank you.

9 THE COURT: Let's go ahead and set a sentencing  
10 date.

11 THE CLERK: October 1st at 8:30.

12 MS. KOLLINS: Thank you.

13 MR. DRASKOVICH: Thank you.

14 THE COURT: Okay. Anything else from the State?

15 MS. KOLLINS: No, Your Honor.

16 THE COURT: All right. Defense?

17 MR. DRASKOVICH: No, Your Honor.

18 THE COURT: Are any of you going to want to try to  
19 speak to the jurors?

20 MR. DRASKOVICH: I would like to. I always do, if  
21 they want to talk to us, though.

22 THE COURT: I mean, yeah. I don't have you go back  
23 to the back room. You can -- if you want to meet them out by  
24 the center doors where the Marshal will bring them out,  
25 you're more than welcome to do that.

1 MR. DRASKOVICH: If Your Honor could let them know  
2 that the attorneys or attorney or -- I'd like to speak to  
3 them, and if --

4 THE COURT: Well, I --

5 MR. DRASKOVICH: -- they'd like to speak --

6 THE COURT: -- think I told them just now, but I'll  
7 mention it to them again back in the --

8 MR. DRASKOVICH: Okay.

9 THE COURT: -- in the jury room.

10 MR. DRASKOVICH: I appreciate that.

11 THE COURT: All right. Anything else?

12 MS. KOLLINS: No.

13 THE COURT: No?

14 MR. DRASKOVICH: No, Your Honor.

15 THE COURT: All right. Everyone have a good  
16 evening.

17 MR. HORVATH: Thank you, Your Honor.

18 (Court adjourned at 5:37 P.M.)

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I N D E X

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WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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DEFENDANT'S WITNESS:

DR. MARK CHAMBERS	9	28	37	41
	*	*	*	*

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
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(No exhibits admitted)

\* \* \* \* \*

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

*Julie Lord*

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VERBATIM DIGITAL REPORTING, LLC

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INST

ORIGINAL

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT  
AUG 12 2019

BY Linda Skinner  
LINDA SKINNER, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,  
  
-vs-  
  
MAURICE TERRANCE MOORE,  
  
Defendant.

CASE NO: C-17-324535-1  
DEPT NO: XX

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

MEMBERS OF THE JURY:

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

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

C-17-324535-1  
INST  
Instructions to the Jury  
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INSTRUCTION NO. 2

1  
2 If, in these instructions, any rule, direction or idea is repeated or stated in different  
3 ways, no emphasis thereon is intended by me and none may be inferred by you. For that  
4 reason, you are not to single out any certain sentence or any individual point or instruction  
5 and ignore the others, but you are to consider all the instructions as a whole and regard each  
6 in the light of all the others.

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



INSTRUCTION NO. 3

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

In this case, it is charged in an Information that on and/or between and/or about the 25th day of February, 2017 and the 26th day of February, 2017, at and within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

Defendant did then and there, willfully, unlawfully and feloniously sexually assault and subject A.M., a child under sixteen years of age, to sexual penetration, to wit: fellatio, by Defendant placing his penis on and/or into the mouth of A.M., against the will of A.M., or under conditions in which Defendant knew, or should have known, that A.M. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 2 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

Defendant did then and there, willfully, unlawfully and feloniously sexually assault and subject A.M., a child under sixteen years of age, to sexual penetration, to wit: sexual intercourse, by Defendant inserting his penis into the genital opening of A.M., against the will of A.M., or under conditions in which Defendant knew, or should have known, that A.M. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 3 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

Defendant did then and there, willfully, unlawfully and feloniously sexually assault and subject A.M., a child under sixteen years of age, to sexual penetration, to wit: sexual intercourse, by Defendant inserting his penis into the genital opening of A.M., against the will of A.M., or under conditions in which Defendant knew, or should have known, that A.M. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

1 COUNT 4 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

2 Defendant did then and there, willfully, unlawfully and feloniously sexually assault  
3 and subject A.M., a child under sixteen years of age, to sexual penetration, to wit: anal  
4 intercourse, by Defendant inserting his penis into the anal opening of A.M., against the will  
5 of A.M., or under conditions in which Defendant knew, or should have known, that A.M.  
6 was mentally or physically incapable of resisting or understanding the nature of Defendant's  
7 conduct.

8 COUNT 5 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

9 Defendant did then and there, willfully, unlawfully and feloniously sexually assault  
10 and subject A.M., a child under sixteen years of age, to sexual penetration, to wit: anal  
11 intercourse, by Defendant inserting his penis into the anal opening of A.M., against the will  
12 of A.M., or under conditions in which Defendant knew, or should have known, that A.M.  
13 was mentally or physically incapable of resisting or understanding the nature of Defendant's  
14 conduct.

15 COUNT 6 - LEWDNESS WITH A CHILD UNDER THE AGE OF 16

16 Defendant did willfully, lewdly, unlawfully and feloniously commit a lewd or  
17 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: A.M.,  
18 a child under the age of 16 years, by Defendant using his hand(s) and/or finger(s) to touch  
19 and/or rub and/or fondle the breast(s) and/or body of A.M., with the intent of arousing,  
20 appealing to, or gratifying the lust, passions, or sexual desires of the Defendant, or A.M.

21 COUNT 7 - LEWDNESS WITH A CHILD UNDER THE AGE OF 16

22 Defendant did willfully, lewdly, unlawfully and feloniously commit a lewd or  
23 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: A.M.,  
24 a child under the age of 16 years, by Defendant using his hand(s) and/or finger(s) to touch  
25 and/or slap and/or fondle the buttock(s) and/or body of A.M., with the intent of arousing,  
26 appealing to, or gratifying the lust, passions, or sexual desires of the Defendant, or A.M.

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

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

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INSTRUCTION NO. 4

1  
2 To constitute the crime charged, there must exist a union or joint operation of an act  
3 forbidden by law and an intent to do the act.

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

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

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

INSTRUCTION NO. 5

1  
2 The Defendant is presumed innocent until the contrary is proved. This presumption  
3 places upon the State the burden of proving beyond a reasonable doubt every element of the  
4 crime charged and that the Defendant is the person who committed the offense.

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

11 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a  
12 verdict of not guilty.

INSTRUCTION NO. 6

1  
2           You are here to determine whether the Defendant is guilty or not guilty from the  
3 evidence in the case. You are not called upon to return a verdict as to whether any other  
4 person is guilty or not guilty. So, if the evidence in the case convinces you beyond a  
5 reasonable doubt of the guilt of the Defendant, you should so find, even though you may  
6 believe one or more persons are also guilty.

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INSTRUCTION NO. 7

1  
2 The evidence which you are to consider in this case consists of the testimony of the  
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

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

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

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

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

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

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INSTRUCTION NO. 8

1  
2 In deciding the facts in this case, you may have to decide which testimony to believe  
3 and which testimony not to believe. You may believe everything a witness says, or part of it,  
4 or none of it.

5 In considering the testimony of any witness, you may take into account:

- 6 (1) The witness' opportunity and ability to see or hear or know the things testified to;  
7 (2) The witness' memory;  
8 (3) The witness' manner while testifying;  
9 (4) The witness' interest in the outcome of the case, if any;  
10 (5) The witness' bias or prejudice, if any;  
11 (6) Whether other evidence contradicted the witness' testimony;  
12 (7) The reasonableness of the witness' testimony in light of all the evidence; and  
13 (8) Any factors that bear on believability.

14 The weight of the evidence as to a fact does not necessarily depend on the number of  
15 witnesses who testify. What is important is how believable the witnesses were, and how  
16 much weight you think their testimony deserves.



INSTRUCTION NO. 9

1  
2 A witness who has special knowledge, skill, experience, training or education in a  
3 particular science, profession or occupation is an expert witness. An expert witness may  
4 give his opinion as to any matter in which he is skilled.

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

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INSTRUCTION NO. 10

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2           It is a constitutional right of a defendant in a criminal trial that he may not be  
3 compelled to testify. Thus, the decision as to whether he should testify is left to the  
4 defendant on the advice and counsel of his attorney. You must not draw any inference of  
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter  
6 into your deliberations in any way.

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INSTRUCTION NO. 11

1  
2 The defendant has been charged in Count 1 of the Amended Information with Sexual  
3 Assault involving fellatio. For you to find the defendant guilty of this charge you must find  
4 beyond a reasonable doubt:

5 First, at or near the time alleged in the Amended Information, the Defendant  
6 intentionally sexually penetrated the victim by placing, however slight, his penis upon the  
7 mouth or tongue of the alleged victim; and

8 Second, the defendant in sexually penetrating the victim either:

9 1) knew or acted under circumstances where he should have known that sexual  
10 penetration was against the will of the victim, or

11 2) knew or should have known the alleged victim was mentally or physically  
12 incapable of resisting or understanding the nature of his conduct.

13 The defendant has been charged in Counts 2 and 3 of the Amended Information with  
14 Sexual Assault involving sexual intercourse. For you to find the defendant guilty of this  
15 charge you must find beyond a reasonable doubt:

16 First, at or near the time alleged in the Amended Information, the Defendant  
17 intentionally sexually penetrated the victim by inserting, however slight, his penis into the  
18 genital opening of the alleged victim; and

19 Second, the defendant in sexually penetrating the victim either:

20 1) knew or acted under circumstances where he should have known that sexual  
21 penetration was against the will of the victim, or

22 2) knew or should have known the alleged victim was mentally or physically  
23 incapable of resisting or understanding the nature of his conduct.

24 The defendant has been charged in Counts 4 and 5 of the Amended Information with  
25 Sexual Assault involving anal intercourse. For you to find the defendant guilty of this charge  
26 you must find beyond a reasonable doubt:

1 First, at or near the time alleged in the Amended Information, the Defendant  
2 intentionally sexually penetrated the victim by inserting, however slight, his penis into the  
3 anal opening of the alleged victim; and

4 Second, the defendant in sexually penetrating the victim either:

5 1) knew or acted under circumstances where he should have known that sexual  
6 penetration was against the will of the victim, or

7 2) knew or should have known the alleged victim was mentally or physically  
8 incapable of resisting or understanding the nature of his conduct.

9 To prove the charge of Sexual Assault, the State does not need to prove the defendant  
10 ejaculated during or near the time of the prohibited sexual conduct. Physical force is not  
11 necessary in the commission of sexual assault. The crucial question is not whether a person  
12 was physically forced to engage in a sexual assault but whether the act was committed  
13 without her consent or under conditions in which the defendant knew or should have known,  
14 the person was incapable of giving her consent or understanding the nature of the act. There  
15 is no consent where a person is induced to submit to the sexual act through fear of death or  
16 serious bodily injury.

17 The defendant's sexual penetration does not constitute a sexual assault if the  
18 defendant at the time of the sexual penetration had a reasonable and good faith belief that the  
19 other person voluntarily consented to engage in sexual intercourse or anal intercourse or  
20 fellatio and was mentally and physically capable of resisting and understanding the nature of  
21 his conduct.

22 Therefore, a reasonable and good faith belief that there was voluntary consent and the  
23 alleged victim was mentally and physically capable of resisting and understanding  
24 defendant's conduct is a defense to such a charge, unless the defendant thereafter became  
25 aware or reasonably should have been aware that the other person no longer consented to the  
26 sexual activity or was no longer mentally or physically capable of resisting or understanding  
27 the nature of his conduct.

28

1           Submission is not the equivalent of consent. While consent inevitably involves  
2 submission, submission does not inevitably involve consent. Lack of protest by a victim is  
3 simply one among the totality of circumstances to be considered by the jury. A person is not  
4 required to do more than her age, strength, surrounding facts and attending circumstances  
5 make it reasonable for her to do to manifest opposition to a sexual assault.

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INSTRUCTION NO. 12

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2           There is no requirement that the testimony of a victim of sexual assault or lewdness  
3 be corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is  
4 sufficient to sustain a verdict of guilty.  
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INSTRUCTION NO. 13

Where multiple sexual acts occur as part of a single criminal encounter a defendant may be found guilty for each separate or different act of sexual assault and/or lewdness.

Where a defendant commits a specific type of act constituting sexual assault and/or lewdness, he may be found guilty of more than one count of that specific type of act of sexual assault and/or lewdness if:

1. There is an interruption between the acts which are of the same specific type,
2. Where the acts of the same specific type are interrupted by a different specific type of sexual assault/lewdness, or
3. For each separate object manipulated or inserted into the genital opening (which includes the vagina, the labia majora, the labia minor, and the clitoris) of another.
4. For each separate object manipulated or inserted into the anal opening of another.

Only one sexual assault and/or lewdness occurs when a defendant's actions were of one specific type of sexual assault and/or lewdness and those acts were continuous and did not stop between the acts of that specific type.

INSTRUCTION NO. 14

1  
2 The defendant has been charged in Counts 6 and 7 of the Amended Information with  
3 Lewdness with a Child under the Age of Sixteen. For you to find the defendant guilty of this  
4 charge you must find beyond a reasonable doubt:

5 First, at or near the time alleged in the Amended Information, the Defendant used his  
6 hands or fingers to touch, grab or fondle the breasts or body of A.M. as alleged in Count 6  
7 and to touch, slap or fondle the buttocks or body of A.M. as alleged in Count 7;

8 Second, the Defendant intended to commit a lewd or lascivious act;

9 Third, the Defendant in doing the act intended to arouse, appeal to or gratify his own  
10 lust, passion or sexual desires or A.M.'s lust, passion or sexual desires.

11 Fourth, A.M was a child under the age of 16 years.

12 To prove the charge of Lewdness with a Child under the Age of Sixteen, the State  
13 does not need to prove either the defendant or A.M.'s lust, passion or sexual desires were  
14 actually aroused. The crime of Lewdness with a Child does not require that bare skin be  
15 touched. The touching may be through the clothing of the child.

16 A child under the age of 16 years cannot consent to another individual using his hands  
17 or fingers to touch and/or slap and/or fondle the buttocks and/or breasts and/or body of A.M.  
18 to arouse, appeal to or gratify his own lust, passion or sexual desires or the child's lust,  
19 passion or sexual desires. The consent of a child under the age of 16 years to such lewd and  
20 lascivious conduct is not a defense to a charge of Lewdness with a Child under the Age of  
21 Sixteen.



INSTRUCTION NO. 15

1  
2           Although you are to consider only the evidence in the case in reaching a verdict, you  
3 must bring to the consideration of the evidence your everyday common sense and judgment  
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as  
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel  
6 are justified in the light of common experience, keeping in mind that such inferences should  
7 not be based on speculation or guess.

8           A verdict may never be influenced by sympathy, prejudice or public opinion. Your  
9 decision should be the product of sincere judgment and sound discretion in accordance with  
10 these rules of law.

INSTRUCTION NO. 16

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

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

INSTRUCTION NO. 17

1  
2           When you retire to consider your verdict, you must select one of your members to act  
3 as foreperson who will preside over your deliberation and will be your spokesperson here in  
4 court.

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

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

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INSTRUCTION NO. 18

1  
2 If, during your deliberation, you should desire to be further informed on any point of  
3 law or hear again portions of the testimony, you may send a note through the marshal, signed  
4 by any one or more of you. No member of the jury should ever attempt to communicate with  
5 me except by a signed writing, and I will respond to the jury concerning the case only in  
6 writing or here in open court. If you send out a question, I will consult with the lawyers  
7 before answering it, which may take some time. You may continue your deliberations while  
8 waiting for the answer to any questions. Remember that you are not to tell anyone -  
9 including me - how the jury stands, numerically or otherwise, on any question submitted to  
10 you, including the question of the guilt of the defendant, until after you have reached a  
11 unanimous verdict or have been discharged.

12 Playbacks of testimony are time-consuming and are not encouraged unless you deem  
13 it a necessity. Should you require a playback, you must carefully describe the testimony to  
14 be played back so that the court recorder can arrange her notes. Remember, the court is not  
15 at liberty to supplement the evidence.

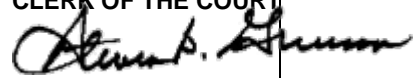
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INSTRUCTION NO. 19

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

GIVEN:

  
DISTRICT JUDGE



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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

vs.

MAURICE TERRANCE MOORE,  
Defendant.

CASE NO: C-17-324535-1

DEPT. XX

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE  
TUESDAY, OCTOBER 08, 2019

**RECORDER'S TRANSCRIPT OF HEARING:  
SENTENCING**

APPEARANCES:

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

For the Defendant: ROBERT M. DRASKOVICH, ESQ.  
W. MICHAEL HORVATH, ESQ.

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 [Las Vegas, Nevada, Tuesday, October 08, 2019, at 12:29 p.m.]

2  
3 THE COURT: State of Nevada versus Maurice Moore, Case  
4 No. C324535. Counsel, please note your appearances for the record.

5 MS. KOLLINS: Good afternoon, Your Honor. Stacey Kollins  
6 on behalf of the State.

7 MR. DRASKOVICH: Good afternoon. Robert Draskovich and  
8 Michael Horvath on behalf of Mr. Moore, who is present in custody.

9 THE COURT: Okay, this is the time set for sentencing on the  
10 guilty verdict by the jury to Counts 6 and 7, lewdness with a child under  
11 the age of 16. Is that correct?

12 MR. DRASKOVICH: That's correct.

13 THE COURT: Showing the -- let's see. No, we don't have  
14 substance there. We go to the Presentence Investigation Report dated  
15 September 17, 2019. Mr. Draskovich, have you read that?

16 MR. DRASKOVICH: I have.

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

19 MR. DRASKOVICH: No, Your Honor.

20 THE COURT: All right. Mr. Moore, have you read your  
21 Presentence Investigation Report?

22 THE DEFENDANT: Yes, sir.

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

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did he answer any questions you had about it?

1 THE DEFENDANT: Absolutely.

2 THE COURT: Anything in there you saw that needed to be  
3 corrected or brought to my attention?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. Then pursuant to your jury verdict in  
6 this case, I do find you guilty of Count 6 and Count 7, lewdness with a  
7 child under the age of 16 in violation of Nevada Revised Statute  
8 201.230.

9 Does the State wish to make any statement?

10 MS. KOLLINS: I do, Your Honor, very briefly. So I know the  
11 Court heard this entire trial, and I know you watched the victim and you  
12 heard the testimony. I guess what I'd like to impress upon this Court is,  
13 you know, eight weeks earlier -- and we would be looking at 35 to lives,  
14 10's to lives on what he was charged with; whatever you think of -- or the  
15 jury thought of the victim's responsibility in this because she interacted  
16 with a man who's held himself out to be 25 years old; on the internet; on  
17 a dating site; on a hook-up site, you know, he ultimately targeted a child.  
18 And she was 14, and she was a child.

19 Despite what the jury thought; despite what the  
20 instructions are, she did not -- she did not deserve what was done to  
21 her. Did she think there was probably going to be sex? Probably. Did  
22 she think she was going to be anally assaulted to the degree where she  
23 had 10 tears? I don't think so. And I still will never think so, or else I  
24 would've never pushed the case.

25 I think four years on the bottom is an absolute gift for



1 him. He deserves far more. He deserves eight to 20 years. I think this  
2 Court should sentence him to that. I think he is a danger to the  
3 community based on his actions; based on how he lured this young  
4 woman; based on how he groomed her; based on how he targeted her;  
5 based on how he communicated with her, and ultimately based on what  
6 he did to her.

7           The Court may disagree with the State on -- you know, I  
8 think Alexia deserves that kind of prison time as punishment from what  
9 he did to her that evening, and I'll submit it to the Court. I think he has  
10 955 days credit.

11           THE COURT: All right. Mr. Draskovich.

12           MR. DRASKOVICH: Your Honor, I've spoken to my client and  
13 I don't know if the Court wants to hear from him. He has no statement to  
14 make given the --

15           THE COURT: It's up to him. And you can go first or second,  
16 or however you want to do it.

17           MR. DRASKOVICH: I'll be brief because Your Honor presided  
18 over the trial. I would respectfully submit to the Court that the question  
19 is not, what Alexia deserves or not. If you look at his criminal history on  
20 page 3, it's all zeros. He has no criminal history to speak of; no prior  
21 convictions.

22           The jury acquitted him of Count 1 through 5. Given the  
23 state of the law, I think Your Honor followed the law; the jury instructions.  
24 One can consent to sexual conduct, i.e., sexual intercourse but,  
25 apparently, one cannot consent to lewdness. So she consented to the

1 anal intercourse, but she didn't consent to being slapped or grabbed  
2 through the course of the consensual anal intercourse, or vaginal  
3 intercourse.

4 As Your Honor is aware -- I mean, even the jury  
5 struggled. They wanted to acquit him of all counts. But they -- given the  
6 state of the law, which we intend to address at a later proceeding, they  
7 couldn't. So, I mean, as far as the luring and all that, the jury disagreed  
8 with the State's theory. It's this man's right to go to trial, which he did.

9 I would urge the Court to look at his history. And  
10 whether or not he is a danger -- you know, we're not really here to  
11 necessarily decide that. I submit that he's not. He knows that he's  
12 going to stay off Tinder; whatever sentence that he gets. He has  
13 informed me that he has closer to 970 days. If there's an issue, we'll  
14 address it.

15 We agree with the 955 at this juncture. I would urge the  
16 Court to sentence him to the 12 to 48 concurrent with 12 to 48. You  
17 heard the facts; you know what occurred and on that, we'd submit it.

18 THE COURT: All right. Does your client wish to make any  
19 statement?

20 MR. DRASKOVICH: At my advice, he will not.

21 THE COURT: Okay, that's fine. Well I did -- I did listen to the  
22 trial. And I can appreciate why the jury ultimately concluded as it did in  
23 terms of the sentence in this case with the standard of beyond a  
24 reasonable doubt. But in sentencing, I'm not limited to that standard. I  
25 can look at the conduct in -- if I find by a preponderance of the evidence

1 that certain conduct occurred, I can sentence accordingly on that basis.

2           Consequently, I do believe while I do think that there  
3 was good cause to believe the plaintiff -- or not plaintiff; that the victim in  
4 this case did anticipate there may be sexual conduct when she was  
5 groomed by the defendant, I don't -- I do tend to believe that. At the  
6 minimum, the incident became nonconsensual when it reached the point  
7 of anal intercourse with the child.

8           And I don't find a lot to excuse the conduct of the  
9 defendant in view of her age. And -- you know, she was 14 years old.  
10 And, you know, indicating that she had issues with her parents and they  
11 were out looking for her running stop lights along the street, the  
12 defendant knew that; that should've put him on notice that there was  
13 some potential issues as it related to her age.

14           And so I don't find his conduct in this case to be that,  
15 which recommends him for any particular consideration. Considering  
16 deterrence of the defendant, you know, I do think he groomed the victim  
17 in this case with the internet conduct; the text calls; deterring others and  
18 considering potential for rehabilitation; the defendant's danger to the  
19 community.

20           I'm going to sentence the defendant to a term of two to  
21 eight years on Count 6 in the Nevada Department of Corrections, and  
22 two to eight years on Count 7 in the Nevada Department of Corrections,  
23 to be consecutive to Count 1 for a total term of four to 16 years in the  
24 Nevada Department of Corrections.

25           I'll provide for the \$25 administrative assessment, \$3

1 DNA administrative assessment, the \$150 DNA testing fee and order the  
2 defendant submit to the DNA testing. Do you concur with the 955 days  
3 credit for time served?

4 MR. DRASKOVICH: My client believes it's 970. I didn't sit  
5 down and count the days on the calendar.

6 THE COURT: Ms. Kollins, do you --

7 MS. KOLLINS: Your Honor, I mean, I have no reason to  
8 believe it's different than what P&P recommends, plus the week that we  
9 continued the sentencing. But, you know, 15 days isn't going to matter  
10 to me if the Court wants to give it to him.

11 THE COURT: Okay, let's do 970 days credit for time served.

12 MS. KOLLINS: It's also lifetime, Your Honor.

13 THE COURT: Oh, that's right. I'll also order pursuant to  
14 Nevada Revised Statute 179D.460, the defendant register as a sex  
15 offender within 48 hours of his release from custody. I'll also order -- is  
16 this lifetime supervision?

17 MR. DRASKOVICH: It is, Your Honor.

18 MS. KOLLINS: Yes.

19 THE COURT: Okay. I don't see that in the probation report,  
20 that's what's throwing me off here.

21 MS. KOLLINS: It is on page 9 under Count 7.

22 THE COURT: Okay. All right. Well I'll go ahead and order  
23 lifetime supervision of the defendant pursuant to Nevada Revised  
24 Statute 176.0931. Is there any restitution? I'm not showing any in the  
25 Presentence Investigation Report.

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MS. KOLLINS: Your Honor, Victim of Crime money was set aside, but those fees have not yet been accessed by Ms. Martinez.

THE COURT: Okay. I'm not -- is there anything else?


MR. DRASKOVICH: At this time, Your Honor, no. Thank you.

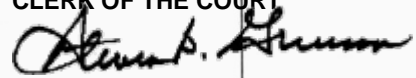
MS. KOLLINS: No. Thank you.

THE COURT: Thank you.

[Hearing concluded at 12:39 p.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.

  
\_\_\_\_\_  
Angie Calvillo  
Court Recorder/Transcriber



1 JOCP

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

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CASE NO. C-17-324535-1

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-vs-

DEPT. NO. XX

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MAURICE TERRANCE MOORE

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#7039952

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Defendant.

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JUDGMENT OF CONVICTION

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(JURY TRIAL)

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The Defendant previously entered a plea of not guilty to the crimes of COUNT 1, 2, 3,

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and 4 –SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

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(Category A Felony) in violation of NRS 200.364, 200.366; and COUNTS 6 and 7 –

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LEWDNESS WITH A CHILD UNDER THE AGE OF 16 (Category B Felony) in violation of

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NRS 201.230; and the matter having been tried before a jury and the Defendant having been

23

found guilty of the crimes of COUNTS 6 and 7 –LEWDNESS WITH A CHILD UNDER THE

24

AGE OF 16 (Category B Felony) in violation of NRS 201.230; thereafter, on the 8<sup>th</sup> day of

25

October, 2019, the Defendant was present in Court with counsel ROBERT M. DRASKOVICH,

26

ESQ., and good cause appearing,

27

28

APX306

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition  
2 to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee including testing  
3 to determine genetic markers plus \$3.00 DNA Analysis Fee, the Defendant is sentenced to the  
4 Nevada Department of Corrections (NDC) as follows: COUNT 6 – a MAXIMUM of EIGHT  
5 (8) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS; and COUNT 7 – a  
6 MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS;  
7 CONSECUTIVE to COUNT 6; with NINE HUNDRED SEVENTY (970) DAYS credit for  
8 time served. The AGGREGATE TOTAL sentence is SIXTEEN (16) YEARS MAXIMUM  
9 with a MINIMUM PAROLE ELIGIBILITY OF FOUR (4) YEARS.  
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12 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION is  
13 imposed to commence upon release from any term of imprisonment, probation or parole. In  
14 addition, before the Defendant is eligible for parole, a panel consisting of the Administrator of  
15 the Mental Health and Development Services of the Department of Human Resources or his  
16 designee; the Director of the Department of Corrections or his designee; and a psychologist  
17 licensed to practice in this state; or a psychiatrist licensed to practice medicine in Nevada must  
18 certify that the Defendant does not represent a high risk to re-offend based on current accepted  
19 standards of assessment.  
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22 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in  
23 accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any release from  
24 custody.

25 DATED this 9 day of October, 2019.

26  
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28   
ERIC JOHNSON  
DISTRICT COURT JUDGE

UAS

CHAPTER.....

AN ACT relating to crimes; establishing the crime of unlawful dissemination of an intimate image of a person; prohibiting certain acts relating to an intimate image of another person; revising provisions relating to sexual assault and the abuse of a child; setting forth provisions relating to expert testimony in a prosecution for pandering or sex trafficking; revising provisions concerning acts of open or gross lewdness, open and indecent or obscene exposure, lewdness with a child and statutory sexual seduction; setting forth various provisions relating to the admissibility of evidence and expert testimony in criminal and juvenile delinquency actions; prohibiting a court from ordering the victim of or a witness to a sexual offense to take or submit to a psychological or psychiatric examination in certain criminal or juvenile delinquency actions; authorizing the court to exclude in certain circumstances the testimony of a licensed psychologist, psychiatrist or clinical worker; providing penalties; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

**Sections 1-6.5** of this bill establish the crime of unlawful dissemination of an intimate image of a person. **Section 3** defines the term “intimate image” generally as a photograph, film, videotape or other recorded image, or any reproduction thereof, which depicts: (1) the fully exposed nipple of the female breast of another person; or (2) one or more persons engaged in sexual conduct. **Section 3** also provides that an image which would otherwise constitute an intimate image is not an intimate image if the person depicted in the image: (1) is not clearly identifiable; (2) voluntarily exposed himself or herself in a public or commercial setting; or (3) is a public figure.

**Section 5** provides that a person commits the crime of unlawful dissemination of an intimate image and is guilty of a category D felony when, with the intent to harass, harm or terrorize another person, the person electronically disseminates or sells an intimate image which depicts the other person and the other person: (1) did not give prior consent to the electronic dissemination or sale; (2) had a reasonable expectation that the intimate image would be kept private and would not be made visible to the public; and (3) was at least 18 years of age when the intimate image was created. **Section 5** also sets forth certain exceptions regarding when an intimate image may be lawfully electronically disseminated. Under **section 6**, a person is guilty of a category D felony if he or she demands payment of money, property, services or anything else of value from a person in exchange for removing an intimate image from public view. **Section 6.5** provides that the provisions of **sections 1-6** must not be construed to impose liability on an interactive computer service, as that term is defined in federal law, for any content provided by another person.

Existing law provides that a person who forces another person under certain circumstances to make a sexual penetration on himself or herself or another, or on a





beast, is guilty of sexual assault. (NRS 200.366) **Section 8** of this bill additionally provides that a person who commits a sexual penetration upon a child under the age of 14 years or causes a child under the age of 14 years to make a sexual penetration on himself or herself or another, or on a beast, is guilty of sexual assault. **Section 8** further provides that, except in certain circumstances, such provisions do not apply to a person who commits any such act upon a child under the age of 14 years if the person committing the act is less than 18 years of age and is not more than 2 years older than the person upon whom the act is committed.

Existing law also provides that a person who commits any act of open or gross lewdness or who makes any open and indecent or obscene exposure of his or her person, or of the person of another, is guilty of a gross misdemeanor for the first offense and a category D felony for any subsequent offense. (NRS 201.210, 201.220) Under **sections 13 and 14** of this bill, if a person commits any such offense and he or she has previously been convicted of a sexual offense, or if the person commits any such offense in the presence of a child under the age of 18 years or a vulnerable person, the person is guilty of a category D felony.

Additionally, under existing law, a person who commits certain acts with a child under the age of 14 years is guilty of lewdness with a child and is guilty of a category A felony. (NRS 201.230) **Section 15** of this bill provides that a person is guilty of lewdness with a child if the person: (1) is 18 years of age or older and commits certain acts with a child under the age of 16 years; or (2) is under the age of 18 years and commits certain acts with a child under the age of 14 years. **Section 15** also provides that if a person commits lewdness with: (1) a child under the age of 14, he or she is guilty of a category A felony; and (2) a child who is 14 or 15, he or she is guilty of a category B felony.

**Section 7** of this bill revises the definition of the term "statutory sexual seduction," and **section 8.5** of this bill revises the penalties imposed for the crime of statutory sexual seduction.

**Sections 12, 23 and 24** of this bill revise various provisions relating to the admissibility of expert testimony and evidence in certain criminal and juvenile delinquency cases. **Section 12** provides that in a prosecution for pandering or sex trafficking, certain expert testimony that is offered by the prosecution or defense is admissible for any relevant purpose, but certain other expert testimony cannot be offered against the defendant to prove the occurrence of an act which forms the basis of a criminal charge against the defendant. Under **section 23**, expert testimony offered by the prosecution or defense which concerns the behavior of a defendant in preparing a child under the age of 18 or a vulnerable person for sexual abuse by the defendant is admissible for any purpose. **Section 24** prohibits a court in a criminal or juvenile delinquency action relating to the commission of a sexual offense from ordering a victim of or witness to a sexual offense to take or submit to a psychological or psychiatric examination. **Section 24** also authorizes the court to exclude the testimony of a licensed psychologist, psychiatrist or clinical worker who performed a psychological or psychiatric examination on a victim or witness in certain circumstances.



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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 200 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6.5, inclusive, of this act.

**Sec. 2.** *As used in sections 2 to 6.5, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Intimate image”:*

*1. Except as otherwise provided in subsection 2, includes, without limitation, a photograph, film, videotape or other recorded image which depicts:*

*(a) The fully exposed nipple of the female breast of another person, including through transparent clothing; or*

*(b) One or more persons engaged in sexual conduct.*

*2. Does not include an image which would otherwise constitute an intimate image pursuant to subsection 1, but in which the person depicted in the image:*

*(a) Is not clearly identifiable;*

*(b) Voluntarily exposed himself or herself in a public or commercial setting; or*

*(c) Is a public figure.*

**Sec. 4.** *“Sexual conduct” has the meaning ascribed to it in NRS 200.700.*

**Sec. 5.** *1. Except as otherwise provided in subsection 3, a person commits the crime of unlawful dissemination of an intimate image when, with the intent to harass, harm or terrorize another person, the person electronically disseminates or sells an intimate image which depicts the other person and the other person:*

*(a) Did not give prior consent to the electronic dissemination or the sale of the intimate image;*

*(b) Had a reasonable expectation that the intimate image would be kept private and would not be made visible to the public; and*

*(c) Was at least 18 years of age when the intimate image was created.*



*2. A person who commits the crime of unlawful dissemination of an intimate image is guilty of a category D felony and shall be punished as provided in NRS 193.130.*

*3. The provisions of this section do not apply to the electronic dissemination of an intimate image for the purpose of:*

- (a) A legitimate public interest;*
- (b) Reporting unlawful conduct;*
- (c) Any lawful law enforcement or correctional activity;*
- (d) Investigation or prosecution of a violation of this section;*

*or*

- (e) Preparation for or use in any legal proceeding.*

*4. A person who commits the crime of unlawful dissemination of an intimate image is not considered a sex offender and is not subject to registration or community notification as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive.*

**Sec. 6.** *Any person who demands payment of money, property, services or anything else of value from a person in exchange for removing an intimate image from public view is guilty of a category D felony and shall be punished as provided in NRS 193.130.*

**Sec. 6.5.** *1. The provisions of sections 2 to 6.5, inclusive, of this act must not be construed to impose liability on an interactive computer service for any content provided by another person.*

*2. As used in subsection 1, "interactive computer service" has the meaning ascribed to it in 47 U.S.C. § 230(f)(2).*

**Sec. 7.** NRS 200.364 is hereby amended to read as follows:

200.364 As used in NRS 200.364 to 200.3784, inclusive, unless the context otherwise requires:

1. "Offense involving a pupil" means any of the following offenses:

(a) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.

(b) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.

2. "Perpetrator" means a person who commits a sexual offense, an offense involving a pupil or sex trafficking.

3. "Sex trafficking" means a violation of subsection 2 of NRS 201.300.

4. "Sexual offense" means any of the following offenses:

(a) Sexual assault pursuant to NRS 200.366.

(b) Statutory sexual seduction pursuant to NRS 200.368.



5. "Sexual penetration" means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning. *The term does not include any such conduct for medical purposes.*

6. "Statutory sexual seduction" means ~~†~~  
~~—(a) Ordinary† ordinary~~ sexual intercourse, anal intercourse, ~~†cunnilingus or fellatio†~~ or sexual penetration committed by a person 18 years of age or older with a person ~~†under the age of 16 years; or~~

~~—(b) Any other sexual penetration committed by a person 18 years of age or older with a person under the age of 16 years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either of the persons.†~~ *who is 14 or 15 years of age and who is at least 4 years younger than the perpetrator.*

7. "Victim" means a person who is a victim of a sexual offense, an offense involving a pupil or sex trafficking.

**Sec. 8.** NRS 200.366 is hereby amended to read as follows:

200.366 1. A person ~~†who subjects†~~ *is guilty of sexual assault if he or she:*

*(a) Subjects* another person to sexual penetration, or ~~†who†~~ forces another person to make a sexual penetration on himself or herself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct ~~†is guilty of sexual assault.†~~; or

*(b) Commits a sexual penetration upon a child under the age of 14 years or causes a child under the age of 14 years to make a sexual penetration on himself or herself or another, or on a beast.*

2. Except as otherwise provided in subsections 3 and 4, a person who commits a sexual assault is guilty of a category A felony and shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault, by imprisonment in the state prison:

(1) For life without the possibility of parole; or

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served.

(b) If no substantial bodily harm to the victim results, by imprisonment in the state prison for life with the possibility of



parole, with eligibility for parole beginning when a minimum of 10 years has been served.

3. Except as otherwise provided in subsection 4, a person who commits a sexual assault against a child under the age of 16 years is guilty of a category A felony and shall be punished:

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) Except as otherwise provided in paragraph (c), if the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 25 years has been served.

(c) If the crime is committed against a child under the age of 14 years and does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 35 years has been served.

4. A person who commits a sexual assault against a child under the age of 16 years and who has been previously convicted of:

(a) A sexual assault pursuant to this section or any other sexual offense against a child; or

(b) An offense committed in another jurisdiction that, if committed in this State, would constitute a sexual assault pursuant to this section or any other sexual offense against a child,  
↳ is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

5. *The provisions of this section do not apply to a person who is less than 18 years of age and who commits any of the acts described in paragraph (b) of subsection 1 if the person is not more than 2 years older than the person upon whom the act was committed unless:*

*(a) The person committing the act uses force or threatens the use of force; or*

*(b) The person committing the act knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct.*

6. For the purpose of this section, "other sexual offense against a child" means any act committed by an adult upon a child constituting:

(a) Incest pursuant to NRS 201.180;

(b) Lewdness with a child pursuant to NRS 201.230;



- (c) Sado-masochistic abuse pursuant to NRS 201.262; or
- (d) Luring a child using a computer, system or network pursuant to NRS 201.560, if punished as a felony.

**Sec. 8.5.** NRS 200.368 is hereby amended to read as follows:

200.368 ~~Except under circumstances where a greater penalty is provided in NRS 201.540, a~~ A person who commits statutory sexual seduction shall be punished:

1. If the person is 21 years of age or older ~~for a category C felony as provided in NRS 193.130,~~ *at the time of the commission of the offense, for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.*

2. ~~For~~ *Except as otherwise provided in subsection 3, if* the person is under the age of 21 years, for a gross misdemeanor.

3. *If the person is under the age of 21 years and has previously been convicted of a sexual offense, as defined in NRS 179D.097, for a category D felony as provided in NRS 193.130.*

**Sec. 9.** NRS 200.400 is hereby amended to read as follows:

200.400 1. As used in this section:

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

(b) "Strangulation" has the meaning ascribed to it in NRS 200.481.

2. A person who is convicted of battery with the intent to commit mayhem, robbery or grand larceny is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

3. A person who is convicted of battery with the intent to kill is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years.

4. A person who is convicted of battery with the intent to commit sexual assault shall be punished:

(a) If the crime results in substantial bodily harm to the victim or is committed by strangulation, for a category A felony by imprisonment in the state prison:

(1) For life without the possibility of parole; or

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served. ~~†~~



~~→ as determined by the verdict of the jury, or the judgment of the court if there is no jury.]~~

(b) If the crime does not result in substantial bodily harm to the victim and the victim is 16 years of age or older, for a category A felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of life with the possibility of parole.

(c) If the crime does not result in substantial bodily harm to the victim and the victim is a child under the age of 16, for a category A felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of life with the possibility of parole.

↳ In addition to any other penalty, a person convicted pursuant to this subsection may be punished by a fine of not more than \$10,000.

**Sec. 10.** NRS 200.508 is hereby amended to read as follows:

200.508 1. A person who willfully causes a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect:

(a) If substantial bodily or mental harm results to the child:

(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served; or

(2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years; or

(b) If substantial bodily or mental harm does not result to the child:

(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years; or

(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for



a minimum term of not less than 2 years and a maximum term of not more than 15 years,

↳ unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.

2. A person who is responsible for the safety or welfare of a child **pursuant to NRS 432B.130** and who permits or allows that child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect:

(a) If substantial bodily or mental harm results to the child:

(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years; or

(b) If substantial bodily or mental harm does not result to the child:

(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a gross misdemeanor; or

(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category C felony and shall be punished as provided in NRS 193.130,

↳ unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.

3. A person does not commit a violation of subsection 1 or 2 by virtue of the sole fact that the person delivers or allows the delivery of a child to a provider of emergency services pursuant to NRS 432B.630.

4. As used in this section:

(a) "Abuse or neglect" means physical or mental injury of a nonaccidental nature, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child under the age of 18 years, as set forth in paragraph (d) and NRS 432B.070, 432B.100, 432B.110, 432B.140 and 432B.150, under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.





(b) "Allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that the child is abused or neglected.

(c) "Permit" means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care, custody and control of a minor child.

(d) "Physical injury" means:

(1) Permanent or temporary disfigurement; or

(2) Impairment of any bodily function or organ of the body.

(e) "Substantial mental harm" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his or her normal range of performance or behavior.

**Sec. 11.** NRS 200.604 is hereby amended to read as follows:

200.604 1. Except as otherwise provided in subsection 4, a person shall not knowingly and intentionally capture an image of the private area of another person:

(a) Without the consent of the other person; and

(b) Under circumstances in which the other person has a reasonable expectation of privacy.

2. Except as otherwise provided in subsection 4, a person shall not distribute, disclose, display, transmit or publish an image that the person knows or has reason to know was made in violation of subsection 1.

3. ~~1A~~ *Unless a greater penalty is provided pursuant to section 5 of this act, a* person who violates this section:

(a) For a first offense, is guilty of a gross misdemeanor.

(b) For a second or subsequent offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.

4. This section does not prohibit any lawful law enforcement or correctional activity, including, without limitation, capturing, distributing, disclosing, displaying, transmitting or publishing an image for the purpose of investigating or prosecuting a violation of this section.

5. If a person is charged with a violation of this section, any image of the private area of a victim that is contained within:

(a) Court records;

(b) Intelligence or investigative data, reports of crime or incidents of criminal activity or other information;

(c) Records of criminal history, as that term is defined in NRS 179A.070; and



(d) Records in the Central Repository for Nevada Records of Criminal History, is confidential and, except as otherwise provided in subsections 6 and 7, must not be inspected by or released to the general public.

6. An image that is confidential pursuant to subsection 5 may be inspected or released:

(a) As necessary for the purposes of investigation and prosecution of the violation;

(b) As necessary for the purpose of allowing a person charged with a violation of this section and his or her attorney to prepare a defense; and

(c) Upon authorization by a court of competent jurisdiction as provided in subsection 7.

7. A court of competent jurisdiction may authorize the inspection or release of an image that is confidential pursuant to subsection 5, upon application, if the court determines that:

(a) The person making the application has demonstrated to the satisfaction of the court that good cause exists for the inspection or release; and

(b) Reasonable notice of the application and an opportunity to be heard have been given to the victim.

8. As used in this section:

(a) "Broadcast" means to transmit electronically an image with the intent that the image be viewed by any other person.

(b) "Capture," with respect to an image, means to videotape, photograph, film, record by any means or broadcast.

(c) "Female breast" means any portion of the female breast below the top of the areola.

(d) "Private area" means the naked or undergarment clad genitals, pubic area, buttocks or female breast of a person.

(e) "Under circumstances in which the other person has a reasonable expectation of privacy" means:

(1) Circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of his or her private area would be captured; or

(2) Circumstances in which a reasonable person would believe that his or her private area would not be visible to the public, regardless of whether the person is in a public or private place.

**Sec. 12.** Chapter 201 of NRS is hereby amended by adding thereto a new section to read as follows:

*In a prosecution for pandering or sex trafficking pursuant to NRS 201.300, expert testimony concerning:*



***1. The prostitution subculture, including, without limitation, the effect of physical, emotional or mental abuse on the beliefs, behavior and perception of the alleged victim of the pandering or sex trafficking that is offered by the prosecution or defense is admissible for any relevant purpose, including, without limitation, to demonstrate:***

***(a) The dynamics of and the manipulation and psychological control measures used in the relationship between a prostitute and a person who engages in pandering or sex trafficking in violation of NRS 201.300; and***

***(b) The normal behavior and language used in the prostitution subculture.***

***2. The effect of pandering or sex trafficking may not be offered against a defendant pursuant to subsection 1 to prove the occurrence of an act which forms the basis of a criminal charge against the defendant.***

**Sec. 13.** NRS 201.210 is hereby amended to read as follows:

201.210 1. A person who commits any act of open or gross lewdness is guilty:

***(a) ~~For~~ Except as otherwise provided in this subsection, for the first offense, of a gross misdemeanor.***

***(b) For any subsequent offense, or if the person has previously been convicted of a sexual offense as defined in NRS 179D.097, of a category D felony and shall be punished as provided in NRS 193.130.***

***(c) For an offense committed in the presence of a child under the age of 18 years or a vulnerable person as defined in paragraph (a) of subsection 7 of NRS 200.5092, of a category D felony and shall be punished as provided in NRS 193.130.***

2. For the purposes of this section, the breast feeding of a child by the mother of the child does not constitute an act of open or gross lewdness.

**Sec. 14.** NRS 201.220 is hereby amended to read as follows:

201.220 1. A person who makes any open and indecent or obscene exposure of his or her person, or of the person of another, is guilty:

***(a) ~~For~~ Except as otherwise provided in this subsection, for the first offense, of a gross misdemeanor.***

***(b) For any subsequent offense, or if the person has previously been convicted of a sexual offense as defined in NRS 179D.097, of a category D felony and shall be punished as provided in NRS 193.130.***



*(c) For an offense committed in the presence of a child under the age of 18 years or a vulnerable person as defined in paragraph (a) of subsection 7 of NRS 200.5092, of a category D felony and shall be punished as provided in NRS 193.130.*

2. For the purposes of this section, the breast feeding of a child by the mother of the child does not constitute an act of open and indecent or obscene exposure of her body.

**Sec. 15.** NRS 201.230 is hereby amended to read as follows:

201.230 1. A person ~~who~~ *is guilty of lewdness with a child if he or she:*

*(a) Is 18 years of age or older and willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of ~~14~~ 16 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child ~~who is guilty of lewdness with a child.~~ ; or*

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

2. Except as otherwise provided in ~~subsection 3.~~ *subsections 4 and 5*, a person who commits lewdness with a child *under the age of 14 years* is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$10,000.

3. *Except as otherwise provided in subsection 4, a person who commits lewdness with a child who is 14 or 15 years of age is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000.*

4. ~~A~~ *Except as otherwise provided in subsection 5, a person who commits lewdness with a child and who has been previously convicted of:*

*(a) Lewdness with a child pursuant to this section or any other sexual offense against a child; or*



(b) An offense committed in another jurisdiction that, if committed in this State, would constitute lewdness with a child pursuant to this section or any other sexual offense against a child, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

~~4~~ **5.** *A person who is under the age of 18 years and who commits lewdness with a child under the age of 14 years commits a delinquent act.*

**6.** For the purpose of this section, “other sexual offense against a child” has the meaning ascribed to it in subsection ~~4~~ **6** of NRS 200.366.

**Sec. 16.** NRS 201.295 is hereby amended to read as follows:

201.295 As used in NRS 201.295 to 201.440, inclusive, *and section 12 of this act*, unless the context otherwise requires:

1. “Adult” means a person 18 years of age or older.
2. “Child” means a person less than 18 years of age.
3. “Induce” means to persuade, encourage, inveigle or entice.
4. “Prostitute” means a male or female person who for a fee, monetary consideration or other thing of value engages in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.
5. “Prostitution” means engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value.
6. “Sexual conduct” means any of the acts enumerated in subsection 4.
7. “Transports” means to transport or cause to be transported, by any means of conveyance, into, through or across this State, or to aid or assist in obtaining such transportation.

**Sec. 17.** NRS 201.520 is hereby amended to read as follows:

201.520 “Sexual conduct” means:

1. Ordinary sexual intercourse;
2. Anal intercourse;
3. Fellatio, cunnilingus or other oral-genital contact;
4. Physical contact by a person with the unclothed genitals or pubic area of another person for the purpose of arousing or gratifying the sexual desire of either person;
5. Penetration, however slight, by a person of an object into the genital or anal opening of the body of another person for the purpose of arousing or gratifying the sexual desire of either person;



6. Masturbation or the lewd exhibition of unclothed genitals; ~~for~~
7. Sado-masochistic abuse ~~H~~; or
8. *Any lewd or lascivious act upon or with the body, or any part or member thereof, of another person.*

**Sec. 18.** NRS 201.540 is hereby amended to read as follows:

201.540 1. Except as otherwise provided in subsection ~~H~~ 3, a person who:

- (a) Is 21 years of age or older;
- (b) Is or was employed in a position of authority by a public school or private school or is or was volunteering in a position of authority at a public or private school; and
- (c) Engages in sexual conduct with a pupil who is 16 or 17 years of age and:

- (1) Who is or was enrolled in or attending the public school or private school at which the person is or was employed or volunteering; or

- (2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer,  
→ is guilty of a category C felony and shall be punished as provided in NRS 193.130.

2. ~~Except as otherwise provided in subsection 4, a person who:~~

- ~~—(a) Is 21 years of age or older;~~
- ~~—(b) Is or was employed in a position of authority by a public school or private school or is or was volunteering in a position of authority at a public or private school; and~~
- ~~—(c) Engages in sexual conduct with a pupil who is 14 or 15 years of age and:~~

- ~~—(1) Who is or was enrolled in or attending the public school or private school at which the person is or was employed or volunteering; or~~

- ~~—(2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer,  
→ is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.~~

~~3.~~ For the purposes of ~~[subsections]~~ **subsection 1**, ~~and 2.~~ a person shall be deemed to be or have been employed in a position of authority by a public school or private school or deemed to be or have been volunteering in a position of authority at a public or private school if the person is or was employed or volunteering as:



- (a) A teacher or instructor;
- (b) An administrator;
- (c) A head or assistant coach; or
- (d) A teacher's aide or an auxiliary, nonprofessional employee who assists licensed personnel in the instruction or supervision of pupils pursuant to NRS 391.100.

~~4~~ **3.** The provisions of this section do not apply to a person who is married to the pupil.

**Secs. 19 and 20.** (Deleted by amendment.)

**Sec. 21.** NRS 48.045 is hereby amended to read as follows:

48.045 1. Evidence of a person's character or a trait of his or her character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, except:

(a) Evidence of a person's character or a trait of his or her character offered by an accused, and similar evidence offered by the prosecution to rebut such evidence;

(b) Evidence of the character or a trait of character of the victim of the crime offered by an accused, subject to the procedural requirements of NRS 48.069 where applicable, and similar evidence offered by the prosecution to rebut such evidence; and

(c) Unless excluded by NRS 50.090, evidence of the character of a witness, offered to attack or support his or her credibility, within the limits provided by NRS 50.085.

2. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

**3.** *Nothing in this section shall be construed to prohibit the admission of evidence in a criminal prosecution for a sexual offense that a person committed another crime, wrong or act that constitutes a separate sexual offense. As used in this subsection, "sexual offense" has the meaning ascribed to it in NRS 179D.097.*

**Sec. 22.** Chapter 50 of NRS is hereby amended by adding thereto the provisions set forth as sections 23 and 24 of this act.

**Sec. 23. 1.** *In any criminal or juvenile delinquency action, expert testimony offered by the prosecution or defense which concerns the behavior of a defendant in preparing a child under the age of 18 years or a vulnerable person as defined in NRS 200.5092 for sexual abuse by the defendant is admissible for any*



*relevant purpose. Such expert testimony may concern, without limitation:*

*(a) The effect on the victim from the defendant creating a physical or emotional relationship with the victim before the sexual abuse; and*

*(b) Any behavior of the defendant that was intended to reduce the resistance of the victim to the sexual abuse or reduce the likelihood that the victim would report the sexual abuse.*

*2. As used in this section, "sexual abuse" has the meaning ascribed to it in NRS 432B.100.*

**Sec. 24.** *1. In any criminal or juvenile delinquency action relating to the commission of a sexual offense, a court may not order the victim of or a witness to the sexual offense to take or submit to a psychological or psychiatric examination.*

*2. The court may exclude the testimony of a licensed psychologist, psychiatrist or clinical worker who performed a psychological or psychiatric examination on the victim or witness if:*

*(a) There is a prima facie showing of a compelling need for an additional psychological or psychiatric examination of the victim or witness by a licensed psychologist, psychiatrist or clinical worker; and*

*(b) The victim or witness refuses to submit to an additional psychological or psychiatric examination by a licensed psychologist, psychiatrist or clinical worker.*

*3. In determining whether there is a prima facie showing of a compelling need for an additional psychological or psychiatric examination of the victim or witness pursuant to subsection 2, the court must consider whether:*

*(a) There is a reasonable basis for believing that the mental or emotional state of the victim or witness may have affected his or her ability to perceive and relate events relevant to the criminal prosecution; and*

*(b) Any corroboration of the offense exists beyond the testimony of the victim or witness.*

*4. If the court determines there is a prima facie showing of a compelling need for an additional psychological or psychiatric examination of the victim or witness, the court shall issue a factual finding that details with particularity the reasons why an additional psychological or psychiatric examination of the victim or witness is warranted.*

*5. If the court issues a factual finding pursuant to subsection 4 and the victim or witness consents to an additional psychological*





*or psychiatric examination, the court shall set the parameters for the examination consistent with the purpose of determining the ability of the victim or witness to perceive and relate events relevant to the criminal prosecution.*

6. *As used in this section, "sexual offense" includes, without limitation:*

- (a) Sexual assault pursuant to NRS 200.366;*
- (b) Statutory sexual seduction pursuant to NRS 200.368;*
- (c) Battery with intent to commit sexual assault pursuant to NRS 200.400;*
- (d) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation;*
- (e) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;*
- (f) Incest pursuant to NRS 201.180;*
- (g) Open or gross lewdness pursuant to NRS 201.210;*
- (h) Indecent or obscene exposure pursuant to NRS 201.220;*
- (i) Lewdness with a child pursuant to NRS 201.230;*
- (j) Sexual penetration of a dead human body pursuant to NRS 201.450;*
- (k) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this section;*
- (l) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this section;*
- (m) Luring a child or a person with mental illness pursuant to NRS 201.560;*
- (n) An offense that is found to be sexually motivated pursuant to NRS 175.547 or 207.193;*
- (o) Pandering of a child pursuant to NRS 201.300;*
- (p) Any other offense that has an element involving a sexual act or sexual conduct with another person; or*
- (q) Any attempt or conspiracy to commit an offense listed in this subsection.*

**Sec. 25.** NRS 50.260 is hereby amended to read as follows:

50.260 As used in NRS 50.260 to 50.345, inclusive, ***and section 23 of this act***, unless the context otherwise requires, "prohibited substance" has the meaning ascribed to it in NRS 484C.080.



**Sec. 26.** NRS 432B.140 is hereby amended to read as follows:

432B.140 Negligent treatment or maltreatment of a child occurs if a child *has been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic*, has been abandoned, is without proper care, control ~~and~~ or supervision or lacks the subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.

**Sec. 27.** 1. The amendatory provisions of sections 1 to 5, inclusive, 6.5 and 11 of this act apply to an intimate image that is electronically disseminated or sold on or after October 1, 2015.

2. The amendatory provisions of section 6 of this act apply to an intimate image that is electronically disseminated or sold before, on or after October 1, 2015, if, on or after October 1, 2015, a person:

(a) Demands payment of money, property, services or anything else of value from a person in exchange for removing the intimate image from public view; or

(b) Directly or indirectly counsels, hires, commands, induces or otherwise procures another person to demand payment of money, property, services or anything else of value from a person in exchange for removing the intimate image from public view.

3. The amendatory provisions of sections 7 to 10, inclusive, 13, 14, 15, 17, 18, 19 and 26 of this act apply to an offense that is committed on or after October 1, 2015.

4. The amendatory provisions of sections 12, 16 and 20 to 25, inclusive, of this act apply to a court proceeding that is commenced on or after October 1, 2015.

5. As used in this section, "intimate image" has the meaning ascribed to it in section 3 of this act.

**Sec. 28.** (Deleted by amendment.)







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

10 MAURICE MOORE, )  
11 ) Appellant, ) CASE NO: C-17-324535-1  
12 ) ) DEPT NO: XX  
13 vs. )  
14 THE STATE OF NEVADA, ) **NOTICE OF APPEAL**  
15 ) Respondent. )  
16 )

17 NOTICE is hereby given that MAURICE MOORE, Appellant above named, hereby  
18 appeals to the Nevada Supreme Court from the District Court's decision entered in this action,  
19 the 8<sup>th</sup> day of October, 2019.

20 DATED this 10<sup>th</sup> day of October, 2019.

21 /s/ Robert M. Draskovich

22 \_\_\_\_\_  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

MAURICE MOORE, )  
Appellant, ) CASE NO: C-17-324535-1  
vs. ) DEPT NO: XX  
THE STATE OF NEVADA, )  
Respondent. )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of October, 2019, a true copy of the foregoing

**NOTICE OF APPEAL** was served upon the following:

Stacey Kollins, Esq.  
Chief Deputy District Attorney  
[stacey.kollins@clarkcountynvda.com](mailto:stacey.kollins@clarkcountynvda.com)

/s/ Erika W. Magana

\_\_\_\_\_  
Erika W. Magana,  
Employee of The Draskovich Law Group