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2 IN THE SUPREME COURT OF THE STATE OF NEVADA
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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.
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22 815 S. Casino Center Blvd.
23 Las Vegas, Nevada 89101-6718
24 (702) 474-4222
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26
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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 Drug/Alcohol Involvement 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 Ancici 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

Other Entities

Properties

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

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, ^{25-26th}

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 ^{slap} 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.

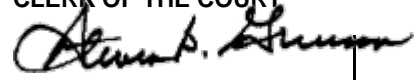
17 COUNT 6 - LEWDNESS WITH A CHILD UNDER THE AGE OF 16

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.)

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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

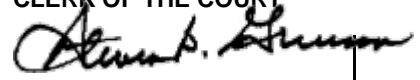
<u>DESCRIPTION</u>	<u>ADMITTED</u>
<u>STATE'S EXHIBITS:</u>	
Exhibits 1 through 101.	34
Exhibits 103 through 122.	118
Exhibit 110.	118
Exhibit 123.	113

* * * * *

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

VERBATIM DIGITAL REPORTING, LLC



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

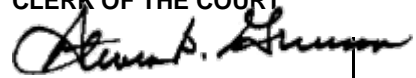
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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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.

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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 be 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)	
12)	
13)	
14)	

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

18 (Appeal From Judgment Of Conviction)

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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

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.

1
2 An Information is but a formal method of accusing a person of a crime and is not of
3 itself any evidence of his guilt.

4 In this case, it is charged in an Information that on and/or between and/or about the
5 25th day of February, 2017 and the 26th day of February, 2017, at and within the County of
6 Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made
7 and provided, and against the peace and dignity of the State of Nevada,

8 COUNT 1 - 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: fellatio, by
11 Defendant placing his penis on and/or into the mouth of A.M., against the will of A.M., or
12 under conditions in which Defendant knew, or should have known, that A.M. was mentally
13 or physically incapable of resisting or understanding the nature of Defendant's conduct.

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

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

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

22 Defendant did then and there, willfully, unlawfully and feloniously sexually assault
23 and subject A.M., a child under sixteen years of age, to sexual penetration, to wit: sexual
24 intercourse, by Defendant inserting his penis into the genital opening of A.M., against the
25 will of A.M., or under conditions in which Defendant knew, or should have known, that
26 A.M. was mentally or physically incapable of resisting or understanding the nature of
27 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.

INSTRUCTION NO. 10

1
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

1
2 Where multiple sexual acts occur as part of a single criminal encounter a defendant
3 may be found guilty for each separate or different act of sexual assault and/or lewdness.

4 Where a defendant commits a specific type of act constituting sexual assault and/or
5 lewdness, he may be found guilty of more than one count of that specific type of act of
6 sexual assault and/or lewdness if:

- 7 1. There is an interruption between the acts which are of the same specific type,
- 8 2. Where the acts of the same specific type are interrupted by a different specific type
9 of sexual assault/lewdness, or
- 10 3. For each separate object manipulated or inserted into the genital opening (which
11 includes the vagina, the labia majora, the labia minor, and the clitoris) of another.
- 12 4. For each separate object manipulated or inserted into the anal opening of another.

13 Only one sexual assault and/or lewdness occurs when a defendant's actions were of
14 one specific type of sexual assault and/or lewdness and those acts were continuous and did
15 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.

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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

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2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you 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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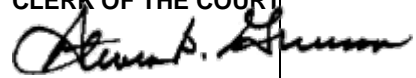
INSTRUCTION NO. 19

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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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.

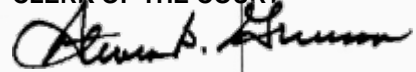
THE COURT: Thank you.

[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
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

MAURICE TERRANCE MOORE
#7039952

Defendant.

CASE NO. C-17-324535-1

DEPT. NO. XX

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1, 2, 3, and 4 –SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (Category A Felony) in violation of NRS 200.364, 200.366; and COUNTS 6 and 7 – LEWDNESS WITH A CHILD UNDER THE AGE OF 16 (Category B Felony) in violation of NRS 201.230; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNTS 6 and 7 –LEWDNESS WITH A CHILD UNDER THE AGE OF 16 (Category B Felony) in violation of NRS 201.230; thereafter, on the 8th day of October, 2019, the Defendant was present in Court with counsel ROBERT M. DRASKOVICH, ESQ., and good cause appearing,

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.
10
11

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.

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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.



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 ~~4~~ 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.)





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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 8th day of October, 2019.

20 DATED this 10th 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 10th 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
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/s/ Erika W. Magana

Erika W. Magana,
Employee of The Draskovich Law Group