

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

2                                   \_\_\_\_\_

3   GUSTAVO GUNERA-PASTRANA,   )   No. 79861

4                                   Appellant,   )

5                                   v.   )

6                                   THE STATE OF NEVADA,   )

7                                   Respondent.   )

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May 19 2020 10:44 a.m.  
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Clerk of Supreme Court

8                                   \_\_\_\_\_)

9                                   **APPELLANT'S APPENDIX VOLUME II PAGES 251-500**

10

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**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion to Suppress on for hearing before the Court on the 23<sup>rd</sup> day of January, 2017, at 8:30 AM.

DATED this 10<sup>th</sup> day of January, 2017.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

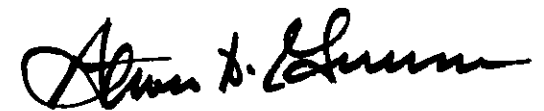
By: /s/ Kevin C Speed  
KEVIN C. SPEED, #8895  
Deputy Public Defender

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that service of the above and foregoing was made this \_\_\_\_ day of January, 2017 by Electronic Filing to:

District Attorneys Office  
E-Mail Address:  
Jaclyn.Motl@clarkcountyda.com

/s/ Anita H Harrold  
Secretary for the Public Defender's Office



CLERK OF THE COURT

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10 (702) 671-2500  
11 Attorney for Plaintiff

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

10 THE STATE OF NEVADA,  
11  
12 Plaintiff,

13 -VS-

14 **GUSTAVO ADONAY GUNERA-**  
15 **PASTRANA,**  
16 **#2697473**  
17 Defendant.

CASE NO: **C-16-318461-1**

DEPT NO: **XI**

17 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS ALL**  
18 **ORAL AND WRITTEN STATEMENTS MADE BY THE DEFENDANT**  
19 **TO DETECTIVES D. HUTH AND L. SAMPLES**

20 DATE OF HEARING: **JANUARY 23, 2017**  
21 TIME OF HEARING: **9:00 AM**

22 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
23 District Attorney, through AMY L. FERREIRA, Chief Deputy District Attorney, and hereby  
24 submits the attached Points and Authorities in Opposition to Defendant's Motion to Suppress  
25 All Oral and Written Statements Made by Defendant to Detectives D. Huth and L. Samples.

26 This Opposition is made and based upon all the papers and pleadings on file herein, the  
27 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
28 deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS PERTINENT TO THIS OPPOSITION**

3 Defendant, GUSTAVO GUNERA-PASTRANA, is charged by way of Criminal  
4 Information with the crimes of Lewdness with a Child Under the Age of 14 (Category A  
5 Felony – NRS 201.230) and Sexual Assault with a Minor Under Fourteen Years of Age  
6 (Category A Felony – NRS 200.364, 200.366). The victim is M.M., age 13. Defendant is the  
7 victim's step-father.

8 On July 12, 2016, LVMPD was notified reference the sexual abuse of the victim in this  
9 case, which occurred at multiple locations, to include 3642 Boulder Highway, #254, Las  
10 Vegas, Nevada, 89121. Officers Kravetz and Delaria responded to the listed residence where  
11 they spoke to the victim and her mother, Meili Casillas-Ortiz. The victim's mother indicated  
12 that her daughter disclosed sexual abuse by Defendant and she feared for her life and that of  
13 her family.

14 The victim told Officer Kravetz that Defendant began molesting her a year prior, by  
15 inappropriately touching her body and kissing her on the mouth. Defendant had been touching  
16 the victim's entire body, including her vagina, once a month for the past year. She recalled  
17 one occasion where Defendant dropped his pants and stuck one of his fingers inside her vagina.  
18 Defendant would sexually assault the victim while her mother was at work and they were  
19 home alone.

20 On July 11, 2016, the victim was home with Defendant and he kissed her on the mouth  
21 while attempting to touch her in an inappropriate manner. The victim was able to extricate  
22 herself from the situation but Defendant threatened, "I'll kill your mother and your brothers if  
23 you tell anyone". Later that evening, M.M. told her mother about Defendant sexually abusing  
24 her; and, that he threatened to kill all of them if she refused to have sex with him.

25 On July 12, 2016, Defendant told M.M. that she would have to have sexual relations  
26 with him when he returned from work and her mother left for work. M.M. reported what  
27 Defendant said to her mother, as she was extremely scared that she would be forced to have  
28 sexual relations with Defendant. M.M. was terrified and shaking as she explained these things

1 to Officer Kravetz. The victim's mother also indicted that she was terrified of Defendant and  
2 that he had threatened her several times in the past. She was certain that Defendant would  
3 harm her and/or the children. While officers were still present in the driveway, Defendant  
4 drove up in a truck. M.M.'s brother, Jose, was also in the truck. Defendant observed the  
5 officers and fled westbound inside the mobile home complex. Officers captured and detained  
6 Defendant prior to his leaving the area.

7 On September 30, 2016, the victim testified at a preliminary hearing of this matter.  
8 Specifically, she testified that in August 2015, she was on the living room couch and  
9 Defendant touched her vagina with his hand. PHT, p. 6. The victim had some surgery down  
10 near her belly button and Defendant told her he was going to check it. Defendant placed his  
11 hand under her clothes and rubbed her vagina with it. Defendant told the victim not to tell her  
12 mother because he would go to jail. PHT, pp. 7-8.

13 In June 2016, M.M. was in the master bedroom, sitting on the bed. Defendant came  
14 into the room and told her he was there to get her baby brother, which was a lie. Defendant  
15 told the victim to lie down and she told him no. Defendant told the victim that if she did not  
16 lie down he was going to do something to her brother. Defendant put his finger inside the  
17 victim's vagina. Defendant also put his mouth on the victim's vagina. PHT, pp. 10-11. The  
18 victim tried telling Defendant that she was on her period, even though she wasn't, in order to  
19 prevent him from touching her. Defendant told the victim that he was going to take her baby  
20 brothers away and do something bad to her brother and mom. PHT, p. 12.

21 On July 11, 2016, the victim was in the living room and Defendant told her that her  
22 time was over and she had to have sex with him. Defendant told the victim that if she did not  
23 have a sexual relationship with him he was going to kick her out of the house and because she  
24 didn't work, she was no one in the world. PHT, pp. 13-14. The victim told Defendant that  
25 she did not work because she was not old enough and that she hadn't chosen that life.  
26 Defendant told her that he chose it for her. The victim told Defendant that he was not her  
27 owner and she would listen to her mother. Defendant told her that he didn't care because she  
28 was his woman. Defendant kissed the victim, on the mouth, with his mouth and tongue. When

1 Defendant left the house the victim immediately called her mother and told her everything that  
2 had happened. The police were called the following day. PHT, pp. 14-15.

3 On June 12, 2016, at approximately 3:05 p.m., Detective D. Huth conducted an  
4 interview with Defendant, while M. Jimenez provided translation. Defendant was advised of  
5 his Miranda warnings from a LVMPD issued card. Defendant indicated that he understood  
6 his rights and agreed to speak with him and Detective L. Samples. Essentially, Defendant  
7 denied touching the victim in this case and stated that the other parties involved were lying.  
8 (Copies of Defendant's Voluntary Statement to Detective Huth and Detective Samples are  
9 attached hereto as State's Exhibit "1" and "2" respectively, for this Court's review).

10 Trial of this matter is scheduled to commence on March 13, 2017. On January 12,  
11 2017, Defendant filed a Motion to Suppress All Oral and Written Statements Made by  
12 Defendant to Detectives D. Huth and L. Samples. The State's Opposition follows.

### 13 **LEGAL ARGUMENT**

14 Before the accused's statements are brought before the jury there must be a hearing in  
15 front of the judge, outside the presence of the jury, pursuant to Jackson v. Denno, 378 U.S.  
16 368, 84 S.Ct. 1774 (1964). At the hearing, the judge hears what the suspect told the police  
17 and the circumstances under which the suspect made the statements. Then the judge decides  
18 (1) whether the statements were "voluntary" using the totality of the circumstances and (2)  
19 whether the statements were given after proper Miranda warnings, or whether Miranda was  
20 violated, or applicable. The burden to ask for such a hearing is on the defendant. *See Wilkins*  
21 *v. State*, 96 Nev. 367, 609 P.2d 309 (1980).

22 Nevada has adopted the procedure often referred to as the "Massachusetts" rule.  
23 Grimaldi v. State, 90 Nev. 89, 518 P.2d 615 (1974). If the statement was involuntary, it ceases  
24 to exist legally and cannot be used for any purpose. *See Mincey v. Arizona*, 437 U.S. 385, 98  
25 S.Ct. 2408 (1978). The prosecution has the burden of proving by a preponderance of the  
26 evidence (1) the voluntariness of a confession and (2) the waiver of a suspect's Fifth  
27 Amendment Miranda rights as being voluntary, knowingly, and intelligently made. Falcon v.  
28 State, 110 Nev. 530, 874 P.2d 772 (1994). The "totality of the circumstances" test is the

1 standard for determining voluntariness of a statement. Alward v. State, 112 Nev. 141, 912  
2 P.2d 243 (1996); Passama v. State, 103 Nev. 212, 735 P.2d 321 (1987).

3 **I. DEFENDANT WAS PROPERLY ADVISED OF HIS MIRANDA WARNINGS**

4 In this case, the Defendant was in custody at the time Detectives Huth and Samples  
5 questioned him. Prior to the interview commencing, Defendant was advised of his Miranda  
6 Warnings as follows:

7 Q. Yeah because I .....I.....you're in cuffs right here and I need ...because  
8 when anybody is in cuffs I usually have to uh...you know they're not free  
to leave...

9 Q. ....So.....

10 Q. And uh, I usually sss....tell these to everyone I interview.

11 Q. I'm gonna read these to you.

12 Q. You have the right to remain silent.

13 Q. Anything you say can be used against you in a Court of Law.

14 Q. You have the right to consult with an attorney before questioning.

15 Q. You have the right to the presence of an attorney during questioning.

16 Q. If you cannot afford an attorney one will be appointed to you before  
17 questioning.

18 Q. Do you understand these rights?

19 INT: Do you...

20 A. Yes.

21 State's Exhibit "1" (Defendant's Voluntary Statement with Detective Huth), pp. 6-7.

22 The prosecutor has the burden to prove that the waiver of a suspect's 5th Amendment  
23 Miranda rights was voluntary, knowingly and intelligently made. This burden is on the  
24 prosecution by preponderance of the evidence. Falcon v. State, 110 Nev. 530, 874 P.2d 772  
25 (1994). This is generally accomplished by demonstrating to the court that the officer advised  
26 the defendant of his Miranda rights and at the conclusion of the advisement asked the suspect  
27 if he understood his rights. An affirmative response by the suspect normally satisfies the  
28 knowingly and intelligent portion of the waiver.

1 The voluntariness prong is normally judged under a totality of the circumstances  
2 existing at the time that the rights were read to the defendant. A waiver of rights need not be  
3 expressed, i.e., the suspect need not say "I waive my Miranda rights" nor need the officer ask  
4 the suspect "do you waive your Miranda rights". It is sufficient if the officer obtains an  
5 affirmative response to the question whether the suspect understands the rights that were just  
6 read to him. *See generally Stomachic v. State*, 99 Nev. 572, 665 P.2d 804 (1983); North  
7 Carolina v. Butler, 441 U.S. 369, 99 S.Ct. 1755 (1979) (defendant refused to sign the waiver  
8 but agreed to talk to the officers. This was an adequate waiver according to the United States  
9 Supreme Court). *See also Toque v. Louisiana*, 444 U.S. 469, 100 S.Ct. 652 (1980). *See also,*  
10 Connecticut v. Barrett, 479 U.S. 523, 107 S.Ct. 828 (1987), wherein defendant agrees to make  
11 oral statements, but declines written statement.

12 In Mendoza v. State, 122 Nev. 267, 130 P.2d 176 (2006), our Nevada Supreme Court  
13 addressed the very issue raised by Defendant in this case. In rejecting Mendoza's argument  
14 that he did not explicitly state his intent to waive the right to counsel the Court held:

15 A valid waiver of rights under Miranda must be voluntary,  
16 knowing, and intelligent. *See Miranda*, 384 U.S. at 444, and 86  
17 S.Ct. 1602; *see also Floyd*, 118 Nev. at 171, and 42 P.3d at 259-  
18 60. "A waiver is voluntary if, under the totality of the  
19 circumstances, the confession was the product of a free and  
20 deliberate choice rather than coercion or improper inducement."  
21 U.S. v. Doe, 155 F.3d 1070, 1074 (9th Cir.1998) (*citing United*  
States v. Pinion, 800 F.2d 976, 980 (9th Cir.1986)) A written or  
oral statement of waiver of the right to remain silent is not  
invariably necessary. *See North Carolina v. Butler*, 441 U.S. 369,  
373, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979). Rather, a waiver may  
be inferred from the actions and words of the person interrogated.  
Id.

22 A detective read Mendoza his rights in Spanish, and Mendoza  
23 never expressed difficulty understanding the nature of his rights or  
24 the content of the subsequent questioning. Further, Mendoza never  
25 expressed a desire not to speak. A review of the totality of the  
26 circumstances reveals that Mendoza voluntarily, knowingly, and  
27 intelligently waived his Miranda rights. Given the wealth of  
evidence pointing to Mendoza's guilt, even if a Miranda violation  
occurred, any error in admitting Mendoza's un-Iridized statement  
is harmless beyond a reasonable doubt. *See Arizona v. Fulminate*,  
499 U.S. 279, 295-96, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991).

28 Id., 122 Nev. 267, 130 P.2d 176, 181-182.

1 Any assertion by Defendant that the waiver of his Fifth Amendment rights was not done  
2 in a knowing and intelligent manner is flawed and must fail on its face, as the defendant's  
3 waiver is implicit in the transcript of his voluntary statement. Moreover, Defendant's argument  
4 is not supported by the law. Clearly, Defendant's statements were the product of his own free  
5 will and his own rational choice and are therefore voluntarily given and should not be  
6 suppressed.

7 **II. DEFENDANT'S STATEMENT WAS FREELY AND VOLUNTARILY GIVEN**  
8 **AND MUST NOT BE SUPPRESSED**

9 "A confession is admissible only if it is made freely and voluntarily, without  
10 compulsion or inducement." Passama v. State, 103 Nev. 212, 213, 735 P.2d 321, 322 (1987)  
11 (*citing* Franklin v. State, 96 Nev. 417, 610 P.2d 732 (1980). A confession is voluntary if it is  
12 the product of a "rational intellect and a free will." Blackburn v. Alabama, 361 U.S. 199, 208,  
13 80 S.Ct. 274, 280 (1960). "To determine the voluntariness of a confession, the court must  
14 consider the effect of the totality of the circumstances on the will of the defendant. (Citation  
15 omitted). The question in each case is whether the defendant's will was overborne when he  
16 confessed." Passama, 103 Nev. at 214, 735 P.2d at 323. In Passama, the Nevada Supreme  
17 Court, *citing* Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041 (1973), delineated the  
18 following factors to be considered when evaluating the voluntariness of a confession:

19 the youth of the accused; his lack of education or his low  
20 intelligence; the lack of any advice of constitutional rights; the  
21 length of detention; the repeated and prolonged nature of  
questioning; and the use of physical punishment such as the  
deprivation of food or sleep.

22 Id. at 323.

23 In Harte v. State, 116 Nev. 1054, 1062, 13 P.3d 420, 426 (2000), the Nevada Supreme  
24 Court explained that "the validity of a waiver of Fifth Amendment rights must be determined  
25 in each case based on the particular facts and circumstances presented including the  
26 background, experience, and conduct of the accused," (quoting Anderson v. State, 109 Nev.  
27 1129, 1133, 865 P.2d 318, 320 (1993)). Moreover, coercive police activity is a necessary  
28 predicate to finding that a confession is not voluntary within the meaning of the due process

1 clause of the Fourteenth Amendment. Colorado v. Connelly, 479 U.S. 157, 107 S. Ct. 515  
2 (1986).

3 Absent coercive police activity, the defendant's subjective state of mind does not render  
4 a confession involuntary. Mere examination of the confessor's state of mind can never  
5 conclude the due process inquiry. "Absent police conduct causally related to the confession,  
6 there is simply no basis for concluding that any state actor has deprived a criminal defendant  
7 of due process of law." Id., 107 S. Ct. at 520. In other words, "coercive police activity is a  
8 necessary predicate to the finding that a confession is not 'voluntary' within the meaning of  
9 the Due Process Clause of the Fourteenth Amendment." Id. at 167, 107 S. Ct at 522.

10 A confession is admissible only if it is made freely and voluntarily, without compulsion  
11 or inducement. Passama v. State, 103 Nev. 212, 213, 735 P.2d 321 (1987), citing Franklin v.  
12 State, 96 Nev. 417, 421, 610 P.2d 732, 734-735 (1980). In order to be voluntary, a confession  
13 must be the product of a "rational intellect and a free will." Blackburn v. Alabama, 361 U.S.  
14 199, 208, 80 S. Ct. 274 (1960). A confession is involuntary whether coerced by physical  
15 intimidation or psychological pressure. Passama, supra, citing Townsend v. Sain, 372 U.S.  
16 293, 307, 83 S. Ct. 745 (1963).

17 A confession may also be rendered inadmissible if it is the result of promises which  
18 impermissibly induce the confession. Passama, supra; Franklin v. State, 96 Nev. 417, 421,  
19 610 P.2d 732 (1980). To determine the voluntariness of a confession, the court must consider  
20 the effect of the totality of the circumstances on the will of the defendant. Passama, supra,  
21 citing Schneckloth v. Bustamonte, 412 U.S. 218, 226-227, 93 S. Ct. 2041 (1973). Factors to  
22 be considered include: the youth of the accused; his lack of education or his low intelligence;  
23 the lack of any advice of constitutional rights; the length of detention; the repeated and  
24 prolonged nature of questioning; and the use of physical punishment such as the deprivation  
25 of food or sleep. Id. at 226, 2047. Each confession situation should be evaluated according  
26 to its particular facts and circumstances." Rowbottom v. State, 105 Nev. 472, 482, 779 P.2d  
27 934, 941 (1989).

1 In Passama, Sheriff Miller told Passama that he would tell the prosecutor if Passama  
2 cooperated. This can be a permissible tactic. United States v. Tingle, 658 F.2d 1332, 1336, n.  
3 4 (9th Cir.1981). He also told Passama he would go to the D.A. and see Passama went to  
4 prison if he was not entirely truthful. It is not permissible to tell a defendant that his failure to  
5 cooperate will be communicated to the prosecutor. Tingle, 658 F.2d at 1336, n. 5.  
6 Specifically, Sheriff Miller told Passama: "...don't sit there and lie to me, 'cause if you're  
7 lying to me I'll push it and I'll see that you go to prison." He further told Passama: "...if you  
8 don't lie to me, I'll help you, but if you lie I'll tell the D.A. to go all the way." Passama at  
9 215, 324.

10 On the other hand, in Franklin v. State, 96 Nev. 417, 610 P.2d 732 (1980), the Nevada  
11 Supreme Court held that promises by a detective to release a defendant on his own  
12 recognizance if he cooperated with authorities in another state and to recommend a lighter  
13 sentence did not render the defendant's confession involuntary. Id.

14 Similarly, in Elvik v. State, 114 Nev. 883, 965 P.2d 281 (1998), the Nevada Supreme  
15 Court held that the defendant's confession was not involuntary or coerced. Throughout the  
16 interrogation, Elvik claimed that he did not remember shooting the victim, and despite Elvik's  
17 insistence, the officers repeatedly stated that Elvik did remember and attempted to persuade  
18 Elvik to discuss the incident. They even suggested that his girlfriend and his mother would  
19 want him to tell the truth and told him that things would be better for him in the future if he  
20 would tell the truth. Id. at 892, 287.

21 A police officer may speculate as to whether cooperation will benefit a suspect or help  
22 in granting leniency, including leniency granted by a prosecutorial authority. However, a law  
23 enforcement agent may not threaten to inform a prosecutor of a suspect's refusal to cooperate.  
24 United States v. Harrison, 34 F.3d 886, 891 (1994); United States v. Leon Guerrero, 847 F.2d  
25 1363, 1366 (1988); Martin v. Wainwright, 770 F.2d 918, 924-27 (11th Cir. 1985). In United  
26 States v. Brandon, 633 F.2d 773, 777 (1980), the Court held that a law enforcement agent may  
27 bring attention to the United States Attorney of the Defendant's willingness to cooperate in  
28 hopes that leniency would be granted.

1 As the United States Supreme Court commented in Schneckloth v. Bustamonte, 412  
2 U.S. 218, 224-25 (1973):

3 If the test was whether a statement would not have been made but for the law  
4 enforcement conduct, virtually no statement would be deemed voluntary because few people  
5 give incriminating statements in the absence of some kind of official action.

6 The Nevada Supreme Court has ruled that a defendant's statement is not deemed  
7 involuntary when made as a result of police misrepresentations. In Sheriff v. Bessey, 112 Nev.  
8 322, 914 P.2d 618 (1996), the Supreme Court reversed a pre-trial petition for a writ of habeas  
9 corpus where the District Court found that the Detective had improperly fabricated evidence  
10 and ruled that the defendant's inculpatory statements should have been suppressed and  
11 dismissed the information. The District Court objected to the fact that during questioning, the  
12 defendant denied engaging in any sexual acts with the victim. The police officer asked the  
13 defendant if he could explain why scientific testing determined that the defendant's semen was  
14 present on the couch of the apartment where the sexual acts allegedly occurred. "The actual  
15 analysis was negative, but the officer presented Bessey with a false crime lab report, which  
16 the officer had prepared. Bessey then made a number of inculpatory statements." Id.

17 The Bessey court recognized that under Passama it is a totality of the circumstances  
18 test to determine whether a confession was voluntary. Police deception was a relevant factor  
19 in determining whether the confession was voluntary; "however, an officer's lie about the  
20 strength of the evidence against the defendant, in itself, is insufficient to make the confession  
21 involuntary." Id. (citing Holland v. McGinnis, 963 F.2d 1044, 1051 (7th Cir. 1992), *cert.*  
22 *denied*, 113 S.Ct. 1053 (1993)). Further, "cases throughout the country support the general  
23 rule that confessions obtained through the use of subterfuge are not vitiated so long as the  
24 methods used are not of a type reasonably likely to procure an untrue statement." Id.

25 The Bessey court noted that lying to a suspect about a co-defendant's statement is  
26 insufficient to render a suspect's subsequent statement involuntary. Id. (citing Frazier v. Kupp,  
27 394 U.S. 731 (1969)). Moreover, lying to a suspect regarding the suspect's connection to the  
28 crime is "the least likely to render a confession involuntary". Id. (citing Holland, *supra.*)

1       Such misrepresentations, of course, may cause a suspect to confess, but causation alone  
2 does not constitute coercion; if it did, all confessions following interrogations would be  
3 involuntary because “it can almost be said that the interrogation caused the confession.” Citing  
4 Miller v. Fenton, 796 F.2d 598, 605 (3rd Cir.), *cert. denied*, 107 S.Ct. 585 (1986). Thus, the  
5 issue is not causation, but the degree of improper coercion, and in this instance the degree was  
6 slight. Id.

7       The Bessey court recognized that many of the investigatory techniques designed to  
8 elicit incriminating statements often involve some degree of deception.

9               Several techniques which involve deception include under-cover  
10 police officers, sting operations, and interrogation techniques such  
11 as offering false sympathy, blaming the victim, minimizing the  
12 seriousness of the charge, using a good cop/bad cop routine, or  
13 suggesting that there is sufficient evidence when there is not. As  
long as the techniques do not tend to produce inherently unreliable  
statements or revolt our sense of justice, they should not be  
declared violative of the United States or Nevada Constitutions.  
Id.

14 (Emphasis added).

15       Upon review of the record in this case, there is nothing in the transcript that suggests  
16 Defendant’s statement was anything other than freely and voluntarily given. Furthermore,  
17 Defendant did not confess. A thorough reading of each of Defendant’s statements reveals that  
18 he spoke with Detective Huth for approximately 57 minutes, from 3:03 p.m. until 4:00 p.m.  
19 During the entire interview Defendant had no problem answering the questions being asked  
20 of him and repeatedly denied touching the victim in this case. Afterward, Detective Samples  
21 interviewed the Defendant. Detective Samples’ interview of the Defendant was also brief;  
22 less than 100 pages transcribed; and, Defendant continued to deny any wrongdoing throughout  
23 it.

24       The record reflects that Defendant did have some water to drink during the brief  
25 interviews. The record further reflects that although an interpreter was present during the  
26 interviews, Defendant had a solid command of the English language being interpreted into  
27 Spanish for him. As for the good cop/bad cop tactics employed by the Detectives in this case,  
28 they did nothing to produce inherently unreliable statements by this Defendant. In fact, the

1 more they pushed, the more adamant Defendant became about his innocence.

2 Finally, Defendant provides absolutely no facts which support his argument that his  
3 statements to Detectives Huth and Samples were involuntarily given. Moreover, at no time  
4 during the interview did Defendant ever come close to admitting that he inappropriately  
5 touched the victim in this case. In fact, Defendant unequivocally denied the allegations.

6 **CONCLUSION**

7 Based upon the above and foregoing Points and Authorities, the State requests  
8 Defendant's Motion to Suppress All Oral and Written Statements Made by the Defendant to  
9 Detectives D. Hutch and L. Samples be DENIED.

10 DATED this 19th day of January, 2017.

11 Respectfully submitted,

12 STEVEN B. WOLFSON  
13 Clark County District Attorney  
Nevada Bar #001565

14  
15 BY /s/ AMY L. FERREIRA  
16 AMY L. FERREIRA  
17 Chief Deputy District Attorney  
18 Nevada Bar #010347  
19

20 **CERTIFICATE OF SERVICE**

21 I hereby certify that service of the above and foregoing was made this 19th day of  
22 January, 2017, to:

23 KEVIN SPEED, DPD  
24 harrolah@ClarkCountyNV.gov

25  
26 BY /s/ HOWARD CONRAD  
27 Secretary for the District Attorney's Office  
Special Victims Unit

28 hjc/SVU

  
CLERK OF THE COURT

1 ORDR  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 KEVIN C. SPEED, DEPUTY PUBLIC DEFENDER  
5 NEVADA BAR NO. 8895  
6 **PUBLIC DEFENDERS OFFICE**  
7 309 South Third Street, Suite 226  
8 Las Vegas, Nevada 89155  
9 Telephone: (702) 455-4685  
10 Facsimile: (702) 455-5112  
11 speedkc@co.clark.nv.us  
12 *Attorneys for Defendant*

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

13 THE STATE OF NEVADA, )  
14 )  
15 Plaintiff, )  
16 )  
17 v. )  
18 )  
19 GUSTAVO ADONAY GUNERA-PASTRANA, )  
20 )  
21 Defendant, )  
22 )

CASE NO. C-16-318461-1  
DEPT. NO. I

**ORDER FOR THE RELEASE OF CONFIDENTIAL RECORDS TO THE  
EIGHTH JUDICIAL DISTRICT COURT - CLARK COUNTY, NEVADA**

23 THIS MATTER having come before the Court on February 23, 2017,  
24 the Defendant being present, KEVIN C. SPEED, Chief Deputy Public Defender,  
25 the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney,  
26 through JENNIFER CLEMONS, Chief Deputy District Attorney, and the Court  
27 having heard the arguments of counsel and good cause appearing therefore, that  
28 certain evidence in Case No. C318461, held in the custody of THE LAS VEGAS  
METROPOLITAN POLICE DEPARTMENT ("LVMPD") and/or the LVMPD  
RECORDS DIVISION and/or the LVMPD "BWC" Manager needs to be released  
under seal for the purpose of an in camera inspection by the Court for the above  
referenced case.


IT IS HEREBY ORDERED that the evidence in the custody of THE  
LAS VEGAS METROPOLITAN POLICE DEPARTMENT ("LVMPD") and/or  
the LVMPD RECORDS DIVISION and/or the LVMPD "BWC" Manager,

1 consisting of: any officer BODY-WORN CAMERA (BWC) footage depicting the  
2 arrest and apprehension of the Defendant, named above, in LVMPD event number  
3 160712-1162, including any extant "BWC" footage captured on 11 July, 2016.  
4 Such footage is to be reproduced in unredacted form onto compact disc format and  
5 immediately delivered under seal to:

6 Judge Kenneth C. Cory – District Court Department I  
7 Regional Justice Center  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155

10 such evidence having been deemed necessary for the determination of an issue  
11 currently before this Court.

12 DATED 3 day of February, 2017.

13   
14 DISTRICT COURT JUDGE

15 Submitted by:

16 PHILIP J. KOHN  
17 CLARK COUNTY PUBLIC DEFENDER

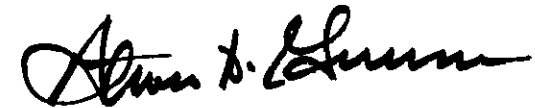
18  
19 By 

20 KEVIN C. SPEED, #8895  
21 Deputy Public Defender

22  
23  
24  
25 Case Name: Gustavo Adonay Gunera-Pastrana

26 Case No.: C-16-318461-1

27 Dept. No.: 1  
28



CLERK OF THE COURT

1 ORDR  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 KEVIN C. SPEED, DEPUTY PUBLIC DEFENDER  
5 NEVADA BAR NO. 8895  
6 **PUBLIC DEFENDERS OFFICE**  
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11 speedkc@co.clark.nv.us  
12 *Attorneys for Defendant*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 THE STATE OF NEVADA, )

16 Plaintiff, )

17 v. )

18 GUSTAVO ADONAY GUNERA-PASTRANA, )

19 Defendant, )

CASE NO. C-16-318461-1

DEPT. NO. 1

20 **ORDER**

21 THIS MATTER having come before the Court on 18 January, 2017, and good  
22 cause appearing therefor,

23 IT IS HEREBY ORDERED that the Defendant's Motion for Discovery shall be  
24 GRANTED IN PART as follows:

25 1) as to **Item(s) Number 1** – *“The complete Clark County School District student files for M.M.*  
26 *(DOB: 12/5/2002), these records are to include any and all disciplinary reports and records*  
27 *maintained at each individual elementary and middle school that M.M. has attended in the CCSD”* –  
28 the motion is **DENIED**, with the Defendant being directed to serve any necessary  
subpoenas upon the Clark County School District;

2) as to **Item(s) Number 2** – *“Any and all information from the Clark County Department of Family*  
*Services - CPS (Child Protective Services) Division including memoranda, reports, UNITY notes,*  
*pleadings, certificates, letters, e-mails, interview transcripts, specialists' notes, voluntary statements*  
*(oral and written) concerning: “M.M.”, all information to be provided in un-redacted form to the*  
*Court for review in chambers and dissemination to the District Attorney and defense counsel”* – the

1 motion is GRANTED, with the Defendant also being directed to serve any necessary  
2 subpoenas upon the Department of Family Services - CPS;

3 3) as to **Item(s) Number 3** – *“Any LVMPD records, photographs, investigative notes, all audio*  
4 *recordings, and video recordings for Event Number(s) 160712-1162”* – the motion is  
5 GRANTED;

6 4) as to **Item Number 4** – *“Any and all records or information concerning financial benefits, fees,*  
7 *reimbursement for travel expenses and/or any payments for rent or other services provided to Meili*  
8 *Casillas-Ortiz or to M.M. by the Clark County District Attorney’s office, the Clark County Victim*  
9 *Witness Advocacy Center, the Department of Family Services (CPS), or any other state or county*  
10 *governmental agency”* – the motion is GRANTED, with the State also being directed to  
11 inquire with the family of the complaining witness concerning the receipt of any  
12 counseling services either provided by the District Attorney’s office, the Victim  
13 Witness Advocacy Center or any other assistance agency, counseling services  
14 received from providers referred by the District Attorney’s office, the VWAC or any  
15 other assistance agency or private provider counseling services, and to disclose  
16 confirmation or denial of receipt of said services to the Defendant’s counsel;

17 5) as to **Item Number 5** – *“Evidence, to include any DNA analyses and/or medical reports, related*  
18 *to any medical or forensic examinations conducted on the person of the Defendant by LVMPD officers,*  
19 *detectives or staff, or by police department personnel at the Clark County Detention Center, and any*  
20 *SANE exam reports or other medical records created in the course of the investigation of the*  
21 *allegations in the instant case”* – the motion is GRANTED;

22 6) as to **Item(s) Number 6** – *“Recordings of any intercepted telephone communications (“jail*  
23 *calls”) between the Defendant and any party where Mr. Pastrana is speaking on telephones in the*  
24 *Clark County Detention Center”* – the motion is GRANTED;

25 7) as to **Item(s) Number 7** – *“Copies of any intercepted written communication alleged to have*  
26 *been made by Mr. Pastrana at any time during his incarceration at the Clark County Detention*  
27 *Center”* – the motion is GRANTED;

1 8) as to Item(s) Number 8 -- "The Defendant asks that this Court execute Certificate(s) of  
2 Materiality for the purpose of obtaining documents that may exist and/or are held outside the  
3 Court's physical jurisdiction in discovery pursuant to NRS 174.425(1), Nevada's Uniform Act to  
4 Secure the Attendance of Witnesses From Without a State in Criminal Proceedings" -- the motion  
5 is GRANTED. *Daniel K*

6 DATED *Feb* day of *February*, 2017.

7  
8 *Kenneth C. Cory*  
9 *Kenneth C. Cory*  
DISTRICT COURT JUDGE

10 Submitted by:

11 PHILIP J. KOHN

12 CLARK COUNTY PUBLIC DEFENDER

13  
14 By *[Signature]*

15 KEVIN C. SPEED, 38895

16 Deputy Public Defender

17  
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20  
21  
22  
23  
24 Case Name: Gustavo Adonay Gunera-Pastrana

25 Case No.: C-16-318461-1

26  
27 Dept. No.: I

ORIGINAL

Electronically Filed  
5/31/2017 10:13 AM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

1 **EXMT**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 AMY FERREIRA  
6 Chief Deputy District Attorney  
7 Nevada Bar #010347  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 THE STATE OF NEVADA,  
15  
16 Plaintiff,

17 -vs-

18 **GUSTAVO ADONAY GUNERA-**  
19 **PASTRANA,**  
20 **#2697473**  
21 Defendant.

CASE NO. **C-16-318461-1**

DEPT NO. **I**

22 **EX PARTE MOTION and ORDER FOR**  
23 **RELEASE OF CPS/DFS RECORDS**

24 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
25 District Attorney, through AMY FERREIRA, Chief Deputy District Attorney, and moves this  
26 Honorable Court for an Order Releasing evidence which includes protected information being  
27 held by CPS/DFS consisting of any and all records for SUBJECT MINOR: MEILY MORAN,  
28 DOB: 12/05/2002, to be released to a representative of the DISTRICT ATTORNEY'S  
OFFICE, UNDER SEAL, and submitted to this Court for in camera inspection, for the purpose  
of prosecuting the above referenced case charging the crime of LEWDNESS WITH A CHILD  
UNDER THE AGE OF 14 (Category A Felony - NRS 201.230 - NOC 50975) and SEXUAL  
ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony -  
NRS 200.364, 200.366 - NOC 50105).

1 Movant represents that the information sought is relevant and material to a legitimate  
2 law enforcement inquiry; that the request is specific and limited in scope to the extent  
3 reasonably practicable in light of the purpose for which the information is sought; and that de-  
4 identified information could not reasonably be used.

5 **ORDER**

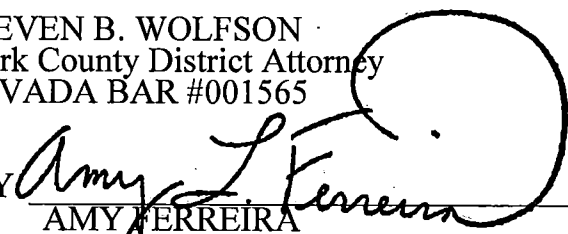
6 Upon the ex parte application and representation of STEVEN B. WOLFSON, Clark  
7 County District Attorney, by and through AMY FERREIRA, Chief Deputy District Attorney,  
8 that certain records containing protected information are necessary for the prosecution of the  
9 above-captioned criminal case are being held in the custody of CPS/DFS, and with GOOD  
10 CAUSE APPEARING, CPS/DFS shall release to a representative of the DISTRICT  
11 ATTORNEY'S OFFICE, UNDER SEAL, any and all medical records concerning diagnosis,  
12 prognosis, and/or treatment of MEILY MORAN, whose date of birth is 12/05/2002, which are  
13 TO BE DELIVERED DIRECTLY TO THIS COURT'S CHAMBERS.

14 **IT IS HEREBY ORDERED.**

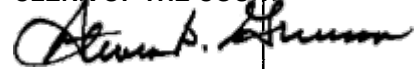
15 DATED this 24 day of May, 2017.

16  
17   
18 DISTRICT JUDGE

19 STEVEN B. WOLFSON  
20 Clark County District Attorney  
21 NEVADA BAR #001565

22 BY   
23 AMY FERREIRA  
24 Chief Deputy District Attorney  
25 Nevada Bar #010347

26  
27  
28 hjc/SVU



PHILIP J. KOHN, PUBLIC DEFENDER  
NEVADA BAR NO. 0556  
KEVIN C. SPEED, DEPUTY PUBLIC DEFENDER  
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speedkc@co.clark.nv.us  
*Attorneys for Defendant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

GUSTAVO ADONAY  
GUNERA-PASTRANA,

Defendant,

CASE NO. C-16-318461-1

DEPT. NO. I

DATE: January 8, 2018  
TIME: 9:00 a.m.



**MOTION IN LIMINE**

**(For an Order Excluding Impermissible Evidence)**

COMES NOW, the Defendant, GUSTAVO GUNERA-PASTRANA, by and through  
KEVIN C. SPEED, Chief Deputy Public Defender, and hereby requests that this Court enter an  
Order excluding any argument by the State:

- 1) or testimony dealing with any alleged domestic violence or spousal abuse  
committed by the Defendant against his estranged wife, Meili Casillas-  
Ortiz;
- 2) or testimony that reveals the Defendant's immigration or US residency  
status;

/ / / /

/ / / /

/ / / /

/ / / /

1 This Motion is made and based upon all the papers and pleadings on file herein, the  
2 attached Statement of Facts, Memorandum of Law and oral argument at the time set for hearing  
3 this Motion.

4 DATED this 20<sup>th</sup> day of December, 2017.

5 PHILIP J. KOHN  
6 CLARK COUNTY PUBLIC DEFENDER

7  
8 By: /s/ Kevin C. Speed  
9 KEVIN C. SPEED, #8895  
10 Deputy Public Defender  
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1 **Facts**

2 The Defendant, *Gustavo Gunera-Pastrana* (hereinafter, “Gustavo,” or “Mr.  
3 Pastrana”), is charged with two counts of Lewdness with a Child Under the Age of 14 (NRS  
4 201.230), and two counts of Sexual Assault with a Minor Under 14 Years of Age (NRS  
5 200.366). The complaining witness is “M.M.,” Gustavo’s step-daughter, and the biological  
6 daughter of Gustavo’s common-law wife, Meili Castillas-Ortiz, the mother of Gustavo’s two  
7 young children. M.M. has falsely claimed that Gustavo engaged in an on-going pattern of sexual  
8 abuse, molestation and mistreatment against her since approximately the summer of 2015. The  
9 Defendant has entered pleas of not guilty to all of the charges against him and trial is set before  
10 this court on 22 January, 2018.

11 **Law**

12 In the present case, the State may attempt to introduce evidence, through any  
13 number of previously listed or as of yet unnamed witnesses, that the Defendant, Gustavo Gunera-  
14 Pastrana 1) has committed acts of domestic abuse against his estranged wife, Meili Casillas-  
15 Ortiz; and 2) that he may not be a lawful US resident. Any testimony regarding these allegations,  
16 all meant to serve no legitimate purpose other than to further scandalize Mr. Gunera-Pastrana’s  
17 name, will create an unfairly prejudicial impression in the minds of the trier of fact that suggests  
18 that because Mr. Gunera-Pastrana is said to have abused his adult wife, or that because he is an  
19 “illegal alien,” he is a “...bad hombre” who is predisposed to commit crimes because of his  
20 heritage and/or national origin and who is more than likely guilty of the crimes he is accused of  
21 committing in the instant case. Such species of evidence must be excluded as they are irrelevant  
22 to the charges of sexual assault and lewdness with a child and even if this Court finds that the  
23 evidence may be of some minute probative value, that value is substantially outweighed by the  
24 danger of unfair prejudice, confusion of the issues, or of misleading the jury.

1           **I)     NRS 48.025 states:**

2           Evidence which is not relevant is not admissible.

3     Mr. Gunera-Pastrana has been charged with multiple sexual offenses against his wife's  
4     biological daughter, M.M. Whether the Defendant committed other crimes, acts or wrongs  
5     amounting to domestic violence against Ms. Casillas-Ortiz, or whether he is a lawful US resident  
6     - have absolutely no bearing upon the truth or falsity of the claims that M.M. has made against  
7     him.

8           **II)     No proper *Petrocelli* hearing.**

9           The State has not offered any legal basis for the introduction of this evidence in the way  
10     of a properly argued *Petrocelli* hearing. *Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985);  
11     also see, *Rhymes v. State*, 107 P.3d 1278 (Nevada, 2005). NRS 48.045(2) prohibits the  
12     introduction of evidence of other crimes, wrongs, or acts as proof of a person's character, but  
13     allows such evidence to prove motive, opportunity, intent, preparation, plan, knowledge, identity  
14     or absence of mistake or accident. While such evidence may be admitted for these limited  
15     purposes, the Nevada Supreme Court has often looked upon the admission of bad act evidence  
16     with disfavor because the evidence is often irrelevant and prejudicial, and it forces a defendant to  
17     defend against vague and unsubstantiated charges. For these reasons, such evidence is presumed  
18     to be inadmissible and the State bears the burden of requesting the admission of the evidence and  
19     establishing its admissibility. To accomplish this task, the State must demonstrate, at a hearing  
20     outside the presence of the jury, that: "(1) the incident is relevant to the crime charged; (2) the act  
21     is proven by clear and convincing evidence; and (3) the probative value of the evidence is not  
22     substantially outweighed by the danger of unfair prejudice." *Richmond v. State*, 118 Nev. 924,  
23     932, 59 P.3d 1249, 1255 (2002) (quoting *Tavares v. State*, 117 Nev. 725, 730, 30 P.3d 1128,  
24     1131 (2001)). *Tavares*, 117 Nev. at 731, 30 P.3d at 1131. *Tinch v. State*, 113 Nev. 1170, 1176,  
25     946 P.2d 1061, 1064-65 (1997).

26           In this case, the State has not sought to prove by clear and convincing evidence that the  
27     allegations of domestic abuse or of illegal residency status are in any way connected to alleged  
28

1 acts of sexual abuse that were only recently disclosed under the most suspicious of  
2 circumstances.

3 **III) Probative value outweighed by unfair prejudice.**

4 NRS 48.035 states:

5 Although relevant, evidence is not admissible if its probative value is  
6 substantially outweighed by the danger of unfair prejudice, of confusing  
the issues, or of misleading the jury.

7 Counsel for the Defendant anticipates that the State will argue that, "...any testimony about (the  
8 alleged domestic abuse or the Defendant's residency status) will not be offered for their truth. It  
9 goes to [fill in the blank with any of the 48.045 "non-propensity" purpose allowances]." The  
10 defense asserts that the jury need not hear any of the facts or circumstances relating to any bad  
11 acts or any evidence tangentially related to these anticipated areas of improper testimony to reach  
12 a proper determination of innocence in the present case. Also, it would be unfair to confuse the  
13 jury with irrelevant testimony regarding collateral details pertaining to uncharged acts or arrests  
14 that have not been shown to be related to the present charge. Clearly, any effort to cast Mr.  
15 Gunera-Pastrana as a "...dangerous illegal" or "...wife-beater" would create an atmosphere so  
16 prejudicial as to render a trial on the merits of the State's case a useless exercise. The State's  
17 witnesses do not need to mention anything about the alleged abuse or Mr. Gunera-Pastrana's  
18 immigration status in order to relate M.M.'s baseless allegations to the jury and any attempt to do  
19 so would be tantamount to the State attempting to tell the "complete story of crime" with  
20 information not closely related to the alleged acts in controversy. *Bellon v. State*, 117 P.3d 176  
21 (Nevada, 2005).

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1 **CONCLUSION**

2 Because any testimony or argument related to the alleged acts discussed above are  
3 irrelevant and would be substantially more prejudicial than probative of the ultimate issue in  
4 controversy, the State must not be allowed to raise any argument or elicit any testimony about  
5 the Defendant's alleged domestic abuse of his wife or his immigration status in its case in chief  
6 or as impeachment evidence.

7 DATED this 19<sup>th</sup> day of December, 2017.

8 PHILIP J. KOHN  
9 CLARK COUNTY PUBLIC DEFENDER

10 By /s/ Kevin C. Speed  
11 KEVIN C. SPEED, #8895  
12 Deputy Public Defender  
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**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion in Limine on for hearing before the Court on the 8<sup>th</sup> day of January, 2018, at 9:00 AM. In Department 1 of the District Court.

DATED this 19th day of December, 2017.

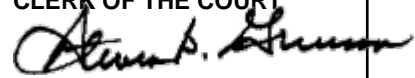
PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Kevin C. Speed  
KEVIN C. SPEED, #8895  
Deputy Public Defender

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that service of the above and forgoing Motion in Limine as served via electronic e-filing to the Clark County District Attorney's Office at [motions@clarkcountydak.com](mailto:motions@clarkcountydak.com) on this 20<sup>th</sup> day of December, 2017.

By: /s/ Annie McMahan  
An employee of the  
Clark County Public Defender's Office



**SLOW**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**SANDRA K. DIGIACOMO**  
Chief Deputy District Attorney  
Nevada Bar #006204  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

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

THE STATE OF NEVADA,

Plaintiff,

-VS-

**GUSTAVO ADONAY GUNERA-PASTRANA,**  
**#2697473**

Defendant.

CASE NO: **C-16-318461-1**

DEPT NO: **XXVIII**

**STATE'S SUPPLEMENTAL NOTICE OF WITNESSES**  
**AND/OR EXPERT WITNESSES**  
**[NRS 174.234]**

**TO: GUSTAVO ADONAY GUNERA-PASTRANA, Defendant; and**

**TO: KEVIN SPEED, Deputy Public Defender, Counsel of Record:**

**YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the STATE OF  
NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief:

**\*indicates additional witness(es) and/or modification(s)**

**\*ASHENFELTER, DEBBIE; c/o CCDA Investigations**

**\*CARNELL, CRISTEN; c/o CCDA Investigations**

**\*CETL, DR SANDRA; c/o CCDA's Office; Dr. Cetl will be called as a medical expert**  
in the field of pediatric sexual and physical abuse based on her training, experience and any  
research. Dr. Cetl will testify regarding the procedure for medical and SCAN exams on  
pediatric patients who present to the hospital or the Southern Nevada Children's Assessment

Center with complaints of sexual abuse, including the nature, process, and possible medical diagnoses involved in completing a SCAN. This testimony will necessarily include the body's physical processes and what would contribute or take away from physical findings on a patient reporting sexual abuse, including, but not limited to, the passage of time, the healing process of the body, the potential or lack of potential injuries based on the type of sexual contact disclosed.

COR or Designee; CCDC

COR or Designee; LVMPD COMMUNICATIONS

COR or Designee; LVMPD RECORDS

DELARIA, D.; LVMPD #13338

\*DRANSFIELD, W.; LVMPD #10052

EISEN, TIFFANY; c/o CPS/DFS, 701 N. Pecos Rd., LVN

\*ESPINOZA, ELIZABETH; CPS/DFS; may be called to testify about the methodology, process, purpose, and limitations of forensic and victim interviews, including research regarding forensic interviews, as well as child development, memory, suggestibility, and/or deviations from the forensic interview, as it relates to her training and experience, as well as the interview(s) completed in this case.

HUTH, D.; LVMPD #8543

J.M.; c/o CCDA-SVU/VWAC

JIMENEZ, M.; LVMPD #13257

\*KEITH, TIFFANY; c/o CPS/DFS, 701 N. Pecos Rd., LVN

\*KNEPP, ELAINE; c/o CCDA Investigations

KRAVETZ, M.; LVMPD #15346

\*LANKFORD, REBECCA; c/o SNCAC

\*LARSON, R.; LVMPD #15366

M.C.O.; c/o CCDA-SVU/VWAC

M.M.; c/o CCDA-SVU/VWAC

\*MENDOZA-PONCE, ADRIANA; c/o CPS/DFS, 701 N. Pecos Rd., LVN

1           \*RAPELA, MARCELO; c/o CCDA Investigations

2           \*RUSSO, MARABETH; c/o CPS/DFS, 701 N. Pecos Rd., LVN

3           SAMPLES, L.; LVMPD #9354

4           These witnesses are in addition to those witnesses endorsed on the Information or  
5           Indictment and any other witness for which a separate Notice of Witnesses and/or Expert  
6           Witnesses has been filed.

7           The substance of each expert witness's testimony and copy of all reports made by or at  
8           the direction of the expert witness have been provided in discovery.

9           A copy of each expert witness's curriculum vitae, if available, is attached hereto.

10                               STEVEN B. WOLFSON  
11                               Clark County District Attorney  
12                               Nevada Bar #001565

13                               BY /s/ Sandra K. DiGiacomo  
14                               SANDRA K. DIGIACOMO  
15                               Chief Deputy District Attorney  
16                               Nevada Bar #006204

17  
18                               CERTIFICATE OF ELECTRONIC TRANSMISSION

19           I hereby certify that service of the above and foregoing was made this 14th day of  
20           December, 2018, by electronic transmission to:

21                               KEVIN SPEED, Deputy Public Defender  
22                               Email Address: speedkc@clarkcountynv.gov

23                               ANN McMAHAN, Legal Secretary  
24                               Email Address: mcmahaae@clarkcountynv.gov

25                               BY: /s/ J. Georges  
26                               Secretary for the District Attorney's Office

27  
28           jg/SVU

**Sandra Cetl, MD, FAAP**

Sunrise Children's Hospital  
Pediatric Administration  
3186 Maryland Parkway  
Las Vegas, Nevada 89109  
702-784-1933 (office)  
702-378-3931 (cell)

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**Education:**

University of Nevada, School of Medicine  
Las Vegas, Nevada  
Residency in Pediatrics  
July 2007 – June 2010

University of Vermont, College of Medicine  
Burlington, Vermont  
M.D.  
August 2002 – May 2007

University of California, Los Angeles  
Los Angeles, California  
B.S. in Neuroscience, cum laude  
September 1997 – May 2001

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**Current Attending Responsibilities: September 2010 to current**  
**Employer: Mednax-Pediatrics**

- **Overview of experience:**

Director of the Suspected Child Abuse and Neglect (SCAN) program at Sunrise Children's Hospital and the Southern Nevada Children's Assessment Center (SNCAC) in Las Vegas, Nevada. I have served as the sole M.D. provider for approximately 5 years and as a co-provider for approximately 2.5 years prior.

As sole M.D. provider evaluating child abuse concerns in Southern Nevada for the past 5 years (and jointly for 2.5 additional years, prior), case staffing of child physical abuse, neglect, and sexual abuse comes from a large catchment area to include Southern Nevada, areas of Arizona, California, and Utah. Child abuse evaluation referrals and staffings come from inpatient consultations via medical staff as well as from outside facilities, law enforcement, child protective services and agencies, public and private attorneys (prosecution,

defense and civil.) I staff such medical concerns from all facilities in Southern Nevada and catchment facilities.

I additionally serve as an emergency department physician in general pediatrics at Sunrise Children's Hospital Emergency Department.

- Sunrise Children's Hospital Child Abuse Pediatrician
  - Medical evaluations of patients with suspected physical abuse, sexual abuse and/ or neglect. Patients are evaluated in the Emergency Department, Pediatric Ward and Pediatric Intensive Care Unit.
- Southern Nevada Children's Assessment Center (SNCAC)
  - Sole M.D. provider of medical evaluations of patients with concerns of child sexual abuse.
  - Exams are both acute and remote in nature. Acute requiring Sexual Assault Evidence Kit collection.
- Sunrise Children's Hospital Emergency Department
  - Average 2-5 shifts per month in the pediatric ER, managing and treating patient triage levels 2-5.
  - My role in the pediatric ED includes diagnosis, management and treatment patient triage levels 2 through 5 in general pediatric and emergency patient needs.
  - 2010 – 2011, I worked approximately 10 shifts per month (4000 – 5000 ED patients/per year) as an ED physician in addition to child abuse work and training. I continued to work 5 – 10 shifts per month through 2012. 2013 to current, I average 2-5 shifts per month (1500 - 2000 ED patients/ per year).
- Sunrise Children's Hospital SCAN call
  - Sole M.D. provider taking inhouse night call for suspected child sexual abuse medical evaluations in the ER. (2010 – 2012)
  - Currently, sole M.D. provider taking 24/7/365 call and consultation telephonically, with occasional inhouse night response, regarding the recognition, diagnosis, management, and treatment of children with concerns of child abuse and/ or neglect, to include recognition and diagnosis of abuse mimics and natural disease.
- Assistant Clinical Professor at the University of Nevada, School of Medicine (October 2012 – present)
  - Hosting 2-week to 4-week rotations for residents and medical students in child abuse pediatrics and attending physician during student ED rotations.
- Assistant Clinical Professor at the University of Nevada Las Vegas, School of Medicine (June 2017 – present)
  - Hosting 2-week to 4-week rotations for residents and medical students in child abuse pediatrics and attending physician during student ED rotations.

**Additional Duties:**

- Training medical providers at Sunrise Children's Emergency Department on child abuse evaluations, peer review of all child abuse evaluations and all photo-documentation by other providers from Sunrise Children's Hospital.
- Resident education in general pediatrics, emergency pediatric medicine and child abuse evaluation and management.
- Midlevel provider training for response and evaluation of child sexual abuse. Creation of curriculum, clinical responsibilities, and approximately 100 clinical hours of training. Currently reviewer of all exams by physician's assistant at the SNCAC.
- Overview and creation of hospital policies and evaluation/ management processes regarding patient evaluation of suspected child abuse and neglect, management, and discharge. Nursing staff education, peer review and feedback.
- Creation of electronic medical record (EMR) for the SNCAC to replace hand written documentation for sexual abuse evaluations. Upkeep, management, and compliance requirements of EMR as it interfaces with DFS IT and security systems.

**Additional Work Experience:****Juvenile Diabetes Camp Physician August 2010**

**Job Title:** Physician

**Primary Responsibilities:** Observation and management of insulin use during the 3 day camp. Children were aged 12- 17.

**Planned Parenthood, Los Angeles August 2001 – May 2002**

**Job Title:** Senior Program Manager

**Primary Responsibilities:** I was in charge of the all volunteers, teachers and coordinators. Duties ranged from the management of staff to reviewing and editing the curriculum as well as ensuring the program's educators were properly trained and prepared for the situations they would encounter.

**Planned Parenthood, Los Angeles August 2000 – August 2001**

**Job Title:** Reproductive Health Educator

**Primary Responsibilities:** I was responsible for educating inner city teens and young adults on topics including reproductive health, sexually transmitted diseases, the use contraceptives and the possible social, economic and health consequences of various sexual choices.

**University of California, Los Angeles 1997 – 2001**

**Title:** Research Associate

**Responsibilities:** rodent husbandry, surgery, data collection, perfusions, histology and result analysis over the course of four consecutive years; the data from my efforts resulted in two publications in the Journal of Neuroscience.

Laura H. Corbit, Janice L. Muir, and Bernard W. Balleine. *The Role of the Nucleus Accumbens in Instrumental Conditioning: Evidence of a Functional Dissociation between Accumbens Core and Shell*. J. Neurosci., May 2001; 21: 3251 - 3260.

Laura H. Corbit and Bernard W. Balleine. *The Role of the Hippocampus in Instrumental Conditioning*. J. Neurosci., Jun 2000; 20: 4233 - 4239.

I was awarded 1<sup>st</sup> place in the annual UCLA Neuroscience Poster Session with a presentation titled *The Effects of Lesions in the Nucleus Accumbens on Instrumental Conditioning*. Additionally, I was responsible for teaching presentations for undergraduate and graduate students regarding both the research completed and other topics in neuroscience.

#### **Private Math and Science Tutor 1999 – 2003**

I conducted weekly sessions for several junior high and high school students in subjects ranging from Algebra to Calculus and Life Sciences to Physics.

#### **Care Extenders at UCLA – Santa Monica Hospital 1997 – 1999**

I transported patients and aided in the care of patients in obstetrics, medical-surgical wards, and the emergency department.

#### **Rockwell Aerospace and Defense and The California Museum of Science and Industry - Summer 1996**

I was the primary instructor for an inner city program to promote the benefits of mathematics and science to fourth and fifth grade disadvantaged children.

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#### **Licensure and Certification:**

Fellow of the American Academy of Pediatrics 2012 – present

Assistant Clinical Professor at the University of Nevada, School of Medicine

Oct.2012 - present

Assistant Clinical Professor at the University of Nevada Las Vegas, School of Medicine

June 2017 - present

Board Certified in Specialty of Pediatrics by the American Board of Pediatrics

current to 2021

PALS Current to December 2019

BLS Current to December 2019

Nevada State Board of Medical Examiners Current to June 2019 (#13619, Exp. 6/30/2019)

Nevada State Board of Pharmacy current to 2018 (#CS18753, Exp. 10/31/2018)

Drug Enforcement Agency License current to 2019 (#FC2137885, Exp. 08/31/2019)

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#### **Current Outreach and Committees:**

Adjunct Instructor for Nye County Sheriff's Office 2017

CSART– Child Sexual Abuse Review Team

October 2016 to present  
Southern Nevada Children's Assessment Center and Clark County District Attorney's Office multi-disciplinary team meeting discussion on child sexual abuse cases. Meets bimonthly.

Clark County Office of the Coroner/Medical Examiner Advanced Review Committee on Sudden Death in the Young  
August 2016 – current  
The SDY committee is comprised of physicians, researchers and representatives of the coroner's office reviewing cases of sudden death in the young that are designated as undetermined deaths.

Southern Nevada Children's Assessment Center Steering Committee Member  
April 2016 – current

Clark County Child Fatality Review, Chair  
January 2013 – January 2014

Nevada Alliance for Drug Endangered Children, Member  
2012 – present

Clark County Child Fatality Review, Vice Chair  
June 2011 – December 2012

Clark County Child Fatality Review Team, Member and Core Voting Member  
September 2010 – current

Clark County Child Fatality Task Force, Member  
October 2010 – current

CARES Committee (Child Abuse Case Review and Education Service)  
Facilitator for multidisciplinary review of the medical aspects of child physical abuse and neglect cases. Held bimonthly.

Children's Assessment Center Case Review Team  
September 2010 – present  
Member of a multidisciplinary team where cases are presented by medical staff, CPS, Law Enforcement, and District Attorneys where there are concerns of child sexual or physical abuse at the Southern Nevada Children's Assessment Center

Prevent Child Abuse Nevada, Member  
2012 – 2014

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### **Research Participation:**

Currently approved for IRB participation in for a Multi-Center Prospective Research Project. Topic: the yield of medical screening of pediatric contacts- siblings and other children- in the home of an abused child. Currently concluded.

Currently approved for IRB participation in a second Multi-Center Prospective Research Project. Topic: Risk perception of physically abused children and how to use a child's social history when evaluating injuries that may be due to physical abuse. Currently concluded.

### **Presentations:**

#### **February 2018: Child Sexual Abuse**

- Power point presentation addressing the gynecological examination process and anatomy, myths regarding female genitals, and sexually transmitted infections. Target audience of law enforcement investigators, child protections service investigators, and SNCAC staff. (1.5-hour lecture)

#### **November 2017: Nye County Sheriff's Office: Child Abuse and Evaluations, Academy Training**

- Power point presentation for Nye County Sheriff's Office, consisting of patrol officers finishing academy training. Discussion of statistical abuse information, risk factors for abuse and neglect, cutaneous findings of abuse and accidents, photo-documentation techniques, medical evaluations, head trauma, abdominal trauma, fractures, neglect, mimics of abuse, sexual abuse and genital examinations. (approximately 6-hour lecture)

#### **October 2017: Drug Exposed Babies**

- Power point presentation given to foster parents and foster program staff via DFS, both live and through webinar about normal embryology, how specific legal, illicit and prescription drugs effect in utero development of a fetus, and the lifelong consequence of drug exposures.

#### **September 2017: Child Sexual Abuse**

- Power point presentation given to foster parents and foster program staff via DFS about child sexual abuse including signs and symptoms, examination, risk factors and forensic findings.

#### **August 2017: Child Sexual Abuse Training for Rape Crisis Counseling volunteers**

- 3-hour Power point presentation for volunteers transitioning from solely adult and late adolescent hospital response to include pediatric response for children and families being evaluated for concerns of child sexual abuse in an emergency department setting. Education regarding the exam, hospital specific information (Sunrise Children's Hospital), neurobiology of trauma, effects of adverse childhood

experiences, differences in child, adolescent, and adult sexual abuse and assault evaluations, and anatomy basics through age and development.

**June 2017: Child Maltreatment Overview for Law Enforcement**

- Power point presentation for North Las Vegas Police Department, consisting of detectives, sergeants, and lieutenant. Discussion of cutaneous findings of abuse, abusive head trauma, abdominal trauma, mimics, neurobiology of abuse and trauma, sexual abuse and genital examinations. (approximately 7-hour lecture)

**June 2017: Child Sexual Abuse Training for Law Enforcement**

- 90-minute review on child sexual abuse examinations, DNA and evidentiary collection by medical staff, sexually transmitted infections, differences in sexual abuse exams between pediatrics, adolescents, and adults, and the neurobiology of trauma as it may influence a child's behavior and long-term successes.

**June 2017: Board Review on Child Maltreatment**

- 1-hour review for residents of University of Nevada, School of Medicine in preparation of the American Academy of Pediatrics Board exam. Topics covered are high yield review of child physical abuse, sexual abuse, and neglect. Additionally, discussed cases of mimics and missed opportunities.

**May 2017: Neurobiology of Trauma, Las Vegas, NV**

**Center for the Application of Substance Abuse Technologies (CASAT)**

- Power point presentation regarding the neurobiological and neuroanatomical reactions during a trauma, specifically sexual assault. Additional discussion with long term consequences of the neurobiological cascade resulting from trauma and management strategies. (approximately 8 hour lecture)

**May 2017: Drug Exposed Babies**

- Power point presentation given to foster parents and foster program staff via DFS, both live and through webinar about normal embryology, how specific legal, illicit and prescription drugs effect in utero development of a fetus, and the life long consequence of drug exposures.

**April 2017: Mimics and Missed Opportunities**

- Power point presentation to residents regarding testing for concerns of child abuse, mimics of child abuse and review of the significance of sentinel injuries on young children.

**April 2017: Child Maltreatment Overview**

- Power point presentation for DFS investigators. Discussion of cutaneous findings of abuse, abusive head trauma, abdominal trauma, mimics, sexual abuse and genital examinations.

**April 2017: Neurobiology of Trauma, Reno, NV**

**Center for the Application of Substance Abuse Technologies (CASAT)**

- Power point presentation regarding the neurobiological and neuroanatomical reactions during a trauma, specifically sexual assault. Additional discussion with long term consequences of the neurobiological cascade resulting from trauma and management strategies. (approximately 8 hour lecture)

**March 2017, 1, 8, 12th: Nye County Sheriff's Office: Child Abuse and Evaluations**

- 3 separate Power point presentation for Nye County Sheriff's office, consisting of patrol officers, detectives, and commanding officers. Discussion of cutaneous findings of abuse, abusive head trauma, abdominal trauma, mimics, sexual abuse and genital examinations. (approximately 4 hour lecture)

**November 2016: Overdose and Accidental Poisonings**

- Power point presentation given to foster parents and foster program staff via DFS about accidental deaths of children and adolescents from accidental overdose or poison ingestion.

**November 2016: Nye County Sheriff's Office: Child Abuse and Evaluations**

- Power point presentation for Nye County Sheriff's office, consisting of patrol officers, detectives, Sheriff, and commanding officers. Discussion of cutaneous findings of abuse, abusive head trauma, abdominal trauma, mimics, sexual abuse and genital examinations. (approximately 8 hour lecture)

**November 2016: Child Physical Abuse**

- Two hour power point presentation to Pediatric Residents at the UNSOM residency program about all medical aspects of evaluating and recognizing physical child abuse.

**October 2016: Child Sexual Abuse**

- Power point presentation given to foster parents and foster program staff via DFS about child sexual abuse including signs and symptoms, examination, risk factors and forensic findings

**September 2016: Drug Exposed Babies**

- Power point presentation given to foster parents and foster program staff via DFS, both live and through webinar about normal embryology, how specific legal, illicit and prescription drugs effect in utero development of a fetus, and the life long consequence of drug exposures.

**June 2016: Board Review on Child Maltreatment**

- 2 hour review for residents of University of Nevada, School of Medicine in preparation of the American Academy of Pediatrics Board exam. Topics covered are high yield review of child physical abuse, sexual abuse, and neglect.

**June 2016: Child Maltreatment Overview**

- Power point presentation for Positively Kids Clinic staff, consisting of physicians, nurses, and nursing assistants. Discussion of cutaneous findings of abuse, abusive head trauma, abdominal trauma, mimics, sexual abuse and genital examinations.

**June 2016: Sexually Transmitted Infections and Myths of Female Anatomy**

- “First Wednesday” Luncheon presenter discussing sexually transmitted infections and myths surrounding sexual abuse in the pediatric population.

**May 2016: Child Maltreatment Overview**

- Power point presentation for Henderson Police Department, consisting of detectives, sergeants, and lieutenant. Discussion of cutaneous findings of abuse, abusive head trauma, abdominal trauma, mimics, sexual abuse and genital examinations. (approximately 7 hour lecture)

**May 2016: Drug Exposed Babies**

- Power point presentation given to foster parents and foster program staff via DFS, both live and through webinar about normal embryology, how specific legal, illicit and prescription drugs effect in utero development of a fetus, and the life long consequence of drug exposures.

**April 2016: Child Sexual Abuse**

- Power point presentation given to foster parents and foster program staff via DFS about child sexual abuse including signs and symptoms, examination, risk factors and forensic findings.

**February 2016: Antipsychotic Use and Misuse****Center for the Application of Substance Abuse Technologies (CASAT)**

- Power point presentation on use and misuse of antipsychotic medications for an audience of drug counselors, rehab workers, social workers and nurses. The talk provided a 7 hour daylong conference going into the subject in detail.

**August 2015: Failure to Thrive and Pediatric Nutrition**

- Power point presentation given to foster parents and foster program staff via DFS on consequences, findings, evaluation and management of failure to thrive. Additionally, discussion on proper nutrition.

**May 2015: Drug Exposed Babies**

- Power point presentation given to foster parents and foster program staff via DFS, both live and through webinar about normal embryology, how specific legal, illicit and prescription drugs effect in utero development of a fetus, and the life long consequence of drug exposures.

**April 2015: Failure to Thrive and Pediatric Nutrition**

- Power point presentation given to foster parents and foster program staff via DFS on consequences, findings, evaluation and management of failure to thrive. Additionally, discussion on proper nutrition.

**March 2015: Commercial Sexual Exploitation of Children, Medical Management**

- Power Point presentation for the NAPNAP: National Association of Pediatric Nurse Practitioners Conference. Discussion included medical signs and symptoms of CSEC, evaluation, pitfalls and concerns, and medical management.

**September and October 2015: Genital Findings, Sexually Transmitted Infections and Photo-documentation in Child Sexual Abuse**

- Power point presentation for nursing staff at Sunrise Children's Hospital as a part of a day long class on child sexual abuse evaluations and management.
- Discussion about genital exam, normal anatomy, findings, pathology, and sexual abuse

**December 2014: Antipsychotic Use and Misuse****Center for the Application of Substance Abuse Technologies (CASAT)**

- Power point presentation on use and misuse of antipsychotic medications for an audience of drug counselors, rehab workers, social workers and nurses. The talk provided a 7 hour daylong conference going into the subject in detail.

**August, September, and December 2014: Drug Endangered Children**

- Power point co presented through the Attorney General's program on Drug Endangered Children. The presentation was given in Las Vegas, Reno, and rural Nevada, in addition to a shortened webinar on the same subject. The purpose of the activity is to educate physicians & other healthcare practitioners on the identification and treatment of the drug endangered child. Assess needs of the newborn infant that is drug exposed, apply best practices for immediate identification and management of drug exposed children, and describe types of child abuse and the role drug use and exposure plays

**June 2014: Technology and Ethical Considerations in Forensic Photo-documentation**

- Power point co presented at the annual American Professional Society on the Abuse of Children (APSAC) in the 2014 national conference in New Orleans, LA. Audience of approximately 50 clinicians, law enforcement, and attorneys focused on technology of photo-documentation and review of storage of material. Discussed ethical consideration of technology use, misuse, storage, alternate light sources, and global filters.

**April 2014: Child Sexual Abuse**

- Power point presentation given to foster parents and foster program staff via DFS about child sexual abuse including signs and symptoms, examination, risk factors and forensic findings.

**March 2014: Overdose and Accidental Poisonings**

- Power point presentation given to foster parents and foster program staff via DFS about accidental deaths of children and adolescents from accidental overdose or poison ingestion.

**January 2014: Cutaneous Injuries and Physical child abuse**

- Power point presentation for CPS and DFS workers and investigators, and students of forensic investigators of CSI law enforcement on the external findings of child physical abuse. Discussion of mimics of abuse and accidental injuries.

**December 2013: Female Genital Evaluation**

- Power point presentation for residents and attendings of UNSOM Emergency Medicine Residency Program about the female genital exam, pathology, and child sexual abuse.

**December 2013: Abusive Head Trauma and Fractures in Child Abuse**

- Power point presentation for residents and attendings of UNSOM Emergency Medicine Residency Program about findings with abusive head trauma, fractures and abdominal trauma, including mimics of abuse and proper complete evaluation in the ED setting.

**December 2013: Drug Exposed Babies**

- Power point presentation given to foster parents and foster program staff via DFS, both live and through webinar about normal embryology, how specific legal, illicit and prescription drugs effect in utero development of a fetus, and the life long consequence of drug exposures.

**November 2013: Female Genital Evaluation**

- Power point presentation for medical students and residents of UNSOM. Discussion about genital exam, normal anatomy, findings, pathology, and sexual abuse.

**October 2013: Child Maltreatment Overview**

- Power point presentation for Positively Kids Clinic staff, consisting of physicians, nurses, and nursing assistants. Discussion of cutaneous findings of abuse, abusive head trauma, abdominal trauma, mimics, sexual abuse and genital examinations.

**August 2013: Cutaneous Finding in Child Physical Abuse, Bruises**

- Power point presentation to University of Nevada, School of Medicine Emergency Department residents for grand rounds. Discussed skin findings associated with child physical abuse and accidental injury.

**April 2013 Visual Diagnosis**

- Power point presentation regarding a visual diagnosis of a patient at the Ray E. Helfer Society Annual Meeting, which is attended by Pediatricians and Child Abuse Pediatricians practicing nationally and internationally.

**March 2013: Grand Rounds “The Long Term Effects of Child Abuse”**

- One hour power point presentation for Grand Rounds at the University of Nevada, School of Medicine. Discussion on Adverse Childhood Events and the studies stemming from the CDC data collection in response to adverse childhood events in the community through the life time.

**March 2013: Sexual Abuse Nurse Examiner**

- Guest speaker at the SANE class at Sunrise Children’s Hospital on mandated reporting and description of the Southern Nevada Children’s Assessment Center.

**February 2013: Child Physical Abuse**

- Two hour power point presentation to Pediatric Residents at the UNSOM residency program about all medical aspects of evaluating and recognizing physical child abuse.

**September 2012: Sexual Child Abuse**

- Two 3 hour power point presentations on child sexual abuse examinations and Sexual Assault Nurse Examiner (SANE) program given to pediatric emergency department nurses at Sunrise Children’s Hospital.

**April 2012: Overdose and Accidental Poisoning Deaths**

- Power point presentation given to members of the Southern Nevada Child Fatality Review Team about accidental deaths of children and adolescents from accidental overdose or poison ingestion.

**January 2012: Sex Trafficking Among Adolescents**

- Modified Power point presentation on sex trafficking among adolescent males and females in the U.S. as well as locally in Las Vegas, NV. Presentation given to hospital clergy members in Clark County, NV at Sunrise Children’s Hospital.

**June 2011: Child Abuse Signs and Symptoms**

- Power point presentation given to University of Nevada School of Medicine medical students transitioning from classroom learning to clinical practice.

**May 2011: Sexually Transmitted Infections and Testing in Child Sexual Abuse**

- Power point presentation given at Sunrise Children’s Hospital for ER nurses training to become pediatric sexual abuse nurse examiners

**March 2011: Adolescent Drug Overdose****Center for the Application of Substance Abuse Technologies (CASAT)**

- Regional conference in Las Vegas and Reno, Nevada on accidental overdose in the adolescent population
- Two 7 hour trainings on aspects of adolescent drug use and overdose

**February 2011: Child Physical Abuse**

- Power point presentation on skin manifestations of child physical abuse
- Attendees included hospital social workers and case managers

**October 2010: Child Abuse and Neglect Prevention Conference**

- Regional for South Western United States
- Provided a conference session on Adolescent Accidental Overdose
- Attendees included teachers, school nurses, social workers, attorneys, and psychology care workers

**October 2010 Sexually Transmitted Infections in Child Sexual Abuse**

- Power point presentation at the Southern Nevada Children's Assessment Center on sexually transmitted infections in sexually abused children.
- Attendees included law enforcement, CPS and DFS workers and staff

**January 2010 University Medical Center Ward Teaching Senior**

- Morning Report for residents and faculty including subjects such as burn management and seizure evaluation
- Morbidity and Mortality power point presentation for residents and faculty about evaluation and management of extravasation injuries
- Resident Lecture Power Points on variety of topics including Newborn screening, Non Accidental Trauma, Pediatric Brain Tumors, and Apparent Life Threatening Events

**December 2010 Lied Clinic, Senior Resident**

- Morbidity and Mortality power point presentation on consequences of RSV mismanagement

**October 2009 University Medical Center NICU**

- Power point presentation for residents and faculty in Glucose Metabolism of Neonates

**September 2009 Endocrinology**

- Power point presentation for residents and faculty on Short Stature

**August 2009 Adolescent Medicine**

- Noon Conference power point for residents and faculty on Chronic Pain Management

**July 2009 Sunrise Hospital Ward Teaching Senior**

- Morning Report presentations for residents and faculty on subjects including Abdominal Pain, Peritonsillar abscesses, and Kawasaki's Disease
- Resident Lecture Power Points on a variety of topics including Diabetes Management, Neonatal Fever, and Substance Overdose

**January 2009 CPS, DFS, Child Haven Staff**

- Presentation to staff on Medical Neglect and Newborn Screening

**January 2009 Noon Conference**

- Journal Club on Office Based Treatment and Outcomes for Febrile Infants With Clinically Diagnosed Bronchiolitis

**August 2007 Noon Conference**

- Journal Club on the Early Intervention and Outcome of Children with Failure to Thrive

**Memberships:**

- American Academy of Pediatrics Member 2007-2010, 2012 – current (2010 to 2011 on an institutional membership through the employment facility)
- American Academy of Pediatrics Section on Child Abuse and Neglect (SOCAN), 2012 – current
- American Academy of Pediatrics Section on Child Death Review and Prevention (Provisional) (PSOCDRP), October 2016 – current
- American Academy of Pediatrics Nevada Chapter, October 2012 - current
- Helfer Society Scholar Member, June 2011- current
- American Professional Society on the Abuse of Children, May 2014 – May 2015
- ACGME Resident Forum Representative, 2008 – 2010
- Created curriculum for Child Development resident rotation, August 2007

**Professional Development:**

- International Association of Coroners and Medical Examiners Conference (Las Vegas, NV), July 2017
- “Blue dye guy” presentation on burn injuries and investigation, February 2017
- San Diego International Conference on Child and Family Maltreatment, January, 2017
- International Association of Coroners and Medical Examiners Conference (Las Vegas, NV) July, 2016
- International Association of Coroners and Medical Examiners Conference (Las Vegas, NV) July, 2015
- San Diego International Conference on Child and Family Maltreatment, January, 2015

- International Association of Coroners and Medical Examiners Conference (Las Vegas, NV) July, 2014
- American Professional Society on the Abuse of Children Conference (New Orleans, LA) June 2014
- International Association of Coroners and Medical Examiners Conference (Las Vegas, NV) June, 2013
- Ray E. Helfer Society Annual Meeting (Sonoma, CA) April 2013
- San Diego International Conference on Child and Family Maltreatment, January, 2013
- Valley High School Lecture Series about Sex Trafficking, Las Vegas, Nevada October 2012
- Basic High School Lecture Series about Sex Trafficking, Henderson, Nevada October, 2012
- International Association of Coroners and Medical Examiners Conference (Las Vegas, NV) June, 2012
- San Diego International Conference on Child and Family Maltreatment, January, 2012
- International Association of Coroners and Medical Examiners Conference (Las Vegas, NV) June, 2011
- Ray E. Helfer Society Annual Meeting; (Amelia Island, FL) April 2011
- San Diego International Conference on Child and Family Maltreatment, January, 2011
- Child Abuse and Neglect Prevent Conference (Reno, NV) October 2010
- Shaken Baby Conference (Atlanta, GA) September 2010
- Western States Child Sexual Abuse Conference (Las Vegas, NV) September 2010
- International Association of Coroners and Medical Examiners Conference, June 2010
- SANE P Training, June 2010
- Clark County School District Nursing Conference on various Genetic Disorders and Behavior Disorders, November 2009
- Clark County School District Nursing Conference on many aspects of school nursing, including Child Maltreatment, August 2009
- AAP Conference Nevada Chapter (Las Vegas, NV) August 2009

#### **Awards:**

- Clark County District Attorney Meritorious Award
  - 2013
  - Including recognition by the Governor's Office.
- University of Nevada, School of Medicine Resident award for Sub-Specialist of the year
  - 2015

**Languages:**

- Fluent in Serbo-Croatian
- Conversant in Medical Spanish

# **Elizabeth Espinoza**

701 North Pecos Road Las Vegas, Nevada 89101  
Phone: (831) 206-8068 E-Mail: elizabeth.espinoza@clarkcountynv.gov

## **CAREER PROFILE**

Experienced in the area of child welfare for ten years, and law enforcement for five years. Knowledge about populations at risk, due to substance abuse, mental health issues, child abuse, gang violence, truancy, and poverty. Highly experienced with interviewing clients and collaterals to gather information and appropriately assess the needs and strengths of individuals and make recommendations to the Court in regards to their disposition. Experience in monitoring, following up, and referring clients to services and ensuring there is compliance with treatment services.

Experienced interviewing clients, collaterals, and other sources

Skilled in drafting court reports and testifying in various courtroom settings

Able to interpret department policies and implementing safety plans and intervention strategies to ameliorate safety threats to children and families

Demonstrated an extensive awareness of high-risk behaviors relating to domestic violence, substance abuse, mental health, gang violence, child abuse, and sex related abuse, and able to de-escalate confrontations and encourage client cooperation

Ten years of experience successfully reuniting families and obtaining permanency plans for children in foster care

Five years of experience as a Juvenile Probation Officer monitoring juvenile sex offenders in treatment programs, as well as participating in other areas related to intake, and specialized truancy services

Training from the National Children's Advocacy Center in forensic interviewing of children.

Presently employed as a Forensic Interview Specialist at the Southern Nevada Children's Assessment Center.

## **PROFESSIONAL EXPERIENCE**

**Department of Family Services - Las Vegas, Nevada**

**Forensic Interview Specialist**

**June 2015 - Present**

As a Forensic Interview Specialist I conduct interviews of children who have been victims of sexual abuse, domestic violence, and physical abuse. A forensic interview of a child as defined by the National children's Advocacy Center is a, "developmentally-sensitive and legally sound method of gathering factual information regarding allegations of abuse and/or exposure to violence. The interview is conducted by a neutral professional utilizing research and practice-informed techniques as part of a larger investigative process." I interview children

between the ages of 3-17 years old. Some of the children have special needs and or mental health issues. Law enforcement and child protective services refer the children for interviews as part of their investigation.

Completed training at the National Children's Advocacy Center in Huntsville, Alabama for forensic interviewing.

Conduct forensic interviews of children at the Southern Nevada Children's Assessment Center.

Work collaboratively with law enforcement and children's protective services in conducting interviews.

Facilitate case reviews with various legal, mental health, physician, and Department of Family Services professional to assess the needs of a case.

Participate in peer reviews to offer constructive feedback on forensic interviews.

Conduct interviews in Spanish for non-English Speaking children.

Provide information to parents and children regarding the forensic interview process.

Conduct interviews of children with special needs or mental health issues.

Review Individual Educational Plans when necessary in preparing for forensic interviews.

#### **Department of Family Services - Las Vegas, Nevada**

**Senior Family Services Specialist**

**December 2004 - June 2015**

As a Senior Family Services Specialist (SFSS) working with the Department of Family Services my responsibilities are to assess and ensure that children's safety, emotional well being, and permanency needs, are met. These children have been removed from the care of their natural parents due to sustained child abuse and neglect petitions. Additional job duties for this position are to conduct home visits and ensure that the children are safe, and that their needs are being met while they are placed in the foster care system or with relatives. A SFSS also works with the natural parents to assess their needs in determining the types of services and or programs that will address the underlying issues to work towards reunification. In addition, a SFSS is assigned high profile cases that are more complicated and or sensitive. Lastly, the position also requires that an SFSS offers training to new employees, and assists the unit by taking supervisory responsibilities when necessary.

Entrusted with ensuring that children's safety, emotional well being, and permanency needs were met

Conducted interviews to gather information and best assess the needs of children and families

Referred clients and children to treatment services that aid their needs and address familial dysfunction, helping them work towards reunification and other permanency goals

Presented the court with family reports and testified at reviews, status hearings, & Termination of Parental Rights hearings

Maintained regular communication with children under our agency care, to assess their safety

Supervised an average caseload of twenty-five to thirty-five children.

Facilitated the removal of children from their homes where safety concerns prevailed

Performed lead responsibilities and trained new employees

**Monterey County Probation Department - Salinas, California**

**Deputy Probation Officer II**

**August 1999 to August 2004**

As a Deputy Probation Officer II, there were various assignments. Performed as an Intake Probation Officer interviewing juvenile offenders cited for misdemeanors and felonies. Victims of crimes committed by juvenile offenders were also interviewed in depth to gather information for the dispositional Court report. Recommendations were made to the Court, which detailed the terms and conditions of probation. Other assignments included working in the field as a truancy officer in a high crime area, and a placement officer supervising juvenile sex offenders in-group homes. The general job duties as a probation officer were to supervise juvenile offenders to ensure the safety of the community and monitor their compliance with Court sanctions. Conduct home visits, searches of the juvenile offender and their home. Drug test, make arrests when necessary and or obtain warrants from the Court. Work with youth in high crime areas with gang affiliation, substance abuse, and mental health issues.

Conducted interviews to gather information for court dispositions and to determine conditions of probation for juvenile offenders.

Provided the court with detailed offenders' compliance reports

Made sentencing recommendations and advised on the types of treatment services needed

Read and interpreted department policies and followed the State's Penal Code

Conducted searches, administered drug tests, and made arrests,

Referred juvenile offenders to treatment services and other programs to assist with rehabilitation

Managed a caseload of twenty five to forty juvenile offenders

Trained new employees

**CERTIFICATION / TRAINING**

Forensic Interview training at the National Children's Advocacy Center  
in Huntsville, Alabama (40 hours).

July 2015

Forensic Interviewing of Children (80 hrs.)

(2014 and 2015)

Safety Assessment Intervention Policy	(2015)
832 Laws of Arrest Search and Seizure Course (40 hrs.)	(2012 and 1999)
Gang Task Force Training	(2012)
Probation Officer Academy (4 weeks)	(1999)
Defensive Tactics Training	(2012 and 1999)

## EDUCATION

Bachelor of Arts in Social Science (May 1999)

SAN JOSE STATE UNIVERSITY

## SKILLS

Bilingual / English / Spanish

Experienced in gathering information and able to testify in various types of court hearings

Experience in writing Court reports and other types of documentation pertinent to cases

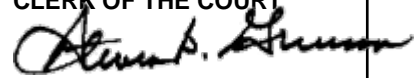
Able to de-escalate confrontational and potentially violent situations

Knowledge of child welfare laws and case management

## AWARDS

*CASA Worker of the Year*, Department of Family Services (2010)

*Deputy Probation Officer of the Year*, Monterey County Probation Department (2002).



**SLOW**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**SANDRA K. DIGIACOMO**  
Chief Deputy District Attorney  
Nevada Bar #006204  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

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

THE STATE OF NEVADA,

Plaintiff,

-VS-

**GUSTAVO ADONAY GUNERA-PASTRANA,**  
**#2697473**

Defendant.

CASE NO: **C-16-318461-1**

DEPT NO: **XXVIII**

**STATE'S SECOND SUPPLEMENTAL NOTICE OF WITNESSES**  
**AND/OR EXPERT WITNESSES**  
**[NRS 174.234]**

**TO: GUSTAVO ADONAY GUNERA-PASTRANA, Defendant; and**

**TO: KEVIN SPEED, Deputy Public Defender, Counsel of Record:**

**YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the STATE OF  
NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief:

**\*indicates additional witness(es) and/or modification(s)**

ASHENFELTER, DEBBIE; c/o CCDA Investigations

CARNELL, CRISTEN; c/o CCDA Investigations

CETL, DR SANDRA; c/o CCDA's Office; Dr. Cetl will be called as a medical expert  
in the field of pediatric sexual and physical abuse based on her training, experience and any  
research. Dr. Cetl will testify regarding the procedure for medical and SCAN exams on  
pediatric patients who present to the hospital or the Southern Nevada Children's Assessment

Center with complaints of sexual abuse, including the nature, process, and possible medical diagnoses involved in completing a SCAN. This testimony will necessarily include the body's physical processes and what would contribute or take away from physical findings on a patient reporting sexual abuse, including, but not limited to, the passage of time, the healing process of the body, the potential or lack of potential injuries based on the type of sexual contact disclosed.

COR or Designee; CCDC

COR or Designee; LVMPD COMMUNICATIONS

COR or Designee; LVMPD RECORDS

\*COR or Designee; SUNRISE HOSPITAL

DELARIA, D.; LVMPD #13338

DRANSFIELD, W.; LVMPD #10052

EISEN, TIFFANY; c/o CPS/DFS, 701 N. Pecos Rd., LVN

ESPINOZA, ELIZABETH; CPS/DFS; may be called to testify about the methodology, process, purpose, and limitations of forensic and victim interviews, including research regarding forensic interviews, as well as child development, memory, suggestibility, and/or deviations from the forensic interview, as it relates to her training and experience, as well as the interview(s) completed in this case.

HUTH, D.; LVMPD #8543

J.M.; c/o CCDA-SVU/VWAC

JIMENEZ, M.; LVMPD #13257

KEITH, TIFFANY; c/o CPS/DFS, 701 N. Pecos Rd., LVN

KNEPP, ELAINE; c/o CCDA Investigations

KRAVETZ, M.; LVMPD #15346

LANKFORD, REBECCA; c/o SNCAC

LARSON, R.; LVMPD #15366

M.C.O.; c/o CCDA-SVU/VWAC

M.M.; c/o CCDA-SVU/VWAC

1 MENDOZA-PONCE, ADRIANA; c/o CPS/DFS, 701 N. Pecos Rd., LVN

2 RAPELA, MARCELO; c/o CCDA Investigations

3 RUSSO, MARABETH; c/o CPS/DFS, 701 N. Pecos Rd., LVN

4 SAMPLES, L.; LVMPD #9354

5 These witnesses are in addition to those witnesses endorsed on the Information or  
6 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert  
7 Witnesses has been filed.

8 The substance of each expert witness's testimony and copy of all reports made by or at  
9 the direction of the expert witness have been provided in discovery.

10 A copy of each expert witness's curriculum vitae, if available, is attached hereto.

11 STEVEN B. WOLFSON  
12 Clark County District Attorney  
Nevada Bar #001565

13  
14 BY /s/ Sandra K. DiGiacomo  
15 SANDRA K. DIGIACOMO  
16 Chief Deputy District Attorney  
Nevada Bar #006204

17  
18  
19 CERTIFICATE OF ELECTRONIC TRANSMISSION

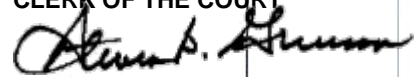
20 I hereby certify that service of the above and foregoing was made this 18th day of  
21 December, 2018, by electronic transmission to:

22 KEVIN SPEED, Deputy Public Defender  
23 Email Address: speedkc@clarkcountynv.gov

24 ANN McMAHAN, Legal Secretary  
25 Email Address: mcmahaae@clarkcountynv.gov

26 BY: /s/ J. Georges  
27 Secretary for the District Attorney's Office

28 jg/SVU



**MOT**  
KATHIA PEREIRA, ESQ.  
BAR NO.: 8874  
PEREIRA & ASSOCIATES, LLP  
8942 SPANISH RIDGE AVE., STE. 1  
LAS VEGAS, NV 89148  
T: 702-737-7717  
E: KP@PIMMIGRATION.COM  
ATTORNEY FOR THE IMMIGRANT  
HOME FOUNDATION

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

GUSTAVO ADONAY GUNERA-  
PASTRANA,

Defendant.

CASE NO.: C-16-318461-1

DEPT. NO.: XXVIII

**MOTION TO QUASH SUBPOENA-  
CRIMINAL DUCES TECUM**

Comes now, **THE IMMIGRANT HOME FOUNDATION**, represented by KATHIA PEREIRA, ESQ., of PEREIRA & ASSOCIATES, LLP, and respectfully requests that this Court quash the Subpoena-Criminal Dues Tecum issued on December 13, 2018, pursuant to the provisions of NRCP 45 (c)(3)(A). The Subpoena requests that The Immigrant Home Foundation produce a file/documents relating to a party not named in the above referenced action, and respectfully represents the following:

The Subpoena should be quashed because it requires disclosure of privileged or other protected matter, including but not limited to work product, and no

MOTION TO QUASH SUBPOENA-CRIMINAL DUCES TECUM - 1

1 exception or waiver applies, and subjects The Immigrant Home Foundation to undue  
2 burden.

3 Per NRS 53.045, I declare under the penalty of perjury that the foregoing is  
4 true and correct.

5 Executed this 26 day of December, 2018.

6  
7 

8 KATHIA PEREIRA, ESQ.

9 BAR NO.: 8874

10 PEREIRA & ASSOCIATES, LLP

11 8942 SPANISH RIDGE AVE., STE. 1

12 LAS VEGAS, NV 89148

13 T: 702-737-7717

14 E: KP@PIMMIGRATION.COM

15 ATTORNEY FOR THE IMMIGRANT

16 HOME FOUNDATION

17 **NOTICE OF MOTION**

18 **TO: STATE OF NEVADA;**

19 **TO: KEVIN C. SPEED, PUBLIC DEFENDER; AND**

20 **TO: BRUCE E. MCALLISTER, PUBLIC DEFENDER.**

21 **PLEASE TAKE NOTICE THAT** the foregoing Motion shall be heard on  
22 the **23rd** day of **January**, 20**19**, at **9 00 A**.M. in Department **XXVIII** of  
23 the District Court.

24 DATED this \_\_\_\_ day of December, 2018.

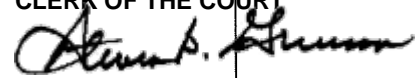
25 

26 KATHIA PEREIRA, ESQ.

27 BAR NO.: 8874

28 ATTORNEY FOR THE IMMIGRANT

MOTION TO QUASH SUBPOENA-CRIMINAL DUCES TECUM - 2



1 **COM**

2 KATHIA PEREIRA, ESQ.  
3 BAR NO.: 8874  
4 PEREIRA & ASSOCIATES, LLP  
5 8942 SPANISH RIDGE AVE., STE. 1  
6 LAS VEGAS, NV 89148  
7 T: 702-737-7717  
8 E: KP@PIMMIGRATION.COM  
9 ATTORNEY FOR THE IMMIGRANT  
10 HOME FOUNDATION

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

16 GUSTAVO ADONAY GUNERA-  
17 PASTRANA,

18 Defendant.

CASE No.: C-16-318461-1

DEPT. No.: XXVIII

19 **CERTIFICATE OF MAILING**

20 I HEREBY CERTIFY that service of the foregoing MOTION TO QUASH  
21 SUBPOENA DUECE TECUM was made on the 30 day of January 2019, pursuant to  
22 NRCP 5(b), by depositing a copy of same in the United States Mail in Las Vegas,  
23 Nevada, postage prepaid, addressed as follows:  
24

25  
26 KEVIN C. SPEED  
27 BRUCE E. MCALLISTER  
28 PUBLIC DEFENDER

CERTIFICATE OF MAILING - 1

1 OFFICE OF THE PUBLIC DEFENDER  
2 309 S. THIRD ST., SECOND FLOOR  
3 P.O. BOX 552610  
4 LAS VEGAS, NV 89155-2610

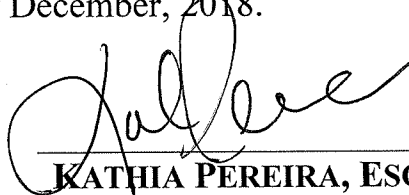
5 STATE OF NEVADA  
6 STEVE WOLFSON  
7 CLARK COUNTY DISTRICT ATTORNEY  
8 OFFICE OF THE DISTRICT ATTORNEY  
9 REGIONAL JUSTICE CENTER  
10 200 LEWIS AVENUE  
11 LAS VEGAS, NV 89101

12 and electronically via:

13 mcallibe@clarkcountynv.gov; and  
14 motions@clarkcountyda.com.

15 Per NRS 53.045, I declare under the penalty of perjury that the foregoing is  
16 true and correct.

17 Executed this 28 day of December, 2018.

18 

19 **KATHIA PEREIRA, ESQ.**

20 BAR NO.: 8874

21 PEREIRA & ASSOCIATES, LLP

22 8942 SPANISH RIDGE AVE., STE. 1

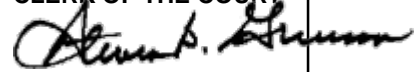
23 LAS VEGAS, NV 89148

24 T: 702-737-7717

25 E: KP@PIMMIGRATION.COM

26 ATTORNEY FOR THE IMMIGRANT

27 HOME FOUNDATION  
28



PHILIP J. KOHN, PUBLIC DEFENDER  
NEVADA BAR NO. 0556  
KEVIN C. SPEED, DEPUTY PUBLIC DEFENDER  
NEVADA BAR NO. 8895  
**PUBLIC DEFENDERS OFFICE**  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
Telephone: (702) 455-4685  
Facsimile: (702) 455-5112  
SpeedKC@clarkcountynv.gov  
*Attorneys for Defendant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GUSTAVO ADONAY GUNERA-PASTRANA, )  
 )  
Defendant, )  
\_\_\_\_\_ )

CASE NO. C-16-318461-1

DEPT. NO. XXVIII

DATE: January 23, 2019  
TIME: 9:00 AM

**DEFENDANT'S OPPOSITION TO THE IMMIGRANT HOME FOUNDATION'S  
PROCEDURALLY AND SUBSTANTIVELY INFIRM MOTION TO QUASH  
SUBPOENA-CRIMINAL DUCES TECUM**

COMES NOW, the Defendant, GUSTAVO ADONAY GUNERA-PASTRANA, by and through KEVIN C. SPEED, Chief Deputy Public Defender, asking that this Honorable Court deny The Immigrant Home Foundation's Motion to Quash Subpoena-Criminal Duces Tecum as the Motion: 1) is not grounded in applicable statutory, administrative, regulatory law or case law; 2) has come without the required memorandum of points and authorities in support of any grounds, under EDCR 3.20(b); 3) fails to state any ground(s) for its grant other than to recite mere general conclusion and/or argument.

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1        This Opposition is made and based upon all the papers and pleadings on file herein, the  
2 attached Declaration of Counsel, Memorandum of Points and Authorities, and oral argument at  
3 the time set for hearing this Motion.

4        DATED this 10th day of January, 2019.

5                                PHILIP J. KOHN  
6                                CLARK COUNTY PUBLIC DEFENDER

7  
8                                By: /s/Kevin C. Speed  
9                                KEVIN C. SPEED, #8895  
                                 Deputy Public Defender

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**DECLARATION**

KEVIN C. SPEED makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada. I am a Chief Deputy Public Defender for the Clark County Public Defender's Office appointed to represent the Defendant, Gustavo Adonay Gunera-Pastrana, in the present matter.

2. I am more than 18 years of age and am competent to testify as to the matters stated herein. I am familiar with the procedural history of the case and the substantive allegations made by the State of Nevada. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

3. The Defendant (hereinafter, "Gustavo," or "Mr. Pastrana") is charged with two counts of Lewdness with a Child Under the Age of 14 (NRS 201.230), and two counts of Sexual Assault with a Minor Under 14 Years of Age (NRS 200.366). The complaining witness is "M.M.," Gustavo's step-daughter, and the biological daughter of Gustavo's common-law wife, Meili Casillas-Ortiz, the mother of Gustavo's two young children. M.M. has falsely claimed that Gustavo engaged in an on-going pattern of sexual abuse, molestation and mistreatment against her since approximately the summer of 2015.

4. The Defendant has entered pleas of not guilty to all of the charges against him and trial is set before this court on 18 March 2019, with calendar call set for 11 March 2019.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 10th day of January, 2019.

/s/ Kevin C. Speed  
KEVIN C. SPEED

## MEMORANDUM OF POINTS AND AUTHORITIES

### *I. Statement of Facts*

Mr. Pastrana filed his Motion for Discovery in December of 2016, with the Court granting the motion in large part by written order electronically filed with the Clerk of Court on 10 March 2017. **Exhibit 1.** On 20 December 2017, defense counsel sent a letter to counsel for the State of Nevada formally requesting that the government produce:

Evidence of any and all compensation, express or implied, promises of favorable treatment or leniency, or any other benefit that any of the State's witnesses may of have received in exchange for their cooperation with this or any related prosecution. This includes but is not limited to: (1) any and all records and notes from the Victim Witness Advocacy Center of the District Attorney, including any/all records of any expectation of any benefit or assistance to be received, or already received by any witness in this case; (2) any monetary benefits received as well as any express or implied promises made to any witness to provide counseling and/or treatment and/or provide immigration assistance (including, but not limited to U-Visa documentation) as a result of the witness' participation in this case; (3) the names of any and all agencies and workers or other referrals that were given to any witness and/or his/her family member, relative or guardian in connection with this case or any related matter; (4) an estimate of future benefits to be received by any witness during or after the trial, including travel expenses.

**Exhibit 2.** After continued talks in preparation for trial throughout 2018, defense counsel anticipated announcing ready to commence at calendar call set for 2 January 2019. On the morning of the calendar call, however, defense counsel received the instant motion to quash by The Immigrant Home Foundation which had already been set for hearing on 23 January 2019. Mr. Pastrana opposes the motion to quash and asks that it be denied.

### *II. Memorandum*

#### *A.*

The third-party/witness, The Immigrant Home Foundation (hereinafter, "TIHF"), makes no cognizable argument nor has it attached points and authorities to its Motion to Quash the Defendant's Subpoena-Criminal Duces Tecum. In a way that betrays the substantive weakness of its request for relief, TIHF merely cries out in the barely two-page long filing that the Defendant's subpoena requires "...disclosure of privileged or other protected matter, including but not limited to work product...and subjects [TIHF] to undue burden." Under EDCR 3.20, "...[a] party filing a motion *must* [emphasis added] also serve and file with it a memorandum of points and authorities in support of each ground thereof. The absence of such a memorandum

1 may be construed as an admission that the motion is not meritorious, as cause for its denial or as  
2 a waiver of all grounds not so supported.” Here, it is clear on the filing’s face that it is  
3 insufficient under the local rules and there have been no subsequent filings purporting to  
4 augment, amend or supplement this feeble request to quash a valid subpoena in any meaningful  
5 or redemptive way. Therefore, TIHF has left the Court with no practical alternative except to  
6 deny its motion as meritless and substantively infirm. If, however, this Court did choose to  
7 ignore the shortfalls in TIHF’s so-called “...motion” and provide the request with a modicum of  
8 life support, what could only magnanimously be called its “...ground(s) for relief” should still  
9 fail.

#### 10 **B.**

11 First, much like the State often does in discovery controversies, TIHF has claimed that  
12 the Brady material sought by Mr. Pastrana is privileged under the NRS or otherwise protected,  
13 and therefore the Defendant is not entitled to it. Essentially TIHF’s argument is that statutory  
14 privileges take precedence over the Defendant’s due process rights. This position is contrary to  
15 and in direct opposition to a criminal defendant’s long established rights. Defendants have a  
16 constitutional right to discovery, Fifth and Fourteenth Amendment rights to due process, and a  
17 Sixth Amendment right to present a defense, confront and cross examine the witnesses and  
18 evidence against them, and the effective assistance of counsel. There is no authority that holds  
19 that a statutory privilege trumps a defendant’s constitutional right to discovery and due process.

20 Support for Mr. Pastrana’s position is persuasive and abundant. In Wyman v. State, 125  
21 Nev. 592, 607-08, 217 P.3d 572, 583-84 (2009), the Court held that the district court abused its  
22 discretion by denying the defendant’s request for a certificate of materiality to obtain he  
23 accuser’s mental health records from out of state. The defendant had adequately demonstrated  
24 that her accuser’s mental health records were material – the defendant had only one direct  
25 accuser, and her accuser’s reliability ad credibility were central to the case. Id.

26 The United States Supreme Court has also held that a defendant has a right to have  
27 otherwise confidential records reviewed by the trial court to determine if they contain material  
28

1 evidence. Pennsylvania v. Ritchie, 480 U.S. 39, 60. (1987). In Ritchie the Supreme Court held  
2 that the State could not claim privilege to fail to disclose Child and Youth Services (CYS)  
3 records unless there is a statutory scheme that forbids, any use, including disclosure to a  
4 prosecutor, of such records. Id. at 57-58. The Supreme Court found that the defendant was  
5 entitled to have the CYS file reviewed by the trial court to determine whether it contains  
6 information that would be material. Id. Furthermore, the Supreme Court has held that when the  
7 ground for asserting privilege as to subpoenaed materials was based only on the generalized  
8 interest in confidentiality it cannot prevail over the fundamental demands of due process of law.  
9 United States v. Nixon, 418 U.S. 683, 713 (1974). The generalized assertion of privilege must  
10 yield to the demonstrated, specific need for evidence in a pending criminal trial. Id.

11 Many other jurisdictions have applied the Ritchie framework in similar circumstances  
12 and required the disclosure of privileged records to the trial court for *in camera* review. For  
13 example, the Supreme Court of Utah held that the defendant was entitled to directly request the  
14 alleged victim's school psychological records that indicated that the alleged victim had a high  
15 propensity to lie and records which showed that the victim had previously lied about an attempted  
16 rape by a school janitor. State v. Cardell, 982 P.3d 79, 86 (Ut. 1999). The Supreme Court of  
17 Michigan reviewed the jurisprudence of several other states and held that in an appropriate case  
18 the court must conduct an *in camera* review of the potentially privileged records to determine  
19 whether they contain any evidence "reasonably necessary and therefore essential" to the defense.  
20 People v. Stanaway, 521 N.W. 2d 557, 574 (Mich. 1994). An *in camera* review should be  
21 available where a defendant can establish a reasonable probability that the privileged records are  
22 likely to contain material information necessary to his defense. Id. The Supreme Court of  
23 Delaware found that Ritchie applies to privately held records. Burns v. State, 968 A.2d 1012,  
24 1024-25 (Del. 2009). In Burns, the Court held that the defendant was entitled to private therapy  
25 records because he sought only the factual information contained in the therapy records and he  
26 had established a compelling justification that the information was needed for impeachment

1 purposes. Id. at 1026. Furthermore, the Court held that a defendant need only make a “plausible  
2 showing” that the records sought are material and relevant. Id. at 1025.

### 3 C.

4 Mr. Pastrana also respectfully reminds the Court that NRS 49.115(1) and 49.2549(1) and  
5 (4) make three exceptions to any claim of lawyer/client or victim/victim’s-advocate privilege  
6 (depending upon how TIHF elects to characterize itself, **Exhibit 3**) available to the Defendant in  
7 this case. First, under NRS 49.115(1), “[t]here is no privilege...if the services of the lawyer were  
8 sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or  
9 reasonably should have known to be a crime or fraud.” Then, under NRS 49.2549(1), “[t]here is  
10 no privilege...if [t]he purpose of the victim in seeking services from a victim’s advocate is to  
11 enable or aid any person to commit or plan to commit what the victim knows or reasonably  
12 should have known is a crime or fraud.” And finally, under NRS 49.2549(4), “[t]here is no  
13 privilege...if [d]isclosure of the communication is otherwise required by law.”

14 Certainly, counsel for TIHF would agree that in a sexual assault case where there is  
15 virtually no corroborating physical evidence and where the credibility of the complainant(s) will  
16 be key to the determination of Mr. Pastrana’s innocence or guilt, information that would serve to  
17 “...impeach the State’s witnesses, or to bolster the defense case against prosecutorial attacks,”  
18 constitutes proper Brady material. Mazzan v. Warden, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000),  
19 Giglio v. United States, 405 U.S. 150, 31 L. Ed. 2d 104 (1972). Furthermore, “[d]iscovery in a  
20 criminal case is not limited to investigative leads or reports that are admissible in evidence,” and,  
21 “evidence ‘need not have been independently admissible to have been material.’” Mazzan at 66 –  
22 67 (further citations omitted).

### 23 **III. Conclusion**

24 Neither Mr. Pastrana nor counsel for the defense is unreasonable and we agree that a  
25 compromise on the part of TIHF and stipulation to in camera review by the Court would be the  
26 best strategy for resolving this issue in a way that serves the competing interests of all sides. The  
27 Defendant submits that he is willing to abide by all reasonable custody and maintenance  
28

1 requirements pertaining to the sensitive immigration and U-Visa records concerning Ms.  
2 Casillas-Ortiz and M.M. that the Court might see fit to impose. Also, this Opposition is not made  
3 for the purposes of harassment or embarrassment for the complainant(s) or any third-  
4 party/witness(es) and any information obtained from this Court's orders for the production of  
5 discovery and compliance with valid subpoenas shall be utilized in a way that is in keeping with  
6 the highest standards of ethical and professional conduct.

7 DATED this 10th day of January, 2019.

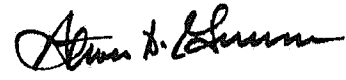
8 PHILIP J. KOHN  
9 CLARK COUNTY PUBLIC DEFENDER

10 By: /s/Kevin C. Speed  
11 KEVIN C. SPEED, #8895  
12 Deputy Public Defender  
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By: /s/ Annie McMahan  
An employee of the  
Clark County Public Defender's Office

# **Exhibit 1**



CLERK OF THE COURT

1 ORDR  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 KEVIN C. SPEED, DEPUTY PUBLIC DEFENDER  
5 NEVADA BAR NO. 8895  
6 **PUBLIC DEFENDERS OFFICE**  
7 309 South Third Street, Suite 226  
8 Las Vegas, Nevada 89155  
9 Telephone: (702) 455-4685  
10 Facsimile: (702) 455-5112  
11 speedke@co.clark.nv.us  
12 *Attorneys for Defendant*

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

GUSTAVO ADONAY GUNERA-PASTRANA,

Defendant,

CASE NO. C-16-318461-1

DEPT. NO. 1

ORDER

THIS MATTER having come before the Court on 18 January, 2017, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Defendant's Motion for Discovery shall be GRANTED IN PART as follows:

- 1) as to **Item(s) Number 1** — *"The complete Clark County School District student files for M.M. (DOB: 12/5/2002), these records are to include any and all disciplinary reports and records maintained at each individual elementary and middle school that M.M. has attended in the CCSD"* — the motion is **DENIED**, with the Defendant being directed to serve any necessary subpoenas upon the Clark County School District;
- 2) as to **Item(s) Number 2** — *"Any and all information from the Clark County Department of Family Services - CPS (Child Protective Services) Division including memoranda, reports, UNITY notes, pleadings, certificates, letters, e-mails, interview transcripts, specialists' notes, voluntary statements (oral and written) concerning: "M.M.", all information to be provided in un-redacted form to the Court for review in chambers and dissemination to the District Attorney and defense counsel"* — the

1 motion is GRANTED, with the Defendant also being directed to serve any necessary  
2 subpoenas upon the Department of Family Services - CPS;

3 3) as to Item(s) Number 3 – *“Any LVMPD records, photographs, investigative notes, all audio*  
4 *recordings, and video recordings for Event Number(s) 160712-1162”* – the motion is  
5 GRANTED;

6 4) as to Item Number 4 – *“Any and all records or information concerning financial benefits, fees,*  
7 *reimbursement for travel expenses and/or any payments for rent or other services provided to Meili*  
8 *Casillas-Ortiz or to M.M. by the Clark County District Attorney’s office, the Clark County Victim*  
9 *Witness Advocacy Center, the Department of Family Services (CPS), or any other state or county*  
10 *governmental agency”* – the motion is GRANTED, with the State also being directed to  
11 inquire with the family of the complaining witness concerning the receipt of any  
12 counseling services either provided by the District Attorney’s office, the Victim  
13 Witness Advocacy Center or any other assistance agency, counseling services  
14 received from providers referred by the District Attorney’s office, the VWAC or any  
15 other assistance agency or private provider counseling services, and to disclose  
16 confirmation or denial of receipt of said services to the Defendant’s counsel;

17 5) as to Item Number 5 – *“Evidence, to include any DNA analyses and/or medical reports, related*  
18 *to any medical or forensic examinations conducted on the person of the Defendant by LVMPD officers,*  
19 *detectives or staff, or by police department personnel at the Clark County Detention Center, and any*  
20 *SANE exam reports or other medical records created in the course of the investigation of the*  
21 *allegations in the instant case”* – the motion is GRANTED;

22 6) as to Item(s) Number 6 – *“Recordings of any intercepted telephone communications (“jail*  
23 *calls”) between the Defendant and any party where Mr. Pastrana is speaking on telephones in the*  
24 *Clark County Detention Center”* – the motion is GRANTED;

25 7) as to Item(s) Number 7 – *“Copies of any intercepted written communication alleged to have*  
26 *been made by Mr. Pastrana at any time during his incarceration at the Clark County Detention*  
27 *Center”* – the motion is GRANTED;

1 8) as to Item(s) Number 8 -- "The Defendant asks that this Court execute Certificate(s) of  
2 Materiality for the purpose of obtaining documents that may exist and/or are held outside the  
3 Court's physical jurisdiction in discovery pursuant to NRS 174.425(1), Nevada's Uniform Act to  
4 Secure the Attendance of Witnesses From Without a State in Criminal Proceedings" -- the motion  
5 is GRANTED. *Daniel K.C.*

6 DATED 7<sup>th</sup> day of February, 2017.

7  
8 *Kenneth C. Cory*  
9 Kenneth C. Cory  
DISTRICT COURT JUDGE

10 Submitted by:

11 PHILIP J. KOHN  
12 CLARK COUNTY PUBLIC DEFENDER

13  
14 By *[Signature]*

15 KEVIN C. SPEED, 38895  
16 Deputy Public Defender

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24 Case Name: Gustavo Adonay Gunera-Pastrana

25 Case No.: C-16-318461-1

26  
27 Dept. No.: I  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 18, 2017**

---

C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

---

**January 18, 2017      9:00 AM      Motion for Discovery**

**HEARD BY:** Cory, Kenneth      **COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Michele Tucker

**RECORDER:** Lisa Lizotte

<b>PARTIES</b>	Ferreira, Amy L.	Attorney for the State
<b>PRESENT:</b>	Gunera-Pastrana, Gustavo Adonay	Defendant
	Speed, Kevin	Attorney for the Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

Defendant Gunera-Pastrana PRESENT in custody.

Mr. Speed listed the discs requested from the Clark County School District. Ms. Ferreira argued there is no requirement under NRS 174 and the Brady law. Mr. Speed advised he would request the information, but requested the State issue a subpoena. COURT ORDERED, the Public Defender's Office to the subpoena. Mr. Speed requested CPS's records. COURT ORDERED, records can be requested by way of subpoena. Further arguments by counsel.

COURT ORDERED, the following:

1. The complete Clark County School District student files for M.M. (DOB: 1 2/5/2002), these records are to include any and all disciplinary reports and records maintained at each individual elementary and middle school that J.B. has attended in the CCSD; DENIED, defendant may serve any necessary subpoenas upon the Clark County School District.

2. Any and all information from the Clark County Department of Family Services - CPS (Child Protective Services) Division including memoranda, reports, UNITY notes, pleadings, certificates,

PRINT DATE: 03/06/2017

Page 1 of 2

Minutes Date: January 18, 2017

letters, e-mails, interview transcripts, specialists notes, voluntary statements (oral and written) concerning: M.M. , all information to be provided in un-redacted form to the Court for review in chambers and dissemination to the District Attorney and defense counsel; GRANTED, defendant may serve any necessary subpoenas upon the Department of Family Services - CPS

3. Any LVMPD records, photographs, investigative notes, all audio recordings, and video recordings for Event Number(s) 160712-1162; GRANTED.

4. Any and all records or information concerning financial benefits, fees, reimbursement for travel expenses and/or any payments for rent or other services provided to Meili Casillas-Ortiz or to M.M. by the Clark County District Attorney s office, the Clark County Victim Witness Advocacy Center, the Department of Family Services (CPS), or any other state or county governmental agency; GRANTED. The State also being directed to inquire with the family of the complaining witness concerning the receipt of any counseling services either provided by the District Attorney's Office, the Victim Witness Advocacy Center or any other assistance agency, counseling services received from providers referred by the District Attorney's office, the VWAC or any other assistance agency or private provider counseling services, and to disclose confirmation or denial of receipt of said services to the Defendant's counsel.

5. Evidence, to include any DNA analyses and/or medical reports, related to any medical or forensic examinations conducted on the person of the Defendant by LVMPD officers, detectives or staff, or by police department personnel at the Clark County Detention Center, and any SANE exam reports or other medical records created in the course of the investigation of the allegations in the instant case; GRANTED.

6. Recordings of any intercepted telephone communications (jail calls) between the Defendant and any party where Mr. Pastrana is speaking on telephones in the Clark County Detention Center; GRANTED.

7. Copies of any intercepted written communication alleged to have been made by Mr. Pastrana at any time during his incarceration at the Clark County Detention Center; GRANTED.

8. The Defendant asks that this Court execute Certificate(s) of Materiality for the purpose of obtaining documents that may exist and/or are held outside the Court's physical jurisdiction in discovery pursuant to NRS 174.425(1), Nevada s Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings; DENIED.

Mr. Speed to prepare the Order.

# **Exhibit 2**



## Office of the Public Defender

309 S Third St. • Second Floor • P.O. Box 552610 • Las Vegas, NV 89155-2610

(702) 455-4685 • Fax (702) 455-5112

Philip J. Kohn, Public Defender • Daren B. Richards, Assistant Public Defender



20 December, 2017

Clark County District Attorney  
Amy Ferreira, Chief Deputy District Attorney  
301 E. Clark Ave., 9<sup>th</sup> Floor  
Las Vegas, Nevada 89101

RE: State of Nevada v. Gustavo Gunera-Pastrana  
Case No. C-16-318461-1

Dear Ms. Ferreira:

As the end of the year approaches, my review of the calendar for 2018 shows that we have the matter referenced above scheduled for trial at the end of January. With this letter I am formally requesting production of additional discovery. Please respond by indicating in writing, no later than Monday, 8 January, 2018, whether you agree to provide the materials sought. I will then formalize each request in the form of a written motion informing the Court as to which requests are disputed and which are unopposed. I will then ask that the Court adjudicate the disputed requests and enter an Order directing the production of discovery accordingly.

On Mr. Gunera-Pastrana's behalf, I am requesting that you produce:

1. Evidence of any and all compensation, express or implied, promises of favorable treatment or leniency, or any other benefit that any of the State's witnesses may of have received in exchange for their cooperation with this or any related prosecution. This includes but is not limited to: (1) any and all records and notes from the Victim Witness Advocacy Center of the District Attorney, including any/all records of any expectation of any benefit or assistance to be received, or already received by any witness in this case; (2) any monetary benefits received as well as any express or implied promises made to any witness to provide counseling and/or treatment and/or provide immigration assistance (including, but not limited to, U-Visa documentation) as a result of the witness' participation in this case; (3) the names of any and all agencies and workers or other referrals that were given to any witness and/or his/her family member, relative or guardian in connection with this case or any related matter; (4) an estimate of future benefits to be received by any witness during or after the trial, including travel expenses.
2. Documentation of any and all statements, tangible or intangible, recorded or unrecorded, made by any witness that are in any manner inconsistent with the written and/or recorded statements previously provided to the defense. This includes, but is not limited to, any oral statements made to any employee or representative of the District Attorney's office or any other government employee, local or federal, during pre-trial conferences or other investigative meetings.
3. Criminal history information on any witness, actual or potential, relating to specific instances of misconduct or for untruthfulness that may be inferred and/or which could lead to admissible evidence, impeachment or otherwise. This includes, but is not limited to, NCIC data, juvenile records, misdemeanors, out-of-state arrests and convictions, outstanding arrest warrants or bench warrants, and cases which were dismissed or not pursued by the prosecuting agency, and any other information that would go to the issue(s) of credibility and/or bias, or lead to the discovery of information bearing on credibility/bias, whether or not the information is directly admissible by the rules of evidence. In addition, those witnesses, actual or potential, known to the State or any law enforcement agency

involved in the investigation of this or any related matter. Also, along with any other requirements imposed by *Brady*, the defense requests that the District Attorney be required to run the aforementioned witnesses, in addition to any other lay witnesses prosecutors intend to call or upon whose testimony or statements the State will rely during either the guilt or penalty phases of trial, through an NCIC check and allow defense counsel to review the NCIC reports on those witnesses. The defense requests that the NCIC information be disclosed to defense counsel as soon as possible. If there is no NCIC record for a particular witness, I ask that the State make that representation. While the defense is not insisting that prosecutors run NCICs on expert or law enforcement witnesses, the defense requests that the State be ordered to comply with any *Brady* obligations with respect to these witnesses.

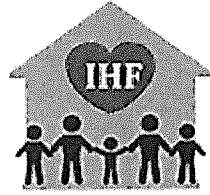
Please do not hesitate to contact me at (702) 455-6611 if you have further questions or concerns.

Very truly yours,

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

Kevin C. Speed  
Chief Deputy Public Defender - SADU

# **Exhibit 3**



**The Immigrant Home Foundation**  
**Fundación Casa del Inmigrante**

(<http://www.immigrantfoundation.org>)

Call us now

**702-889-4431 (tel:702-889-4431)**

Email us now

**[info@immigrantfoundation.org](mailto:info@immigrantfoundation.org) (mailto:info@immigrantfoundation.org)**

Select Language ▼

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**The Immigrant Home Foundation**  
**Fundación Casa del Inmigrante**

[Read More](#)

[Contact Us](#)

## Quienes somos **Who Are We**

The Immigrant Home Foundation/Fundación Casa del Inmigrante (IHF) is a non-profit organization whose mission is to provide candid immigrant legal services and empower our community through education. IHF welcomes everyone regardless of sexual orientation, color, race, nationality and religion.

The Immigrant Home Foundation/Fundación Casa del Inmigrante (IHF) es una organización sin fines de lucro cuya misión es proporcionar servicios legales de inmigrantes y empoderar a nuestra comunidad a través de educación. IHF les da la bienvenida a todos, independientemente de su orientación sexual, color, raza, nacionalidad y religión.



**Help an immigrant family today**  
**Ayude una familia inmigrante hoy**

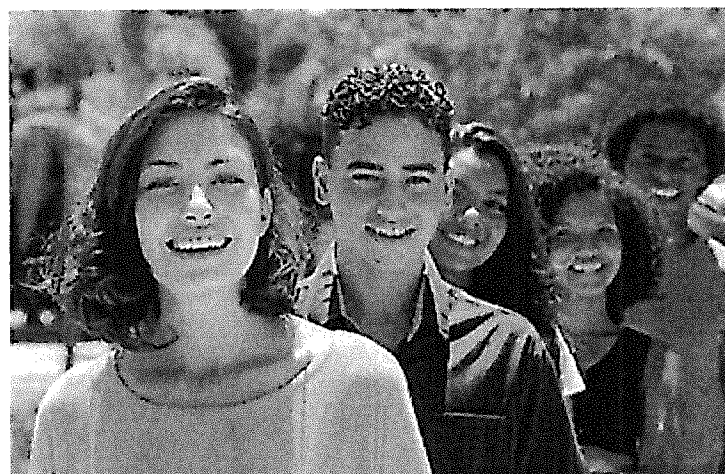
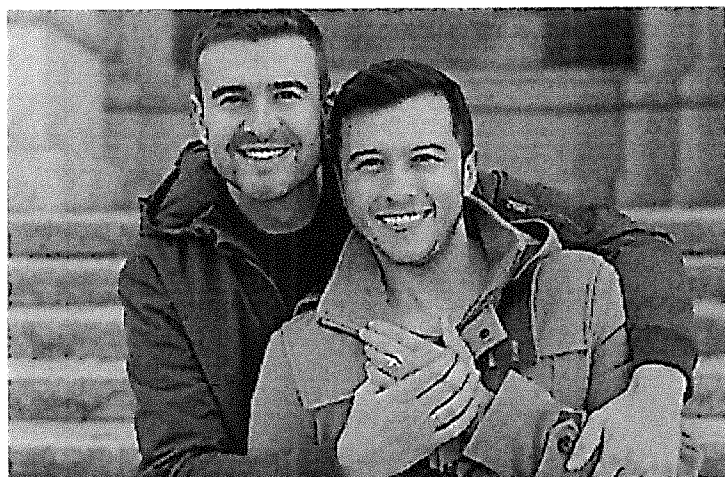
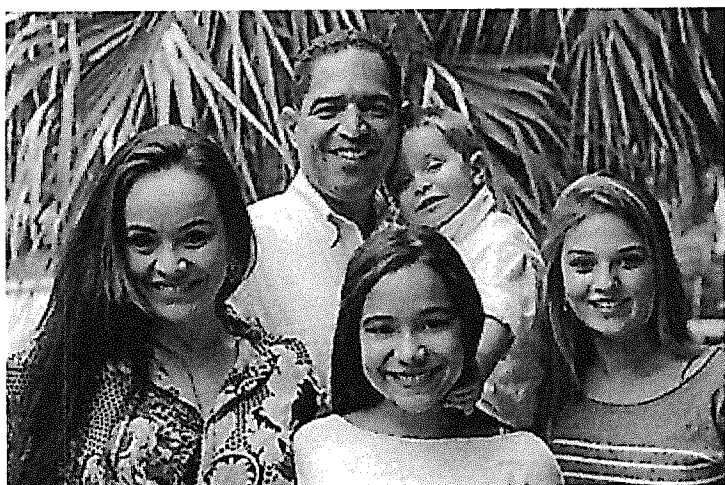
[Donate Now](#)

## **Services | Servicios**

The Immigrant Home Foundation/Fundación Casa del Inmigrante (IHF) is recognized by the by the U.S. Department of Justice.

The Immigrant Home Foundation/Fundación Casa del Inmigrante (IHF) es reconocida por el Departamento de Justicia

de Estados Unidos.



## Citizenship | Ciudadanía

Complete Citizenship process includes the application for citizenship and classes to prepare you for the interview.

Proceso de Ciudadanía completo incluye la aplicación para la ciudadanía y clases para prepararse para la entrevista.

## **Adjustment of Status | Ajuste de Status**

Process to obtain Legal Permanent Resident Status (Green Card).

Proceso para obtener su Residencia Permanente (Tarjeta Verde).

## **U-Visa/VAWA | Visa-U/VAWA**

Immigration relief for victims of violent crimes such as Domestic Violence, Sexual Assault, Battery/Robbery with a Deadly Weapon, etc.

Alivio migratorio para víctimas de crímenes violentos tal como Violencia Domestica, Asalto Sexual, Asalto/Robo a Mano Armada, etc.

## **DACA**

(Consideration of Deferred Action for Childhood Arrivals/Consideración de Acción Diferida para los Llegados en la Infancia)

Assistance with DACA renewal

Ayuda con renovación de DACA

## **Family Petitions | Peticiones Familiares (Petition for Alien Relative)**

## **Fiancé Visa | Visa de Prometido (Petition for Alien Fiancé)**

## **Consular Process | Proceso Consular**

## **Waivers | Perdonos**



**Visit Us**

2900 Stewart Ave. Las Vegas, NV 89101

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**Call Us**

Phone: 702-889-4431 (tel:702-889-4431) | Fax 702-331-1552

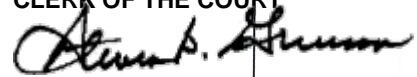
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**Email**

[info@immigrantfoundation.org](mailto:info@immigrantfoundation.org) (mailto:info@immigrantfoundation.org)

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(<https://www.1smg.com/>)



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2 KATHIA PEREIRA, ESQ.  
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4 PEREIRA & ASSOCIATES, LLP  
5 8942 SPANISH RIDGE AVE., STE. 1  
6 LAS VEGAS, NV 89148  
7 T: 702-737-7717  
8 E: KP@PIMMIGRATION.COM  
9 ATTORNEY FOR THE IMMIGRANT  
10 HOME FOUNDATION

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

10 THE STATE OF NEVADA,  
11 PLAINTIFF,

12 VS.

13 GUSTAVO ADONAY GUNERA-  
14 PASTRANA,  
15 DEFENDANT.

CASE NO.: C-16-318461-1

DEPT. NO.: XXVIII

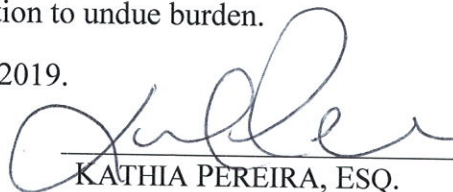
DATE: JANUARY 23, 2019  
TIME: 9:00 A.M.

**AMENDED MOTION TO  
QUASH SUBPOENA-  
CRIMINAL DUCES TECUM**

16 Comes now, **THE IMMIGRANT HOME FOUNDATION**, represented by KATHIA  
17 PEREIRA, ESQ., of PEREIRA & ASSOCIATES, LLP, and respectfully requests that this Court  
18 quash the Subpoena-Criminal Dues Tecum issued on December 13, 2018, pursuant to the  
19 provisions of NRCP 45 (c)(3)(A). The Subpoena requests that The Immigrant Home Foundation  
20 produce a file/documents relating to a party not named in the above referenced action, and  
21 respectfully represents the following:

22 The Subpoena should be quashed because it requires disclosure of privileged or other  
23 protected matter, including but not limited to work product, and no exception or waiver applies,  
24 and subjects The Immigrant Home Foundation to undue burden.

25 Executed this 17<sup>th</sup> day of January, 2019.



KATHIA PEREIRA, ESQ.  
BAR NO.: 8874

28 AMENDED MOTION TO QUASH SUBPOENA-CRIMINAL DUCES TECUM - 1

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**NOTICE OF MOTION**

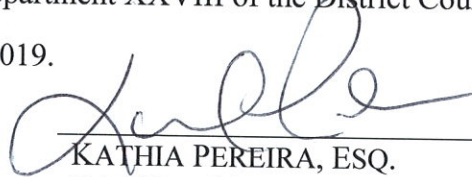
**TO: STATE OF NEVADA;**

**TO: KEVIN C. SPEED, PUBLIC DEFENDER; AND**

**TO: BRUCE E. MCALLISTER, PUBLIC DEFENDER.**

**PLEASE TAKE NOTICE THAT** the foregoing Motion shall be heard on the **23RD DAY**  
**OF JANUARY, 2019, AT 9:00 A.M.** in Department XXVIII of the District Court.

DATED this 17<sup>th</sup> day of January, 2019.



KATHIA PEREIRA, ESQ.

BAR NO.: 8874

PEREIRA & ASSOCIATES, LLP

8942 SPANISH RIDGE AVE., STE. 1

LAS VEGAS, NV 89148

T: 702-737-7717

E: KP@PIMMIGRATION.COM

ATTORNEY FOR THE IMMIGRANT HOME  
FOUNDATION

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**DECLARATION**

Kathia Pereira, Esq., makes the following declaration:

1) I, being an attorney duly licensed to practice law in the State of Nevada, represent THE IMMIGRANT HOME FOUNDATION (hereinafter "TIHF"), who is not party to the instant action.

2) I am more than 18 years of age and am competent to testify as to the matters stated herein.

3) I have prepared and read the foregoing Amended Motion to Quash Subpoena-Criminal Duces Tecum, the contents of which are true to the best of my knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

I declare under the penalty of perjury that the foregoing is true and correct.

EXECUTED THIS 19th DAY OF JANUARY, 2019.

  
KATHIA PEREIRA, ESQ.

BAR NO.: 8874

PEREIRA & ASSOCIATES, LLP

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ATTORNEY FOR THE IMMIGRANT HOME  
FOUNDATION

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. STATEMENT OF FACTS

On December 13, 2018, The Immigrant Home Foundation (hereinafter "TIHF"), who is not a party to the above-captioned matter, was served with a Subpoena-Criminal Duces Tecum, via facsimile, requesting "copies of the following persons file involving her application for a U-Visa: Meili Casillas-Ortiz", an individual who does not appear in the above-referenced case caption. No other documentation, Exhibits, or explanation was provided. A copy of the complete facsimile TIHF received is annexed hereto as **EXHIBIT "A"**.

TIHF, a private entity, represents individuals with immigration related matters and is a recognized Board of Immigration Appeals Accredited Representative. An Accredited Representative is "approved by the Board of Immigration Appeals (the Board) to represent aliens before the Immigration Courts, the BIA and USCIS." See generally <https://www.uscis.gov/tools/glossary/accredited-representative>. As such, and with the goal of protecting Ms. Casillas-Ortiz from the disclosure of her confidential file, on December 26, 2018, THIF caused the Motion to Quash Subpoena-Criminal Duces Tecum (hereinafter "Motion to Quash") to be filed in this matter.

In Defendant's opposition to TIHF's Motion to Quash, Deputy Public Defender Speed (hereinafter "DPD Speed") references correspondence he sent to the State of Nevada, an agency that has no relation to TIHF, requesting that "the government produce: "[e]vidence of any and all compensation, express or implied, promises of favorable treatment or leniency, or any other benefit that any of the State's witness may have received in exchange for their cooperation with this or any related prosecution..."", then makes the leap to state that it was ready to proceed with its case but for our having filed and served the Motion to Quash, and is seeking to have said motion denied.

### II. MEMORANDUM

#### a. VICTIM'S RIGHTS

As an Accredited Representative, TIHF owes its clients duties of loyalty and confidentiality. Additionally, The Nevada voters overwhelmingly voted to enhance victim's rights during the last

1 election; consequently, the State's Constitution has been amended effective November 27, 2018,  
2 to enhance the state constitutional rights of victims, including but not limited to, adding the  
3 protection to "prevent the disclosure of confidential information or records to the defendant which  
4 could be used to locate or harass the victim or the victim's family." NV Const. art. 1 §8A(1)(d)  
5 While DPD Speed would have this honorable Court believe that his client's due process rights  
6 trump the victim's rights with regard to the Subpoena at issue, this State has acted to bolster victims'  
7 rights.

8  
9 b. DISCOVERY

10 DPD Speed seems to think that the mere mention of Brady material will spook this honorable  
11 Court into doing his will; however, DPD Speed knows that Brady material pertains to the State's  
12 disclosures and does not extend to parties/agencies not a named party to the action. DPD Speed  
13 refers to the Defendant's due process rights to discovery. However, in criminal cases the term  
14 "discovery" applies to the actual parties to this case (in this matter, the State of Nevada and Mr.  
15 Gunera-Pastrana). It does not extend to third-party witnesses...including, but not limited to, the  
16 victim. The Criminal Rules of Practice for the Second Judicial District Court of the State of  
17 Nevada specifies as follows:

18 Rule 6. Discovery.

19 (a) The **parties** [emphasis added], through their counsel, without order of the court, shall  
20 timely provide discovery of all information and materials permitted by an applicable  
21 provision of the Nevada Revised Statutes.

22 Moreover, the Federal Rules of Criminal Procedure Rule 16. Discovery and Inspection provides  
23 for "(a) Government's Disclosure; and (b) Defendant's Disclosure." No other parties are subject  
24 to Fed. R. CP. Rule 16.

25 While the Nevada Revised Statutes (hereinafter "NRS") section 174.335 provides for  
26 "Subpoena's for production of documentary evidence and of objects", the language contained  
27 therein must be viewed as applying to the parties to the action. If a more broad reading could be  
28 had, the ability to subpoena non-parties must be viewed with an eye towards upholding the laws

1 enumerated in the State's constitution, and be weighed against the protections contained therein.  
2 The newly enacted section of the State's constitution pertaining to victim's rights trumps this NRS  
3 section insofar as it applies to the material being sought by DPD Speed.  
4

5 Defendant's due process rights are in no way impeded by the granting of the Motion to Quash  
6 or this Amended Motion to Quash as DPD Speed will still be afforded all discovery and disclosures  
7 Defendant is rightfully entitled to from the District Attorney's office, and by cross-examining any  
8 witness(es) against him. TIHF, however, should not be forced to violate the duties of loyalty and  
9 confidentiality it owes to Ms. Casillas-Ortiz who is not a party to this action. Granting DPD Speed  
10 the ability to access our confidential client file would only serve to harass, intimidate, and locate  
11 Ms. Casillas-Ortiz, something the state legislature and the voters, in their infinite wisdom, fought  
12 to protect against during this last session, and election. We humbly and respectfully request that  
13 your honor therefore deny DPD Speed's request and grant either our Motion to Quash or this  
14 Amended Motion to Quash.

15 c. COMPENSATION

16 One can infer that DPD Speed is seeking to review TIHF's file to ascertain if Ms. Casillas-  
17 Ortiz has filed for and/or received U-Visa documentation as a form of compensation for her  
18 cooperation in the instant case. It is important to note that TIHG did not require anything from,  
19 nor in anyway correspond with, the District Attorney's office in Ms. Casillas-Ortiz's matter with  
20 TIHF; therefore, any applications Ms. Casillas-Ortiz may or may not have filed in her matter with  
21 TIHF should have no bearing in the instant case, and the disclosure of her file to PDP Speed would,  
22 as previously stated, only serve the purpose of harassing, intimidating, or locating Ms. Casillas-  
23 Ortiz and/or her family and should, therefore, be denied.

24 d. POINTS AND AUTHORITIES


25 As for DPD Speed's request that the Motion to Quash be denied as no points and authorities  
26 accompanied the motion, I would point out that the authority is cited directly in the body of the  
27 motion, NRCP 45(c)(3)(A), which specifically authorizes the basis for quashing, and the pertinent  
28 portions of the statute were specified, giving this honorable Court sufficient basis by which to

1 continue to hear and decide on the merits of the motion. Moreover, while EDCR 3.20 does state  
2 that points and authorities are to accompany motions, the remedy of denying a motion is not  
3 mandatory as DPD Speed quoted himself “[t]he absence of such a memorandum *may* [emphasis  
4 added] be construed as an admission that the motion is not meritorious, as cause for its denial or  
5 as a waiver of all grounds not so supported. Nothing in the language of EDCR 3.20 mandates the  
6 dismissal of a motion not accompanied by points and authorities; we would argue, especially where,  
7 as in the filed Motion to Quash, the basis and authority is made clear in the body of the motion  
8 itself.  
9

10 e. OPPOSITION UNTIMELY FILED/SERVED

11 Finally, since DPD Speed wishes to hang on to the rules in the hopes of having the Motion  
12 to Quash dismissed, it behooves me to point out that his Opposition was untimely filed and served.  
13 Pursuant to EDCR 3.20(c), which states “[w]ithin 7 days after the service of the motion, the  
14 opposing party must serve and file written opposition thereto. Failure of the opposing party to  
15 serve and file written opposition may be construed as an admission that the motion is meritorious  
16 and a consent to granting of same. DPD Speed was served the Motion to Quash via an email  
17 address which was specifically listed in their service of the Subpoena-Criminal Duces Tecum, sent  
18 via facsimile. See *EXHIBIT “A”* Our office served the Motion to Quash via eMail at the address  
19 listed in that correspondence on December 28, 2018 and a courtesy copy of the motion was mailed  
20 on January 3, 2019, making 7 days from the date of original service January 4, 2019. DPD Speed  
21 did not file/serve his opposition until January 11, 2019, a total of **14** days after the original date of  
22 service. Consequently, the untimely filing/service of the Opposition should be deemed as DPD  
23 Speed’s admission that the motion is meritorious and his consent to granting same. Therefore, we  
24 once again, respectfully request that our Motion to Quash or this Amended Motion to Quash be  
25 granted.

26 DATED this 17th day of January, 2019.

27   
28 KATHIA PEREIRA, ESQ.  
BAR NO.: 8874

AMENDED MOTION TO QUASH SUBPOENA-CRIMINAL DUCES TECUM - 7



## Office of the Public Defender

309 S Thrd St • Second Floor • P.O. Box 552610 • Las Vegas, NV 89155-2610

(702) 455-4685 • Fax (702) 455-6112

Philip J. Kohn, Public Defender • Daren B. Richards, Assistant Public Defender



### FACSIMILE TRANSMISSION

December 13, 2018

**TO:** The Immigrant Home Foundation  
**FROM:** (702)455-2050  
**RE:** Subpoena C-16-318461-1  
**FAX NO.:** (702) 331-1552  
**PAGES:** (3) including this page.

Please contact me should you have any trouble in receiving any part of this fax transmission.

This transmission is intended for the recipient listed above only. It may also contain attorney work product or privileged material, and receipt of the material by one other than the intended recipient does not constitute a waiver of such privileges. If you received it in error, please call the above-listed number.

# DISTRICT COURT

## CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff

v.

GUSTAVO ADONAY GUNERA-  
PASTRANA

Defendant.

CASE NO. C-16-318461-1

DEPT. NO. XXVIII

**SUBPOENA-CRIMINAL  
DUCES TECUM**

**THE STATE OF NEVADA SENDS GREETINGS TO:**

**The Immigrant Home Foundation  
Attn: Custodian of Records  
Rafael Rivera Community Center  
2900 E. Stewart Ave Las Vegas, NV 89101  
Phone: (702) 598-0052  
Fax: (702) 331-1552**

**YOU ARE HEREBY COMMANDED**, that all and singular, business and excuses set aside, you appear and attend on the 7th day of January, 2019, at the hour of 1:30 a.m. in Department 28 of District Court, Clark County, Nevada. The address where you are required to appear is the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. You are required to bring with you at the time of your appearance any items set forth on the reverse side of this Subpoena. **If you fail to attend, you will be deemed guilty of contempt of Court and liable to pay up to a FIVE HUNDRED DOLLAR (\$500.00) fine and sentenced up to TWENTY-FIVE DAYS in jail.**

Dated this 13th day of December, 2018.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By Carei Kung for  
KEVIN C. SPEED  
Attorney for Defendant  
(702) 455-4685

**MCALLISTER**

**STATE OF NEVADA  
COUNTY OF CLARK****AFFIDAVIT OF SERVICE**

\_\_\_\_\_, being duly sworn says: That at all times herein Affiant was over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. That Affiant received the Subpoena on the \_\_\_\_\_, day of December, 2018, and served the same on the \_\_\_\_\_, day of December, 2018, by delivering a copy to the witness at (Write in Address Below):

Name of Person Served: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SUBSCRIBED AND SWORN** to before me this  
\_\_\_\_\_ day of December, 2018.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
NOTARY PUBLIC in and for Clark County  
State of Nevada

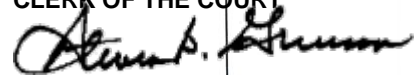
**ITEMS TO BE PRODUCED BY YOU**

Please provide copies of the following persons file involving her application for a U-Visa:

Meili Casillas-Ortiz  
DOB: 05-02-1978

**In lieu of your personal appearance you may deliver the requested materials to any representative of the Clark County Public Defender provided said materials are made available by December 26, 2018.**

When the requested materials are ready for pickup or if you have any questions, please call Bruce E. McAllister - PD at (702)455-2050 or email mcallibe@clarkcountynv.gov.  
**CASE NO. C-16-318461-1**



1 COM

2 KATHIA PEREIRA, ESQ.

3 BAR NO.: 8874

4 PEREIRA & ASSOCIATES, LLP

5 8942 SPANISH RIDGE AVE., STE. 1

6 LAS VEGAS, NV 89148

7 T: 702-737-7717

8 E: KP@PIMMIGRATION.COM

9 ATTORNEY FOR THE IMMIGRANT

10 HOME FOUNDATION

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 THE STATE OF NEVADA,

CASE NO.: C-16-318461-1

14 Plaintiff,

DEPT. NO.: XXVIII

15 vs.

16 GUSTAVO ADONAY GUNERA-  
17 PASTRANA,

**AMENDED**  
**CERTIFICATE OF MAILING**

18 Defendant.

19 I HEREBY CERTIFY that service of the foregoing MOTION TO QUASH SUBPOENA  
20 DUECE TECUM was made on the 28<sup>TH</sup> day of December, 2018, as evidenced by the attached  
21 Exhibit "A", in the following manner:  
22 electronically via:

23 mcallibe@clarkcountynv.gov; and

24 motions@clarkcountyda.com.

25 Per NRS 53.045, I declare under the penalty of perjury that the foregoing is true and correct.

26 Executed this 17<sup>th</sup> day of January, 2019.



27 **KC CARABALLO, ESQ.**

28 BAR NO.: 12189

O/B/O KATHIA PEREIRA, ESQ.

BAR NO.: 8874

ATTORNEY FOR THE IMMIGRANT

HOME FOUNDATION

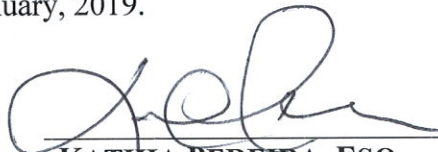
1 I HEREBY CERTIFY that service of the foregoing MOTION TO QUASH SUBPOENA  
2 DUECE TECUM was made on the 3<sup>RD</sup> day of January, 2019, pursuant to NRCP 5(b), by  
3 depositing a copy of same in the United States Mail in Las Vegas, Nevada, postage prepaid,  
4 addressed as follows:  
5

6 KEVIN C. SPEED  
7 BRUCE E. MCALLISTER  
8 PUBLIC DEFENDER  
9 OFFICE OF THE PUBLIC DEFENDER  
10 309 S. THIRD ST., SECOND FLOOR  
11 P.O. BOX 552610  
12 LAS VEGAS, NV 89155-2610

11 STATE OF NEVADA  
12 STEVE WOLFSON  
13 CLARK COUNTY DISTRICT ATTORNEY  
14 OFFICE OF THE DISTRICT ATTORNEY  
15 REGIONAL JUSTICE CENTER  
16 200 LEWIS AVENUE  
17 LAS VEGAS, NV 89101

18 Per NRS 53.045, I declare under the penalty of perjury that the foregoing is true and correct.

19 Executed this 17<sup>th</sup> day of January, 2019.

20 

21 KATHIA PEREIRA, ESQ.  
22 BAR NO.: 8874  
23 PEREIRA & ASSOCIATES, LLP  
24 8942 SPANISH RIDGE AVE., STE. 1  
25 LAS VEGAS, NV 89148  
26 T: 702-737-7717  
27 E: KP@PIMMIGRATION.COM  
28 ATTORNEY FOR THE IMMIGRANT  
HOME FOUNDATION

## KC Caraballo





---

**From:** KC Caraballo  
**Sent:** Friday, December 28, 2018 2:54 PM  
**To:** 'mcallibe@clarkcountynv.gov'; 'motions@clarkcountyda.com'  
**Cc:** Kathia Pereira  
**Subject:** District Court Case No.: C-16-318461-1  
**Attachments:** eFiled Stamped MQUA.pdf

Enclosed for service upon you please find the attached Motion to Quash Subpoena-Criminal Duces Tecum in re District Court Case No.: C-16-318461-1.

Sincerely,  
KC

KC Caraballo, Esq. | Pereira Immigration Law Group, LLC  
8942 Spanish Ridge Avenue, Suite 1, Las Vegas, NV 89148  
Tel (702) 737-7717 Ext. 360 | [kc@pimmigration.com](mailto:kc@pimmigration.com)

 <http://pimmigration.com> |  [@licenciadapereira](https://www.facebook.com/licenciadapereira) |  [@Lic\\_KC](https://twitter.com/Lic_KC) |  [@Lic\\_KP](https://twitter.com/Lic_KP)

**PEREIRA**  
LAW GROUP  
**IMMIGRATION**

Inmigración al Día Por: Lic. Kathia Pereira | <https://www.facebook.com/licenciadapereira?pnref=story>

### OF COUNSEL TO:

**GLOBAL**  
IMMIGRATION GROUP

 **MC LAW**  
**GROUP**  
IMMIGRATION LAW • INVESTOR VISAS • INTERNATIONAL & BUSINESS MATTERS

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ALL RIGHTS RESERVED

*Steven D. Grierson*

**MOT**

KATHIA PEREIRA, ESQ.  
BAR NO.: 8874  
PEREIRA & ASSOCIATES, LLP  
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ATTORNEY FOR THE IMMIGRANT  
HOME FOUNDATION

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

GUSTAVO ADONAY GUNERA-  
PASTRANA,

Defendant.

CASE NO.: C-16-318461-1

DEPT. NO.: XXVIII

**MOTION TO QUASH SUBPOENA-  
CRIMINAL DUCES TECUM**

Comes now, **THE IMMIGRANT HOME FOUNDATION**, represented by KATHIA PEREIRA, ESQ., of PEREIRA & ASSOCIATES, LLP, and respectfully requests that this Court quash the Subpoena-Criminal Dues Tecum issued on December 13, 2018, pursuant to the provisions of NRCP 45 (c)(3)(A). The Subpoena requests that The Immigrant Home Foundation produce a file/documents relating to a party not named in the above referenced action, and respectfully represents the following:

The Subpoena should be quashed because it requires disclosure of privileged or other protected matter, including but not limited to work product, and no

MOTION TO QUASH SUBPOENA-CRIMINAL DUCES TECUM - 1

1 exception or waiver applies, and subjects The Immigrant Home Foundation to undue  
2 burden.

3 Per NRS 53.045, I declare under the penalty of perjury that the foregoing is  
4 true and correct.

5 Executed this 26 day of December, 2018.



KATHIA PEREIRA, ESQ.

BAR NO.: 8874

PEREIRA & ASSOCIATES, LLP

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T: 702-737-7717

E: KP@PIMMIGRATION.COM

ATTORNEY FOR THE IMMIGRANT

HOME FOUNDATION

14 **NOTICE OF MOTION**

16 **TO: STATE OF NEVADA;**

17 **TO: KEVIN C. SPEED, PUBLIC DEFENDER; AND**

18 **TO: BRUCE E. MCALLISTER, PUBLIC DEFENDER.**

19 **PLEASE TAKE NOTICE THAT** the foregoing Motion shall be heard on  
20 the 23rd day of January, 2019, at 9 00 A.M. in Department XXVIII of  
21 the District Court.

22 DATED this \_\_\_\_ day of December, 2018.

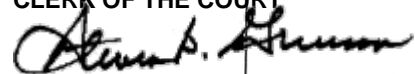


KATHIA PEREIRA, ESQ.

BAR NO.: 8874

ATTORNEY FOR THE IMMIGRANT

HOME FOUNDATION



1 **ORDR**

2 KATHIA PEREIRA, ESQ.  
3 BAR NO.: 8874  
4 PEREIRA & ASSOCIATES, LLP  
5 8942 SPANISH RIDGE AVE., STE. 1  
6 LAS VEGAS, NV 89148  
7 T: 702-737-7717  
8 E: KP@PIMMIGRATION.COM  
9 ATTORNEY FOR THE IMMIGRANT  
10 HOME FOUNDATION

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,

11 Plaintiff,

12 vs.

13 GUSTAVO ADONAY GUNERA-  
14 PASTRANA,

15 Defendant.


CASE NO.: C-16-318461-1

DEPT. NO.: XXVIII

16 **ORDER GRANTING THE IMMIGRANT HOME FOUNDATION'S**  
17 **MOTION TO QUASH SUBPOENA-CRIMINAL DUCES TECUM**

18  
19 This matter having come on for hearing on the 23<sup>RD</sup> day of JANUARY, 2019, at the hour of  
20 9:00 A.M., in the above-entitled Court for the purpose of taking argument and rendering decision  
21 upon the Motion to Quash Subpoena-Criminal Duces Tecum filed by KATHIA PEREIRA, ESQ.,  
22 counsel for The Immigrant Home Foundation, Deputy Public Defender, KEVIN C. SPEED'S  
23 opposition thereto, and attorney Pereira's amended motion/reply, the State having appeared  
24 through their counsel, GENEVIEVE CRAGGS, ESQ., Deputy District Attorney, the Defendant having  
25 appeared through his counsel, KEVIN C. SPEED, ESQ., Deputy Public Defender, and the Immigrant  
26 Home Foundation having appeared through its counsel, KATHIA PEREIRA, ESQ., the Court having  
27

28 ORDER GRANTING THE IMMIGRANT HOME FOUNDATION'S MOTION TO QUASH SUBPOENA-  
CRIMINAL DUCES TECUM - 1

347 

1 considered the moving and opposing papers and having been fully advised and good cause  
2 appearing therefore:

3 **IT IS HEREBY ORDERED** that the Motion to Quash Subpoena-Criminal Duces Tecum  
4 is GRANTED in full.  
5

6 **IT IS FURTHER ORDERED, ADJUGED AND DECREED** that counsel for THE  
7 IMMIGRANT HOME FOUNDATION furnish Deputy Public Defender, KEVIN C. SPEED with an  
8 affidavit verifying that Ms. Meili Casillas Ortiz has applied for a Uvisa within two (2) weeks of  
9 this hearing.  
10

11 **IT IS SO ORDERED.**

12 DATED THIS 13 DAY OF Feb, 2019.

13  
14  
15   
16 **HON. RONALD J. ISRAEL**  
17 **DISTRICT COURT JUDGE**  
18 *C-16-318461-1*

19 RESPECTFULLY SUBMITTED BY:

20   
**KATHIA PEREIRA, ESQ.**

21 BAR NO.: 8874

22 PEREIRA & ASSOCIATES, LLP

23 8942 SPANISH RIDGE AVE., STE. 1

24 LAS VEGAS, NV 89148

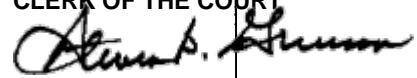
25 T: 702-737-7717

26 E: KP@PIMMIGRATION.COM

27 ATTORNEY FOR THE IMMIGRANT

28 HOME FOUNDATION

ORDER GRANTING THE IMMIGRANT HOME FOUNDATION'S MOTION TO QUASH SUBPOENA-  
CRIMINAL DUCES TECUM - 2



COM  
KATHIA PEREIRA, ESQ.  
BAR NO.: 8874  
PEREIRA & ASSOCIATES, LLP  
8942 SPANISH RIDGE AVE., STE. 1  
LAS VEGAS, NV 89148  
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E: KP@PIMMIGRATION.COM  
ATTORNEY FOR THE IMMIGRANT  
HOME FOUNDATION

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

GUSTAVO ADONAY GUNERA-  
PASTRANA,

Defendant.

CASE NO.: C-16-318461-1

DEPT. NO.: XXVIII

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that service of the foregoing ORDER GRANTING THE  
IMMIGRANT HOME FOUNDATION MOTION TO QUASH SUBPOENA-CRIMINAL  
DUCES TECUM, was made on the 20<sup>th</sup> day of February, 2019, pursuant to NRCP 5(b), by  
depositing a copy of same in the United States Mail in Las Vegas, Nevada, postage prepaid,  
addressed as follows:

KEVIN C. SPEED  
BRUCE E. MCALLISTER  
PUBLIC DEFENDER  
OFFICE OF THE PUBLIC DEFENDER  
309 S. THIRD ST., SECOND FLOOR  
P.O. BOX 552610  
LAS VEGAS, NV 89155-2610

CERTIFICATE OF MAILING - 1

1 STATE OF NEVADA  
2 STEVE WOLFSON  
3 CLARK COUNTY DISTRICT ATTORNEY  
4 OFFICE OF THE DISTRICT ATTORNEY  
5 REGIONAL JUSTICE CENTER  
6 200 LEWIS AVENUE  
7 LAS VEGAS, NV 89101

8 and electronically via:

9 mcallibe@clarkcountynv.gov;

10 speedkc@clarkcountynv.gov;

11 Jennifer.georges@clarkcountyda.com; and

12 motions@clarkcountyda.com.

13 Per NRS 53.045, I declare under the penalty of perjury that the foregoing is true and correct.

14 Executed this 5th day of March, 2019.

15 

16 **BRENDA RUIZ**

17 PEREIRA & ASSOCIATES, LLP

18 8942 SPANISH RIDGE AVE., STE. 1

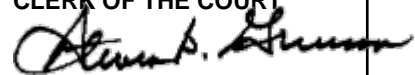
19 LAS VEGAS, NV 89148

20 T: 702-737-7717

21 E: KP@PIMMIGRATION.COM

22 ATTORNEY FOR THE IMMIGRANT

23 HOME FOUNDATION



**SLOW**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**SANDRA K. DIGIACOMO**  
Chief Deputy District Attorney  
Nevada Bar #006204  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

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

THE STATE OF NEVADA,

Plaintiff,

-VS-

**GUSTAVO ADONAY GUNERA-PASTRANA,**  
**#2697473**

Defendant.

CASE NO: **C-16-318461-1**

DEPT NO: **XXVIII**

**STATE'S THIRD SUPPLEMENTAL NOTICE OF WITNESSES**  
**AND/OR EXPERT WITNESSES**  
**[NRS 174.234]**

**TO: GUSTAVO ADONAY GUNERA-PASTRANA, Defendant; and**

**TO: KEVIN SPEED, Deputy Public Defender, Counsel of Record:**

**YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the STATE OF  
NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief:

**\*indicates additional witness(es) and/or modification(s)**

ASHENFELTER, DEBBIE; c/o CCDA Investigations

CARNELL, CRISTEN; c/o CCDA Investigations

CETL, DR SANDRA; c/o CCDA's Office; Dr. Cetl will be called as a medical expert  
in the field of pediatric sexual and physical abuse based on her training, experience and any  
research. Dr. Cetl will testify regarding the procedure for medical and SCAN exams on  
pediatric patients who present to the hospital or the Southern Nevada Children's Assessment

Center with complaints of sexual abuse, including the nature, process, and possible medical diagnoses involved in completing a SCAN. This testimony will necessarily include the body's physical processes and what would contribute or take away from physical findings on a patient reporting sexual abuse, including, but not limited to, the passage of time, the healing process of the body, the potential or lack of potential injuries based on the type of sexual contact disclosed.

COR or Designee; CCDC

COR or Designee; LVMPD COMMUNICATIONS

COR or Designee; LVMPD RECORDS

COR or Designee; SUNRISE HOSPITAL

DELARIA, D.; LVMPD #13338

DRANSFIELD, W.; LVMPD #10052

EISEN, TIFFANY; c/o CPS/DFS, 701 N. Pecos Rd., LVN

ESPINOZA, ELIZABETH; CPS/DFS; may be called to testify about the methodology, process, purpose, and limitations of forensic and victim interviews, including research regarding forensic interviews, as well as child development, memory, suggestibility, and/or deviations from the forensic interview, as it relates to her training and experience, as well as the interview(s) completed in this case.

HUTH, D.; LVMPD #8543

J.M.; c/o CCDA-SVU/VWAC

JIMENEZ, M.; LVMPD #13257

KEITH, TIFFANY; c/o CPS/DFS, 701 N. Pecos Rd., LVN

KNEPP, ELAINE; c/o CCDA Investigations

KRAVETZ, M.; LVMPD #15346

LANKFORD, REBECCA; c/o SNCAC

LARSON, R.; LVMPD #15366

M.C.O.; c/o CCDA-SVU/VWAC

M.M.; c/o CCDA-SVU/VWAC

1 \*MCGILL, JODI/ c/o CCDA Investigations

2 MENDOZA-PONCE, ADRIANA; c/o CPS/DFS, 701 N. Pecos Rd., LVN

3 \*PEREIRA, KATHIA; 8942 Spanish Ridge Ave., Ste. 1, LVN

4 RUSSO, MARABETH; c/o CPS/DFS, 701 N. Pecos Rd., LVN

5 SAMPLES, L.; LVMPD #9354

6 These witnesses are in addition to those witnesses endorsed on the Information or  
7 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert  
8 Witnesses has been filed.

9 The substance of each expert witness's testimony and copy of all reports made by or at  
10 the direction of the expert witness have been provided in discovery.

11 A copy of each expert witness's curriculum vitae, if available, is attached hereto.

12 STEVEN B. WOLFSON  
13 Clark County District Attorney  
Nevada Bar #001565

14  
15 BY /s/ Sandra K. DiGiacomo  
16 SANDRA K. DIGIACOMO  
17 Chief Deputy District Attorney  
Nevada Bar #006204

18  
19  
20 CERTIFICATE OF ELECTRONIC TRANSMISSION

21 I hereby certify that service of the above and foregoing was made this 20th day of May,  
22 2019, by electronic transmission to:

23 KEVIN SPEED, Deputy Public Defender  
24 Email Address: speedkc@clarkcountynv.gov

25 ANN McMAHAN, Legal Secretary  
26 Email Address: mcmahaae@clarkcountynv.gov

27 BY: /s/ J. Georges  
28 Secretary for the District Attorney's Office

jg/SVU

*Steven D. Grierson*

DARIN F. IMLAY, PUBLIC DEFENDER  
NEVADA BAR NO. 5674  
KEVIN C. SPEED, DEPUTY PUBLIC DEFENDER  
NEVADA BAR NO. 8895  
**PUBLIC DEFENDERS OFFICE**  
309 South Third Street, Suite 226  
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Telephone: (702) 455-4685  
Facsimile: (702) 455-5112  
SpeedKC@clarkcountynv.gov  
*Attorneys for Defendant*

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

THE STATE OF NEVADA,

Plaintiff,

v.

GUSTAVO ADONAY  
GUNERA-PASTRANA,

Defendant,

CASE NO. C-16-318461-1

DEPT. NO. XXVIII

DATE: May 29, 2019

TIME: 9:00 a.m.

*Approved*  
*ALC 28*

**MOTION IN LIMINE TO EXCLUDE IMPERMISSIBLE EVIDENCE OF PRIOR  
INCIDENTS WHERE THE DEFENDANT PLEADED NOLO CONTENDERE**

COMES NOW, the Defendant, GUSTAVO ADONAY GUNERA-PASTRANA, by and through KEVIN C. SPEED, Chief Deputy Public Defender, hereby asking that this Honorable Court enter an Order excluding any evidence or argument by the State that references events described under LVMPD Event Number 16M18694X.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Memorandum of Points and Authorities and oral argument at the time set for hearing this Motion.

DATED this 22<sup>nd</sup> day of May, 2019.

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Kevin C. Speed  
KEVIN C. SPEED, #8895  
Deputy Public Defender

## PROCEDURAL BACKGROUND AND FACTS

The Defendant, *Gustavo Gunera-Pastrana* (hereinafter, “Gustavo,” or “Mr. Pastrana”), is charged with two counts of Lewdness with a Child Under the Age of 14 (NRS 201.230), and two counts of Sexual Assault with a Minor Under 14 Years of Age (NRS 200.366). The complaining witness is “M.M.,” Gustavo’s step-daughter, and the biological daughter of Gustavo’s common-law wife, Meili Castillas-Ortiz, the mother of Gustavo’s two young children. M.M. has falsely claimed that Gustavo engaged in an on-going pattern of sexual abuse, molestation and mistreatment against her since approximately the summer of 2015. The Defendant has entered pleas of not guilty to all of the charges against him and trial is set before this court on 3 June 2019.

## LAW

The very specific issue before the district court is whether the State is allowed to introduce alleged prior-bad-act evidence (here, a single incident wherein the defendant entered pleas of nolo contendere) in a subsequent criminal prosecution of a person who entered nolo contendere pleas.

### **A.**

First, it is well-settled in this jurisdiction that a presumption of inadmissibility attaches to all prior-bad-act evidence. The concern is that the jury will convict defendant for being a bad person because they are unduly influenced by the evidence. *Rosky v. State*, 111 P.3d 690 (2005). Also, NRS 48.045(2) prohibits the introduction of evidence of other crimes, wrongs, or acts as proof of a person's character, but only allows such evidence to prove *motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident*. (Emphasis added.) While such evidence may be admitted for these limited purposes, the Nevada Supreme Court has often looked upon the admission of bad act evidence with disfavor because the evidence is often irrelevant, prejudicial and it forces a defendant to wage against vague and unsubstantiated charges. For these reasons, such evidence is presumed to be inadmissible, and the State bears the burden of requesting the admission of the evidence and establishing its admissibility. To

1 accomplish this task, the State must demonstrate, at a hearing outside the presence of the jury,  
2 that: "(1) the incident is relevant to the crime charged; (2) the act is proven by clear and  
3 convincing evidence; and (3) the probative value of the evidence is not substantially outweighed  
4 by the danger of unfair prejudice." Richmond v. State, 118 Nev. 924, 932, 59 P.3d 1249, 1255  
5 (2002) (quoting, Tavares v. State, 117 Nev. 725, 730, 30 P.3d 1128, 1131 (2001)), Tavares, 117  
6 Nev. at 731, 30 P.3d at 1131, Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65  
7 (1997).

8 Even if the State meets the first two prongs of the *Richmond* test, the final prong provides  
9 additional assurances that prosecutors intent on striking "...foul blows"<sup>1</sup> will not be allowed to  
10 trounce a defendant's constitutional rights and deny him a fair trial by introducing evidence  
11 meant to do little more than paint the defendant as a "...bad man." *Williams v. State*, 95 Nev.  
12 830, 603 P.2d 694 (1979) (Also see, *Ledbetter v. State*, 122 Nev. 252, 129 P.3d 671 (2006),  
13 where the Supreme Court noted that "...the principle concern with admitting this type of  
14 evidence is that the jury will be unduly influenced by it and convict a defendant simply because  
15 he is a bad person." ). And, NRS 48.035 states: "...[a]lthough relevant, evidence is not  
16 admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of  
17 confusing the issues, or of misleading the jury." Furthermore, the State cannot simply offer up  
18 the proverbial laundry list of permissible non-propensity purposes (emphasized above) in its  
19 entirety as justification for the improper admission of bad act evidence, with the Supreme Court  
20 having held that, "[The] identification of an at-issue, non-propensity purpose for admitting prior-  
21 bad-act evidence is a necessary first step in a 48.045(2) analysis. *Newman v. State*, 298 P.3d  
22 1171 (2013). The *Newman* case stands for the proposition which demands that the prosecutor  
23 clearly spell out her purpose for seeking the admission of normally frowned-upon evidence, and  
24 said purpose must be relevant to the defense proffered by the Defendant. In other words, the  
25 prosecutor simply saying "...absence of mistake," or "...intent," or "...common plan or  
26 scheme," when the elements of the defense may have nothing, whatsoever, to do with any of

27  
28 <sup>1</sup> *Berger v. United States*, 295 U.S. 78, 88 (1935)

1 those non-propensity allowances made for bad act evidence, is not some talismanic phrase  
2 permitting the trial court to abuse its discretion. And finally, in addition to all of this and  
3 assuming that the State has managed to overcome all of the safety measures set to ensure that  
4 criminal defendants receive fair trials, the district court “should give the jury a specific  
5 instruction explaining the purposes for which the bad act evidence is admitted immediately prior  
6 to its admission and should give a general instruction at the end of the trial reminding the jurors  
7 that certain evidence may be used only for limited purposes. *Tavares*, 117 Nev. at 733, 30 P.3d at  
8 1133.

9 **B.**

10 With regard to Mr. Gunera-Pastrana’s case, the State appears to be asking that the Court  
11 admit evidence of prior-bad-acts to which the Defendant entered pleas of no contest. Despite the  
12 prior presiding court having already GRANTED the Defendant’s Motion in Limine for an Order  
13 Excluding Impermissible Evidence, the State is again attempting to twist and contort the facts of  
14 a July 2016 incident involving Ms. Casillas-Ortiz to fit its purposes in this case by trying to cast  
15 Mr. Gunera-Pastrana as an abusive and vindictive husband/boyfriend who brutalizes his romantic  
16 partner as a means of control. On 8 January 2018, former counsel for the State, Chief Deputy  
17 District Attorney Amy Ferreira, noted that the prosecution had no objection to the Motion in  
18 Limine; however, earlier this afternoon, a mere two weeks ahead of our scheduled trial start-date,  
19 defense counsel received a packet of discovery burned onto a CD purporting to contain a  
20 veritable trove of records related to LVMPD Event Number 16M18694X.

21 Legally, under NRS 48.125(2), “...[e]vidence of a plea of *nolo contendere* to the crime  
22 *charged or any other crime is not admissible in a civil or criminal proceeding involving the*  
23 *person who made the plea or offer.*” (Emphasis added.) Here, it is apparent that the government  
24 plans to use the 16M18694X incident to show that Gustavo is a bad person, plain and simple.  
25 Because convictions in any prior case resulted from a no contest plea, the law provides a very  
26 specific benefit to persons choosing to accept punishment rather than run the risk of proceeding  
27 to full-on trial. *State v. Gomes*, 112 Nev. 1473, 930 P.2d 701 (1996). Therefore, because the  
28

1 16M18694X matter resolved with a no contest plea, the State is expressly prohibited from  
2 offering evidence from the case in the current proceedings against the Defendant.

3 While this may very well be an issue of first impression in Nevada, other jurisdictions  
4 across the nation have stood largely in step with their interpretations of the Uniform Rules of  
5 Evidence 74 – Rule 410, as drafted by the National Conference of Commissioners on Uniform  
6 State Laws in the mid-1970s. It was this “Rule 410” that served as the blueprint for most of the  
7 various states’ virtually identical statutes covering the inadmissibility of nolo contendere pleas in  
8 subsequent civil and criminal actions, including our own NRS 48.125(2). For example, Ohio’s  
9 Sixth District Court of Appeals clearly stated that, “[t]he question here, however, is not one of  
10 policy, but of evidence. The rule, as articulated in Evid.R. 410 and Crim.R. 11(B)(2), is that ‘a  
11 no contest plea may not be used against the defendant in any subsequent civil or criminal  
12 proceeding.’” *Elevators Mutual Insurance Company v. O’Flaherty’s, Inc.*, 180 Ohio App.3d 315,  
13 905 N.E.2d 259 (2008). Likewise, in a civil trial where the appellant family sought damages for  
14 injuries the family sustained in an almost head-on motor vehicle collision, the appellee was  
15 found not liable in a jury verdict. The appellants had previously moved for directed verdict and,  
16 subsequently, for judgment as a matter of law offering the appellee’s nolo plea to a traffic charge  
17 of crossing center as one of their grounds. The South Dakota Supreme Court, in *Olson v. Judd*,  
18 534 N.W.2d 850 (1995), affirmed the jury’s verdict, holding that, “[t]hus to the extent [the]  
19 Olsons’ argument is that Judd’s nolo plea to a statutory violation demonstrates negligence as a  
20 matter of law, such a contention must be rejected because the plea to such a charge was not  
21 admissible.” *Id.* at 853.

22 In the South, we see the Florida Supreme Court finding that, “[t]o resolve the precise  
23 issue in this case, we need not reach a decision as to the scope of the term “conviction” pursuant  
24 to section 90.610(1) [*pertaining to impeachment of witnesses with conviction of a crime*]. In this  
25 case, we need look no further than the express statutory prohibition of section 90.410, Florida  
26 Statutes (1995). This section explicitly precludes evidence of a nolo plea in any criminal  
27 proceeding: ‘Evidence of ... a plea of nolo contendere ... is inadmissible in any civil or criminal  
28

1 proceeding.” *Florida v. Raydo*, 713 So.2d 996 (1998). And finally, in Tennessee, the Tennessee  
2 Supreme Court announced that its jurisdiction’s Tenn. R. Evid. 410 and Tenn. R.Crim. P.  
3 11(e)(6) together meant that, “[a] plea of nolo contendere generally is not admissible in  
4 evidence in ‘any civil or criminal proceeding’ against the party who entered the plea.” *State of*  
5 *Tennessee v. Crowe*, 168 S.W.3d 731 (2005), at FN 20.

6 This Court should also note that in the realm of statutory interpretation, where there may  
7 appear to be some conflict between two statutes that speak to the same subject matter, like here,  
8 where the State will likely attempt to argue that 48.045(2) and 48.125(2) are both evidentiary  
9 rules that similarly speak to the admissibility or inadmissibility of bad act evidence, and that the  
10 more general bad act statute should control, counsel for Mr. Shumpert offers the Nevada  
11 Supreme Court’s decision in *In re: Resort at Summerlin Litigation*, 122 Nev. 177, 127 P.3d 1076  
12 (2006). In that case, a civil matter, but one that provides valuable and oft-cited guidance on this  
13 particular interpretation issue, the Court considered whether the holder of a deed of trust could  
14 maintain priority over mechanic’s lien claimants for the future advances of a bankrupt property  
15 owner. In finding for the deed holder over the lien claimants, the Court held that,  
16 “[i]mportantly, where a general statutory provision and a specific one cover the same subject  
17 matter, the specific provision controls.” *Id.* at 122 Nev. 177, 185, 127 P.3d 1076, 1081 (*citing*,  
18 *Nevada Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999)). Looking back at  
19 Florida’s handling of the conflict between its nolo plea inadmissibility statute and its general  
20 impeachment provisions found in § 90.610(1) of the state’s evidence code, the Florida high court  
21 noted, “[t]his specific section of the Evidence Code prohibiting nolo contendere pleas from  
22 being admitted into evidence takes precedence over the more general impeachment provisions of  
23 section 90.610(1). *Raydo*, 713 So.2d at 1001, (*citing*, *McKendry v. State*, 641 So.2d 45, 46  
24 (Fla.1994): “[A] specific statute covering a particular subject area always controls over a statute  
25 covering the same and other subjects in more general terms.”).

26 Here, because 48.045(2) deals generally with the inadmissibility of prior-bad-act  
27 evidence to prove character, while at the same time giving the list of the limited purposes for  
28

1 which bad act evidence might be allowed; but whereas 48.125(2) deals *specifically* with the  
2 inadmissibility of pleas of nolo contendere in criminal and civil proceedings against the person  
3 who made the plea, Nevada's statutory interpretation rules make the decision that this Court  
4 must reach very clear and easy: the State must not be allowed to introduce the 16M18694X  
5 incident, or any evidence derived from it, including the certified copies of "convictions," in Mr.  
6 Gunera-Pastrana's trial on the current charges.

7 **CONCLUSION**

8 Because evidence of the prior no contest pleas is per se inadmissible, this Court must  
9 grant the Defendant's Motion in Limine.

10 DATED this 22<sup>nd</sup> day of May, 2019.

11 DARIN F. IMLAY  
12 CLARK COUNTY PUBLIC DEFENDER

13 By /s/ Kevin C. Speed  
14 KEVIN C. SPEED, #8895  
15 Chief Deputy Public Defender  
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**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion in Limine to Exclude Impermissible Evidence of Prior Incidents Where the Defendant Pleaded Nolo Contendere on for hearing before the Court on the 29th day of May, 2019, at 9:00 AM. In District Court Department 28.

DATED this 22<sup>nd</sup> day of May, 2019.

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

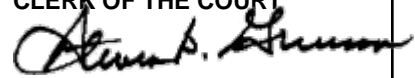
By: /s/ Kevin C. Speed  
KEVIN C. SPEED, #8895  
Chief Deputy Public Defender

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that service of the above and forgoing Motion in Limine to Exclude Impermissible Evidence of Prior Incidents Where the Defendant Pleaded Nolo Contendere was served via electronic e-filing to the Clark County District Attorney's Office on this 22<sup>nd</sup> day of May, 2019.

District Attorney's Office  
E-Mail Address:  
Jennifer.Georges@clarkcountydacounty.com

By: /s/ Annie McMahan  
An employee of the  
Clark County Public Defender's Office



NOTC  
DARIN F. IMLAY, PUBLIC DEFENDER  
NEVADA BAR NO. 5674  
KEVIN C. SPEED, DEPUTY PUBLIC DEFENDER  
NEVADA BAR NO. 8895  
**PUBLIC DEFENDERS OFFICE**  
309 South Third Street, Suite 226  
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Telephone: (702) 455-4685  
Facsimile: (702) 455-5112  
SpeedKC@clarkcountynv.gov  
*Attorneys for Defendant*

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

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-16-318461-1
	)	
v.	)	DEPT. NO. XXVIII
	)	
GUSTAVO ADONAY	)	
GUNERA-PASTRANA,	)	
	)	
Defendant,	)	

**DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234**

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, GUSTAVO GUNERA-PASTRANA, intends to call the following witnesses in his case in chief:

- |                            |                             |
|----------------------------|-----------------------------|
| 1) Mari Parlade            | (COR – CPS)                 |
| 2) Roxana Vargas-Sagastume |                             |
| 3) M. Karvetz              | LVMPD                       |
| 4) Tiffany Keith           | Family Services Spec. - CPS |
| 5) Jose Juan Moran         |                             |
| 6) Rebecca Lankford        | SNCAC                       |
| 7) Gregory Mills, Esq.     |                             |
| 8) Byron Mills, Esq.       |                             |
| 9) Cheryl Cooley           | Family Services Spec. – CPS |

- 1 10) Mary McCarthy, Esq.  
2 11) Kathia Periera, Esq. The Immigrant Home Foundation  
3 12) Adriana Mendoza-Ponce Family Services Spec. - CPS  
4 13) Marabeth Russo Family Services Spec. - CPS  
5 14) Maria Estrada  
6 15) Anna Blanco Urban League of Las Vegas  
7 16) Lileana Duarte FACT (Las Vegas)  
8 17) Courtney (LNU) FACT (Las Vegas)  
9 18) COR – Human Behavior Institute (“HBI”)  
10 19) Melissa Collaso Sr. Financial Office Spec. – CCDFS  
11 20) COR – Lutheran Social Services – Las Vegas  
12 21) Caesar Garcias  
13 22) “Aurora” (LNU)  
14 23) “Maria Doe” (natural daughter of “Aurora”)

15 Also, the Defendant expressly endorses any and all witnesses noticed by the State and  
16 incorporates the “Third Supplemental Notice of Witnesses and Expert Witnesses,” filed on 20 May  
17 2019, herein by reference.

18 DATED this 24<sup>th</sup> day of May, 2019.

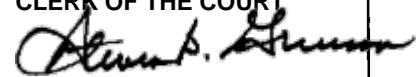
19 DARIN F. IMLAY  
20 CLARK COUNTY PUBLIC DEFENDER

21 By: /s/ Kevin C. Speed  
22 KEVIN C. SPEED, #8895  
23 Chief Deputy Public Defender  
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District Attorney's Office  
E-Mail Address:  
Jennifer.Georges@clarkcountyda.com

Case Name: Gustavo Adonay Gunera-Pastrana  
Case No.: C-16-318461-1  
Dept. No.: District Court, Department XXVIII



1 **ROC**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 SANDRA K. DIGIACOMO  
6 Chief Deputy District Attorney  
7 Nevada Bar #006204  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 EIGHTH JUDICIAL DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

12 -vs-

13 **GUSTAVO ADONAY GUNERA-**  
14 **PASTRANA,**  
15 **#2697473**

16 Defendant.

CASE NO: ~~C-16-316318-1~~  
C-16-318461-1

DEPT NO: XXVIII

17 **RECEIPT OF COPY FOR DISCOVERY PROVIDED**

18 RECEIPT OF COPY of the foregoing DISCOVERY produced May 20, 2019:

- 19 1. ONE DISK Containing the Following:
- 20 a. JOC for 16M18694x (1 pg);
  - 21 b. Complaint and Police Reports for 16M18694x (11 pgs);
  - 22 c. Trial Transcript for 16M18694x (19 pgs);
  - 23 d. CAD, Officer Details and Declaration (4 pgs);
  - 24 e. 911 Call;
  - 25 f. Video Recording of Interview with M.M. – Part 1;
  - 26 g. Video Recording of Interview with M.M. – Part 2;
  - 27 h. Video Recording of Interview with Jose Moran;

28 ///

///

///

- i. Certificate of Defendant's Birth (2 pgs);
  - j. Letter from Defendant (Spanish) (3 pgs);
  - k. Letter from Defendant (Translation) (1 pg);
  - l. Transcript of Interview with Defendant - Part 1 (79 pgs);
  - m. Transcript of Interview with Defendant - Part 2 (95 pgs);
  - n. Transcript of Interview with Jose Moran (32 pgs);
  - o. Transcript of Interview with M.M. (40 pgs);
  - p. Transcript of Interview with Jose Moran (72 pgs);
  - q. Transcript of Interview with Meili Casillas Ortiz (50 pgs);
  - r. Translation of Voluntary Statement by M.M. (1 pg);
  - s. Translation of Voluntary Statement by Meili Casillas Ortiz (1 pg);
  - t. Voluntary Statement by Meili Casillas Ortiz (2 pgs);
  - u. Voluntary Statement by M.M. (2 pgs);
  - v. Arrest Report (8 pgs);
  - w. Booking Voucher (1 pg);
  - x. Declaration of Arrest (1 pg);
  - y. Incident Report with Notes (14 pgs);
  - z. Incident Report (4 pgs);
  - aa. Officer's Report (5 pgs);
  - bb. Property Report (1 pg);
  - cc. SNCAC Medical Records (9 pgs);
  - dd. Sunrise Medical Records (17 pgs);
  - ee. TCR (1 pg);
  - ff. VOC (2 pgs).
2. CADs for Other Incidents (7 pgs);
  3. Copy of Certified JOC for 16M18694x (7 pgs).

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1 4. The Following Items are Not Included on this DISK:

- 2 a. Body Cam – Viewed February 2017;  
3 b. Audio of All Interviews – Provided February 2017;  
4 c. CPS Records – Provided by Court January 2018.

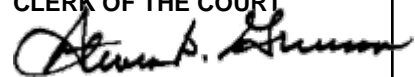
5 is hereby acknowledged this 24<sup>th</sup> day of May, 2019.

7 PUBLIC DEFENDER'S OFFICE  
8 COUNSEL FOR DEFENDANT

10 BY

11 KEVIN SPEED

26  
27 sd/SVU



**OPPS**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
SANDRA K. DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006204  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

**GUSTAVO ADONAY GUNERA-PASTRANA,  
#2697473**

Defendant.

CASE NO: **C-16-318461-1**

DEPT NO: **XXVIII**

**STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE  
IMPERMISSIBLE EVIDENCE OF PRIOR INCIDENTS WHERE THE  
DEFENDANT PLEADED NOLO CONTENDERE**

DATE OF HEARING: MAY 29, 2019  
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through SANDRA K. DIGIACOMO, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Exclude Impermissible Evidence of Prior Incidents Where the Defendant Pleaded Nolo Contendere.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS PERTINENT TO THIS OPPOSITION**

3 Defendant, GUSTAVO GUNERA-PASTRANA, is charged by way of Criminal  
4 Information with the crimes of Lewdness with a Child Under the Age of 14 (Category A  
5 Felony – NRS 201.230) and Sexual Assault with a Minor Under Fourteen Years of Age  
6 (Category A Felony – NRS 200.364, 200.366). The victim is M.M. and was around age 13 at  
7 the time of the crimes. Defendant is the victim's mother's boyfriend.

8 On July 12, 2016, LVMPD was notified reference the sexual abuse of the victim in this  
9 case, which occurred at multiple locations, to include 3642 Boulder Highway, #254, Las  
10 Vegas, Nevada, 89121. Officers Kravetz and Delaria responded to the listed residence where  
11 they spoke to the victim and her mother, Meili Casillas-Ortiz. The victim's mother indicated  
12 that her daughter disclosed sexual abuse by Defendant and she feared for her life and that of  
13 her family.

14 The victim told Officer Kravetz that Defendant began molesting her a year prior, by  
15 inappropriately touching her body and kissing her on the mouth. Defendant had been touching  
16 the victim's entire body, including her vagina, once a month for the past year. She recalled  
17 one occasion where Defendant dropped his pants and stuck one of his fingers inside her vagina.  
18 Defendant would sexually assault the victim while her mother was at work and they were  
19 home alone.

20 On July 11, 2016, the victim was home with Defendant and he kissed her on the mouth  
21 while attempting to touch her in an inappropriate manner. The victim was able to extricate  
22 herself from the situation but Defendant threatened, "I'll kill your mother and your brothers if  
23 you tell anyone". Later that evening, M.M. told her mother about Defendant sexually abusing  
24 her, and that he threatened to kill all of them if she refused to have sex with him.

25 On July 12, 2016, Defendant told M.M. that she would have to have sexual relations  
26 with him when he returned from work and her mother left for work. M.M. reported what  
27 Defendant said to her mother, as she was extremely scared that she would be forced to have  
28 sexual relations with Defendant. M.M. was terrified and shaking as she explained these things

1 to Officer Kravetz. The victim's mother also indicted that she was terrified of Defendant and  
2 that he had threatened her several times in the past. She was certain that Defendant would  
3 harm her and/or the children. While officers were still present in the driveway, Defendant  
4 drove up in a truck. M.M.'s brother, Jose, was also in the truck. Defendant observed the  
5 officers and fled westbound inside the mobile home complex. Officers captured and detained  
6 Defendant prior to his leaving the area.

7 On September 30, 2016, the victim testified at a preliminary hearing of this matter.  
8 Specifically, she testified that in August 2015, she was on the living room couch and  
9 Defendant touched her vagina with his hand. PHT, p. 6. The victim had some surgery down  
10 near her belly button and Defendant told her he was going to check it. Defendant placed his  
11 hand under her clothes and rubbed her vagina with it. Defendant told the victim not to tell her  
12 mother because he would go to jail. PHT, pp. 7-8.

13 In June 2016, M.M. was in the master bedroom, sitting on the bed. Defendant came  
14 into the room and told her he was there to get her baby brother, which was a lie. Defendant  
15 told the victim to lie down and she told him no. Defendant told the victim that if she did not  
16 lie down he was going to do something to her brother. Defendant put his finger inside the  
17 victim's vagina. Defendant also put his mouth on the victim's vagina. PHT, pp. 10-11. The  
18 victim tried telling Defendant that she was on her period, even though she wasn't, in order to  
19 prevent him from touching her. Defendant told the victim that he was going to take her baby  
20 brothers away and do something bad to her brother and mom. PHT, p. 12.

21 On July 11, 2016, the victim was in the living room and Defendant told her that her  
22 time was over and she had to have sex with him. Defendant told the victim that if she did not  
23 have a sexual relationship with him he was going to kick her out of the house and because she  
24 didn't work, she was no one in the world. PHT, pp. 13-14. The victim told Defendant that  
25 she did not work because she was not old enough and that she hadn't chosen that life.  
26 Defendant told her that he chose it for her. The victim told Defendant that he was not her  
27 owner and she would listen to her mother. Defendant told her that he didn't care because she  
28 was his woman. Defendant kissed the victim, on the mouth, with his mouth and tongue. When

1 Defendant left the house the victim immediately called her mother and told her everything that  
2 had happened. The police were called the following day. PHT, pp. 14-15.

3 **Interview with Defendant**

4 On June 12, 2016, at approximately 3:05 p.m., Detective D. Huth conducted an  
5 interview with Defendant, while M. Jimenez provided translation. Defendant was advised of  
6 his Miranda warnings from a LVMPD issued card. Defendant indicated that he understood  
7 his rights and agreed to speak with Detective D. Huth and Detective L. Samples. Essentially,  
8 Defendant denied touching the victim in this case and stated that the other parties involved  
9 were lying.

10 **Facts Relevant from the Interview with Jose Juan Moran, Jr.**

11 On June 12, 2016, Jose told Forensic Interviewer Specialist Elizabeth Espinosa that he  
12 had seen Defendant push his mother and pull out her hair. He stated that he told M.M. to take  
13 a picture and she used a black cell phone to take a photo. Jose stated that the previous month  
14 Defendant got drunk and stated that he is "God." He hit M.M. on her head and she cried.  
15 Defendant stated an intention to kill their mother if they reported him. Jose stated that he  
16 witnessed several incidents of Defendant pushing his mother and his sister, specifically  
17 recalling a time when Defendant scratched his mother and pinched her neck. Defendant would  
18 not permit Jose's mother to go to work for two days afterward because of the marks on her.

19 Jose stated that M.M. told him she could not tell because Defendant told her he would  
20 take the children and kill their mother. Jose has heard the Defendant say that if he was jailed  
21 he would hire a lawyer and when he was released he would kill them all and take his children.

22 **Fact Relevant to Defendant's Misdemeanor Battery DV Conviction– 16M18694X**

23 On January 11, 2017, during the trial, Defendant entered a plea of Nolo Contendere to  
24 one count of Misdemeanor Battery Constituting Domestic Violence for striking and/or  
25 throwing down the victim's mother, Meili Ortiz, on July 1, 2016. In exchange for Defendant's  
26 plea of guilty, the State agreed not to pursue charges for Battery Domestic Violence –  
27 Strangulation and Preventing or Dissuading a Witness from Commencing Prosecution. Of  
28 note, Defendant initially indicated his desire to enter a plea of guilty and the Justice of the

1 Peace sua sponte allowed him to plead no contest.

2 **STATEMENT OF THE CASE RELEVANT TO THIS OPPOSITION**

3 On December 20, 2017, Defendant filed a Motion in Limine for an Order Excluding  
4 Impermissible Evidence. Specifically, Defendant requested an order excluding any argument  
5 by the State of: 1) testimony dealing with any alleged domestic violence or spousal abuse  
6 committed by the Defendant against his estranged wife Meili Casillas-Ortiz; or 2) testimony  
7 that reveals the Defendant's immigration or U.S. residency status.

8 At a hearing on January 8, 2018, Chief Deputy District Attorney Amy Ferreira advised  
9 that she had no objection to the motion; however, if Defendant opened the door to either of  
10 those issues the State would certainly be entitled to explore those issues. *At that time, defense*  
11 *counsel indicated that he would be going into the issue of "witness immigration status."*

12 On May 29, 2019, Defendant filed a Motion to Exclude Impermissible Evidence of  
13 Prior Incidents Where the Defendant Pleaded Nolo Contendere. The State's Opposition  
14 follows.

15 **LEGAL ARGUMENT**

16 **I. RELEVANT EVIDENCE**

17 NRS 48.015 provides:

18 As used in this chapter, 'relevant evidence' means having any  
19 tendency to make the existence of any fact that is of consequence  
20 to the determination of the action more or less probable than it  
would be without the evidence.

21 NRS 48.025 provides, *inter alia*:

22 Evidence which is not relevant is not admissible.

23 NRS 48.035 provides:

24 Although relevant, evidence is not admissible if its probative value  
25 is substantially outweighed by the danger of unfair prejudice, of  
confusion of the issues or misleading the jury.

26 Likewise, the State is entitled to present a full and accurate account of circumstances  
27 of commission of a crime. "All facts necessary to prove crime charged in indictment, when  
28 linked to chain of events which support the crime, are admissible." The State is entitled to

1 present a full and accurate account of circumstances of commission of crime, and if such  
2 account also implicates a defendant in commission of other crimes for which he has not been  
3 charged, evidence is nonetheless admissible. *See* NRS 48.035; Dutton v. State, 94 Nev. 461,  
4 581 P.2d 856 (1978), *citing* Schults v. State, 96 Nev. 742, 616 P.2d 388 (1980); Brackeen v.  
5 State, 104 Nev. 547, 763 P.2d 59 (1988); *see also* Bletcher v. State, 111 Nev. 1477, 907 P.2d  
6 978 (1995).

7       The State does not intend to mention Defendant's acts of violence against Ms. Casillas-  
8 Ortiz ***unless*** Defendant opens the door and makes such testimony relevant during the  
9 proceedings. Defendant has already indicated that he will be presenting evidence of the  
10 witness's immigration status. It is expected that Defendant will assert that the allegations in  
11 the instant case were fabricated in order for the victim's mother to apply for a U-Visa.  
12 However, persons may also qualify for a U-Visa if they are a victim of domestic violence. It  
13 would be highly misleading to the jury if this Court were to allow Defendant to allege that the  
14 victim and her family are fabricating these allegations to obtain a U-Visa, but to preclude the  
15 State from arguing that Ms. Casillas-Ortiz would also qualify based on the history of battery  
16 domestic violence with Defendant. It is the State's position that the State is entitled to present  
17 evidence of Defendant's use of force and threats of violence against the victim, her mother,  
18 and her brother should Defendant choose to make that argument.

19       The State also anticipates that Defendant may open the door to prior acts of domestic  
20 violence, or threats to harm or kill the victim, her mother, or her brother. For instance,  
21 Defendant and his counsel have occasionally tried to present Defendant as a meek, non-violent  
22 person incapable of threatening or causing harm to the victim. However, M.M. had heard  
23 arguments between her mother and Defendant and had seen her mother with marks and bruises  
24 prior to some of the instances of sexual abuse charged in this case. Furthermore, Defendant  
25 frequently threatened to hurt or kill M.M. or her family as a way to prevent M.M. from telling  
26 anyone about his abuse. Where M.M. knew Defendant had been physically violent with her  
27 mother prior to certain acts of abuse, this colored her reaction to the abuse; M.M. did not tell  
28 an adult or resist Defendant because she believed he was capable of acting out his threats.

1 In his argument to preclude the State from admitting evidence of Defendant's prior  
2 incidents of use of force and threats of violence in this case, Defendant cites to NRS 48.125(2),  
3 which states: "2. Evidence of a plea of nolo contendere or of an offer to plead nolo contendere  
4 to the crime charged or any other crime is not admissible in a civil or criminal proceeding  
5 involving the person who made the plea or offer." In this case, the State has no intention of  
6 admitting evidence of Defendant's actual plea of nolo contendere, unless Defendant were to  
7 somehow make the conviction itself relevant (such as arguing that Ms. Casillas-Ortiz would  
8 be unable to prove she was a victim of domestic violence for a U-Visa application); however,  
9 the statute does not preclude the State from admitting the facts and circumstances surrounding  
10 such a plea, in the event Defendant presents evidence of Ms. Casillas-Ortiz's immigration  
11 status or otherwise makes the history of domestic violence relevant to the proceedings.

## 12 CONCLUSION

13 Based upon the above and foregoing Points and Authorities, the State requests  
14 Defendant's Motion in Limine to Exclude Impermissible Evidence of Prior Incidents Where  
15 the Defendant Pleaded Nolo Contendere be DENIED.

16 DATED this 28th day of May, 2019.

17 Respectfully submitted,

18 STEVEN B. WOLFSON  
19 Clark County District Attorney  
Nevada Bar #001565

20  
21 BY /s/ Sandra K. DiGiacomo  
22 SANDRA K. DIGIACOMO  
23 Chief Deputy District Attorney  
24 Nevada Bar #006204  
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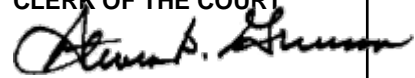
CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 28th day of May,  
2019, by electronic transmission to:

KEVIN SPEED, Deputy Public Defender  
Email Address: speedkc@clarkcountynv.gov  
  
ANN McMAHAN, Legal Secretary  
Email Address: mcmahaae@clarkcountynv.gov

BY: /s/ J. Georges  
\_\_\_\_\_  
Secretary for the District Attorney's Office

jg/SVU



**SLOW**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**SANDRA K. DIGIACOMO**  
Chief Deputy District Attorney  
Nevada Bar #006204  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

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

THE STATE OF NEVADA,

Plaintiff,

-VS-

**GUSTAVO ADONAY GUNERA-PASTRANA,**  
**#2697473**

Defendant.

CASE NO: **C-16-318461-1**

DEPT NO: **XXVIII**

**STATE'S FOURTH SUPPLEMENTAL NOTICE OF WITNESSES**  
**AND/OR EXPERT WITNESSES**  
**[NRS 174.234]**

**TO: GUSTAVO ADONAY GUNERA-PASTRANA, Defendant; and**

**TO: KEVIN SPEED, Deputy Public Defender, Counsel of Record:**

**YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the STATE OF  
NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief:

**\*indicates additional witness(es) and/or modification(s)**

ASHENFELTER, DEBBIE; c/o CCDA Investigations

CARNELL, CRISTEN; c/o CCDA Investigations

CETL, DR SANDRA; c/o CCDA's Office; Dr. Cetl will be called as a medical expert  
in the field of pediatric sexual and physical abuse based on her training, experience and any  
research. Dr. Cetl will testify regarding the procedure for medical and SCAN exams on  
pediatric patients who present to the hospital or the Southern Nevada Children's Assessment

Center with complaints of sexual abuse, including the nature, process, and possible medical diagnoses involved in completing a SCAN. This testimony will necessarily include the body's physical processes and what would contribute or take away from physical findings on a patient reporting sexual abuse, including, but not limited to, the passage of time, the healing process of the body, the potential or lack of potential injuries based on the type of sexual contact disclosed.

\*CHATMAN, I.; LVMPD #6255

\*CHIO, N.; LVMPD #5109

COR or Designee; CCDC

\*COR or Designee; Immigrant Home Foundation

COR or Designee; LVMPD Communications

COR or Designee; LVMPD Records

COR or Designee; Sunrise Hospital

DELARIA, D.; LVMPD #13338

DRANSFIELD, W.; LVMPD #10052

EISEN, TIFFANY; c/o CPS/DFS, 701 N. Pecos Rd., LVN

ESPINOZA, ELIZABETH; CPS/DFS; may be called to testify about the methodology, process, purpose, and limitations of forensic and victim interviews, including research regarding forensic interviews, as well as child development, memory, suggestibility, and/or deviations from the forensic interview, as it relates to her training and experience, as well as the interview(s) completed in this case.

\*FABERT, CRAIG; c/o CCDA Investigations

\*GREENE, E.; LVMPD #4959

HUTH, D.; LVMPD #8543

J.M.; c/o CCDA-SVU/VWAC

JIMENEZ, M.; LVMPD #13257

KEITH, TIFFANY; c/o CPS/DFS, 701 N. Pecos Rd., LVN

KNEPP, ELAINE; c/o CCDA Investigations

1 KRAVETZ, M.; LVMPD #15346

2 LANKFORD, REBECCA; c/o SNCAC

3 LARSON, R.; LVMPD #15366

4 \*LOSADA, WENDY; Rape Crisis Center, 801 S. Rancho Dr., LVN

5 M.C.O.; c/o CCDA-SVU/VWAC

6 M.M.; c/o CCDA-SVU/VWAC

7 MCGILL, JODI/ c/o CCDA Investigations

8 MENDOZA-PONCE, ADRIANA; c/o CPS/DFS, 701 N. Pecos Rd., LVN

9 \*PEREIRA, KATHIA, and/or Designee; c/o Immigrant Home Foundation, 8942  
10 Spanish Ridge Ave., Ste. 1, LVN

11 \*PRICE, R., LVMPD #5626, and/or Designee

12 RUSSO, MARABETH; c/o CPS/DFS, 701 N. Pecos Rd., LVN

13 SAMPLES, L.; LVMPD #9354

14 These witnesses are in addition to those witnesses endorsed on the Information or  
15 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert  
16 Witnesses has been filed.

17 The substance of each expert witness's testimony and copy of all reports made by or at  
18 the direction of the expert witness have been provided in discovery.

19 A copy of each expert witness's curriculum vitae, if available, is attached hereto.

20 STEVEN B. WOLFSON  
21 Clark County District Attorney  
22 Nevada Bar #001565

23 BY /s/ Sandra K. DiGiacomo  
24 SANDRA K. DIGIACOMO  
25 Chief Deputy District Attorney  
26 Nevada Bar #006204  
27  
28

1                                    CERTIFICATE OF ELECTRONIC TRANSMISSION

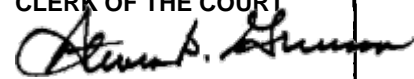
2                    I hereby certify that service of the above and foregoing was made this 28th day of May,  
3                    2019, by electronic transmission to:

4                                    KEVIN SPEED, Deputy Public Defender  
5                                    Email Address: speedkc@clarkcountynv.gov

6                                    ANN McMAHAN, Legal Secretary  
7                                    Email Address: mcmahaae@clarkcountynv.gov

8                                    BY: /s/ J. Georges  
9                                    Secretary for the District Attorney's Office

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**ROC**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
SANDRA K. DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006204  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

GUSTAVO ADONAY GUNERA-  
PASTRANA,  
#2697473

Defendant.

318461  
CASE NO: C-16-316318-1

DEPT NO: XXVIII

**RECEIPT OF COPY FOR DISCOVERY PROVIDED**

RECEIPT OF COPY of the foregoing DISCOVERY produced May 27, 2019 by way  
of Email:

1. Incident Report and Notes for BDV (4 pgs);
2. CCDC Records (24 pgs);
3. Naphcare Records (86 pgs).

is hereby acknowledged this \_\_\_\_\_ day of May, 2019.

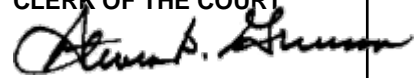
PUBLIC DEFENDER'S OFFICE  
COUNSEL FOR DEFENDANT

BY 

KEVIN SPEED

27 May 2019

sd/SVU



**ATEAR**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
MICHELLE SUDANO  
Deputy District Attorney  
Nevada Bar #013260  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

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

THE STATE OF NEVADA,  
  
Plaintiff,  
  
-vs-  
  
**GUSTAVO GUNERA-PASTRANA,**  
**#2697473**  
  
Defendant.

CASE NO: **C-16-318461-1**  
DEPT NO: **XXVIII**

**AUDIOVISUAL TRANSMISSION EQUIPMENT APPEARANCE REQUEST**

Pursuant to Rule 4 of the Nevada Supreme Court RULES GOVERNING APPEARANCE BY AUDIOVISUAL TRANSMISSION EQUIPMENT, the State of Nevada, by and through MICHELLE SUDANO, Deputy District Attorney, requests that DR. SANDRA CETL, M.D. be permitted to testify by remote court appearance via video conference for the trial scheduled to begin on June 4, 2019, with Dr. Cetl's testimony being scheduled for June 11, 2019.

*Date:* JUNE 11, 2019

*Time:* 3:30 P.M.

*Courtroom:* 15C

DR. SANDRA CETL, M.D. agrees to be bound by the oath given by the Court Clerk, Eighth Judicial District Court, and to be subject to the jurisdiction of this Court for purposes related to this testimony.

1 Any objection to this request must be made in writing within two (2) judicial days of  
2 service of this request.

3 The State of Nevada agrees that by submitting this request, the State of Nevada and  
4 DR. SANDRA CETL, M.D., or their respective representatives, will test and verify the  
5 functionality of the video conference connectivity with the Court's IT department at least two  
6 (2) judicial days before the scheduled appearance. Contact information for the test is:

7 *Name of Party:* State of Nevada / MICHELLE SUDANO

8 *Email Address:* Michelle.Sudano@clarkcountynvda.com

9 *Phone Number:* (702) 671-2790

10 *Name of Witness:* DR. SANDRA CETL, M.D.

11 *Email Address:* sandracetl@hotmail.com

12 *Phone Number:*

13 Counsel certifies that the video connection has been successfully tested at  
14 <http://bluejeans.com/111>, prior to submitting this application.

15 DATED this 4th day of June, 2019.

16 STEVEN B. WOLFSON  
17 Clark County District Attorney  
18 Nevada Bar #1565

19 BY /s/ Michelle Sudano  
20 MICHELLE SUDANO  
21 Deputy District Attorney  
22 Nevada Bar #013260  
23  
24  
25  
26  
27  
28

1                                    CERTIFICATE OF ELECTRONIC TRANSMISSION

2                    I hereby certify that service of the above and foregoing was made this 4th day of June,  
3                    2019, by electronic transmission to:

4                                    KEVIN SPEED, Deputy Public Defender  
5                                    Email Address: speedkc@clarkcountynv.gov

6                                    ANN McMAHAN, Legal Secretary  
7                                    Email Address: mcmahaae@clarkcountynv.gov

8                                    BY: /s/ J. Georges  
9                                    Secretary for the District Attorney's Office

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

JUN 04 2019

BY, Kathy Thomas  
KATHY THOMAS, DEPUTY

1 **ROC**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 SANDRA K. DIGIACOMO  
6 Chief Deputy District Attorney  
7 Nevada Bar #006204  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

8 EIGHTH JUDICIAL DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 GUSTAVO ADONAY GUNERA-  
14 PASTRANA,  
15 #2697473

16 Defendant.

CASE NO: C-16-318461-1

DEPT NO: XXVIII

17 **RECEIPT OF COPY FOR DISCOVERY PROVIDED**

18 RECEIPT OF COPY of the foregoing DISCOVERY produced May 31, 2019 by way  
19 of Email:

- 20 1. Letter by Defendant with Translation (3 pgs);  
21 2. Letter by Defendant with Translation (2 pgs);  
22 3. Incident Report Re: TPO Violation (5 pgs);  
23 4. Metro Case Notes – Page 1 (1 pg);  
24 5. Metro Case Notes – Page 2 (1 pg);

25 ///

26 ///

27 ///

28 ///

C-16-318461-1  
ROC  
Receipt of Copy  
4841372



6. Voluntary Statement by Meili Casillas-Ortiz Re: TPO (1 pg);
7. Transcription of Voluntary Statemeny Re: TPO (1 pg);
8. Transcription of 911 Call (11 pgs);
9. SNCAC Parent/Caregiver Resource Handbook (61 pgs).

is hereby acknowledged this 4<sup>th</sup> day of May, 2019.

PUBLIC DEFENDER'S OFFICE  
COUNSEL FOR DEFENDANT

BY 

KEVIN SPEED

sd/SVU

ORIGINAL

FILED IN OPEN COURT

STEVEN D. GRIERSON

CLERK OF THE COURT

JUN 10 2019

BY, *Kathy Thomas*  
KATHY THOMAS, DEPUTY

JUR

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff(s),

-vs-

GUSTAVO ADONEY GUNERA-  
PASTRANA

Defendant(s).

CASE NO. C318461

DEPT. NO. XXVIII

JURY LIST

- |                           |                              |
|---------------------------|------------------------------|
| 1. Mr. William Collins    | 8. Ms. Alexis Velasquez      |
| 2. Mr. Jeremiah Nickerson | 9. Ms. Nichole Lacy          |
| 3. Mr. Sergio Solis-Sauri | 10. Ms. Brenna Meicher       |
| 4. Ms. Courtney Rutledge  | 11. Ms. Jocelyn Parker       |
| 5. Ms. Arlene Schultz     | 12. Ms. Knitalya Worthy      |
| 6. Mr. Gene Eschardies    | 13. Ms. Breann Dusina-Bakken |
| 7. Mr. David Coleman III  | 14. Ms. Rhonda Rafferty      |
|                           | 15. Mr. Myron Lesane         |

ALTERNATES

Secret from above

- |    |    |
|----|----|
| 1. | 2. |
|    | 3. |

C - 16 - 318461 - 1  
JURL  
Jury List  
4841373



● ORIGINAL ●

1 AINF  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 SANDRA K. DIGIACOMO  
6 Chief Deputy District Attorney  
7 Nevada Bar #006204  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

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

JUN 12 2019

BY.

PHYLIS IRBY, DEPUTY

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

C-16-318461-1  
AINF  
Amended Information  
4842047



9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 GUSTAVO ADONAY GUNERA-PASTRANA,  
13 #2697473

14 Defendant.

CASE NO. C-16-318461-1

DEPT NO. XXVIII

AMENDED  
INFORMATION

15 STATE OF NEVADA }  
16 COUNTY OF CLARK } ss:

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State  
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That GUSTAVO ADONAY GUNERA-PASTRANA, the Defendant above named,  
20 having committed the crimes of LEWDNESS WITH A CHILD UNDER THE AGE OF 14  
21 (Category A Felony - NRS 201.230 - NOC 50975) and SEXUAL ASSAULT WITH A  
22 MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony - NRS 200.364,  
23 200.366 - NOC 50105), on or between August 1, 2015 and July 11, 2016, within the County  
24 of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made  
25 and provided, and against the peace and dignity of the State of Nevada,

26 COUNT 1 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

27 did on or between August 1, 2015 and August 31, 2015 willfully, lewdly, unlawfully,  
28 and feloniously commit a lewd or lascivious act upon or with the body, or any part or member

1 thereof, of a child, to wit: M.M., a child under the age of fourteen years, by touching the said  
2 M.M.'s genital area, with the intent of arousing, appealing to, or gratifying the lust, passions,  
3 or sexual desires of Defendant, or M.M.

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

5 did on or between June 1, 2016 and July 11, 2016 then and there willfully, unlawfully,  
6 and feloniously commit a sexual penetration upon M.M., a child under the age of 14 years, to  
7 wit: cunnilingus, by placing his mouth and/or tongue on or in the genital opening of the said  
8 M.M.

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

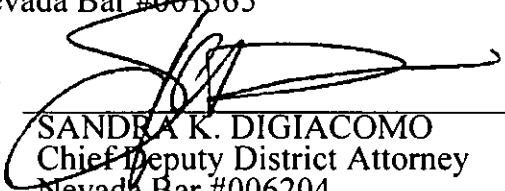
10 did on or between June 1, 2016 and July 11, 2016 then and there willfully, unlawfully,  
11 and feloniously commit a sexual penetration upon M.M., a child under the age of 14 years, to  
12 wit: digital penetration, by inserting his finger(s) into the genital opening of the said M.M.

13 COUNT 4 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

14 did on or between June 1, 2016 and July 11, 2016 willfully, lewdly, unlawfully, and  
15 feloniously commit a lewd or lascivious act upon or with the body, or any part or member  
16 thereof, of a child, to wit: M.M, a child under the age of fourteen years, by kissing the said  
17 M.M., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual  
18 desires of Defendant, or M.M.

19 STEVEN B. WOLFSON  
20 Clark County District Attorney  
Nevada Bar #001565

21  
22 BY

  
23 SANDRA K. DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006204

24  
25  
26  
27 DA#16F11626X/jg/SVU  
28 LVMPD EV#1607121162  
(TK8)

JUN 13 2019

BY, Kathy Thomas  
KATHY THOMAS, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff(s),

-vs-

GUSTAVO ADONAY GUNERA-  
PASTRANA

Defendant(s).

CASE NO. C318461

DEPT. NO. XXVIII

DEFENDANT'S PROPOSED JURY INSTRUCTIONS & VERDICT FORM NOT USED

AT TRIAL

Attached hereto are the proposed jury instructions & verdict form which were  
offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 13th day of JUNE, 2019.

Steven D. Grierson, Clerk of the Court

By: Kathy Thomas  
Kathy Thomas, Deputy Clerk

C-16-318461-1  
PINU  
Proposed Jury Instructions Not Used At Trial  
4842631



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

Gustavo Adonay Gunera-Pastrana,

Defendant.

CASE NO. C-16-318461-1

DEPT. NO. XXVIII

**VERDICT**

We, the jury in the above entitled case, find the Defendant GUSTAVO ADONAY GUNERA-PASTRANA, as follows:

**COUNT 1 – Lewdness with a Child Under the Age of 14**

☐ Not Guilty

☐ Guilty

**COUNT 2 – Sexual Assault with a Minor Under Fourteen Years of Age**

☐ Not Guilty

☐ Guilty

**COUNT 3 – Sexual Assault with a Minor Under Fourteen Years of Age**

☐ Not Guilty

☐ Guilty

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6-13-19  
Ronald J. Aral

1 **COUNT 4 – Lewdness with a Child Under the Age of 14**

2 ☐ Not Guilty

3 ☐ Guilty

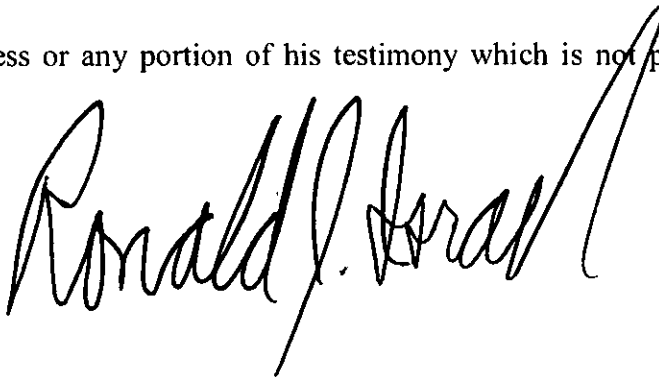
4  
5 Dated this \_\_\_\_\_ day of June, 2019.

6  
7  
8 \_\_\_\_\_  
9 FOREPERSON

The credibility or believability of a witness should be determined by anything that reasonably tends to prove or disprove the truth or accuracy of that testimony. Among the factors that you may consider are the witness's ability to see, hear, or otherwise perceive the things about which the witness testified; the witness's ability to remember and describe what happened; the witness's behavior while testifying; whether the witness understood the questions and answered them directly; whether the witness's testimony was influenced by a factor such as bias or prejudice, a personal relationship with someone involved in the case, or a personal interest in how the case is decided; the witness's attitude about the case or testifying; whether the witness made a statement in the past that is consistent or inconsistent with his or her testimony; whether the witness's testimony was reasonable when considering all the other evidence in the case; whether other evidence proved or disproved any fact about which the witness testified; whether the witness admitted to being untruthful; the witness's character for truthfulness; whether the witness has been convicted of a felony; whether the witness engaged in conduct that reflects on his or her believability; and was the witness promised immunity or leniency in exchange for his or her testimony.

If you do not believe a witness's testimony that he or she no longer remembers something, that testimony is inconsistent with the witness's earlier statement on that subject. If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

CALCRIM 105



If the evidence is susceptible of two reasonable interpretations, one of which points to the defendant's guilt and the other of which points to the defendant's innocence, it is your duty to adopt that the interpretation which points to the defendant's innocence and reject the other which points to his guilt.

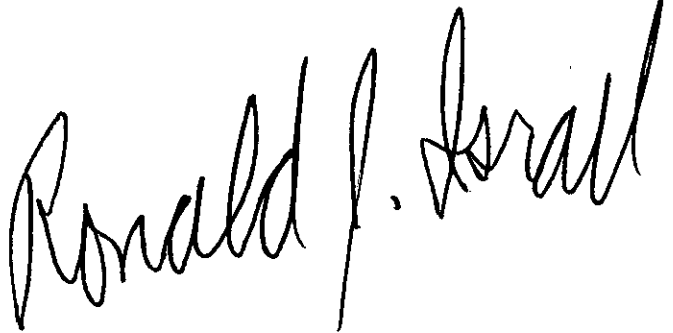
Ronald J. Israel

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the State has proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

*State v. Supranovich*, Nev.S.Ct No. 68837 (September 24, 2015) (unpublished order);

CALCRIM 224

A handwritten signature in black ink, reading "Ronald J. Israel". The signature is written in a cursive, flowing style. The first name "Ronald" is written in a larger, more prominent script, followed by a smaller "J." and the last name "Israel". The signature is positioned in the lower right area of the page, overlapping the line numbers 18 through 22.

A kiss on the mouth, without more, does not constitute lewd conduct because it is not lustful or sexually obscene.

Shue v. State, 407 P.3d 332, 340 (Nev. 2017), reh'g denied (Feb. 23, 2018), cert. denied, 139 S. Ct. 117, 202 L. Ed. 2d 73 (2018)

Ronald J. Gral

05400011

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

JUN 14 2019

BY, Kathy Thomas  
KATHY THOMAS, DEPUTY

AJUR

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff(s),

-vs-

GUSTAVO ADONEY GUNERA-  
PASTRANA

Defendant(s).

CASE NO. C318461

DEPT. NO. XXVIII

**AMENDED JURY LIST**

- |                           |                          |
|---------------------------|--------------------------|
| 1. Mr. William Collins    | 7. Mr. David Coleman III |
| 2. Mr. Jeremiah Nickerson | 8. Ms. Alexis Velasquez  |
| 3. Mr. Sergio Solis-Sauri | 9. Ms. Nichole Lacy      |
| 4. Ms. Courtney Rutledge  | 10. Ms. Brenna Meicher   |
| 5. Ms. Arlene Schultz     | 11. Ms. Jocelyn Parker   |
| 6. Mr. Gene Eschardies    | 12. Ms. Knitalya Worthy  |

**ALTERNATES**

**Secret from above**

- |                             |                        |
|-----------------------------|------------------------|
| 1. Ms. Breann Dusina-Bakken | 2. Ms. Rhonda Rafferty |
|                             | 3. Mr. Myron Lesane    |

C-16-318461-1  
AJUR  
Amended Jury List  
4842630





ORIGINAL

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

JUN 17 2019 505pm

BY, Kathy Thomas  
KATHY THOMAS, DEPUTY

VER

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GUSTAVO ADONAY GUNERA-  
PASTRANA,

Defendant.

CASE NO: C-16-318461-1

DEPT NO: XXVIII

VERDICT

We, the jury in the above entitled case, find the Defendant GUSTAVO ADONAY GUNERA-PASTRANA as follows:

**COUNT 1** – LEWDNESS WITH A CHILD UNDER THE AGE OF 14

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

☒ Guilty of Lewdness with a Child under the Age of 14

☐ Not Guilty

**COUNT 2** – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

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

☒ Guilty of Sexual Assault with a Minor under Fourteen Years of Age

☐ Not Guilty

1 **COUNT 3** – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF  
2 AGE

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

- 4 ☒ Guilty of Sexual Assault with a Minor under Fourteen Years of Age  
5 ☐ Not Guilty

6 **COUNT 4** – LEWDNESS WITH A CHILD UNDER THE AGE OF 14  
7

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

- 9 ☒ Guilty of Lewdness with a Child under the Age of 14  
10 ☐ Not Guilty

11 DATED this 17 day of June, 2019.

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15 FOREPERSON

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INST

ORIGINAL

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

JUN 17 2019 5:09pm

BY, *Kathy Thomas*  
KATHY THOMAS, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
GUSTAVO ADONAY GUNERA- )  
 )  
PASTRANA, )  
 )  
Defendant. )

CASE NO: C-16-318461-1  
DEPT NO: XXVIII

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-16-318461-1  
INST  
Instructions to the Jury  
4843001



If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

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

In this case, it is charged in the Amended Information that on or between August 1, 2015 and July 11, 2016, Defendant committed the offenses of LEWDNESS WITH A CHILD UNDER THE AGE OF 14 and SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did on or between August 1, 2015 and August 31, 2015 willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to-wit: M.M., a child under the age of fourteen years, by touching the said M.M.'s genital area, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or M.M.

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

did on or between June 1, 2016 and July 11, 2016 then and there willfully, unlawfully, and feloniously commit a sexual penetration upon M.M., a child under the age of 14 years, to-wit: cunnilingus: by placing his mouth and/or tongue on or in the genital opening of the said M.M.

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

did on or between June 1, 2016 and July 11, 2016 then and there willfully, unlawfully, and feloniously commit a sexual penetration upon M.M., a child under the age of 14 years, to-wit: digital penetration: by inserting his finger(s) into the genital opening of the said M.M.

///

1    COUNT 4 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

2            did on or about June 1, 2016 and July 11, 2016 willfully, lewdly, unlawfully, and  
3    feloniously commit a lewd or lascivious act upon or with the body, or any part or member  
4    thereof, of a child, to-wit: M.M, a child under the age of fourteen years, by kissing the said  
5    M.M., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual  
6    desires of Defendant, or M.M.

7            It is the duty of the jury to apply the rules of law contained in these instructions to the  
8    facts of the case and determine whether or not the Defendant is guilty of one or more of the  
9    offenses charged.

10          Each charge and the evidence pertaining to it should be considered separately. The  
11    fact that you may find the Defendant guilty or not guilty as to one of the offenses charged  
12    should not control your verdict as to any other offenses charged.

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 of a Minor Under 14 Years of Age.

Consent in fact of a minor child under fourteen years of age to sexual activity is not a defense to a charge of Sexual Assault of a Minor Under 14 Years of Age.

"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. Evidence of ejaculation is not necessary.

Digital penetration is the placing of one or more fingers of the perpetrator into the genital or anal opening of another person.

Cunnilingus is a touching of the female sexual organ by the mouth or tongue of another person.

Fellatio is a touching of the penis by the mouth or tongue of another person.

Sexual intercourse is the intrusion, however slight, of the penis into the genital opening of another person.

Anal intercourse is the intrusion, however slight, of the penis into the anal opening of another person.

Physical force is not necessary in the commission of sexual assault.

If the State fails to prove beyond a reasonable doubt that the Defendant committed 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, then you must find the Defendant not guilty of Sexual Assault of a Minor Under 14 Years of Age.

Specific intent is the intent to accomplish the precise act which the law prohibits. General intent is the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the Defendant intended the precise harm or the precise result which eventuated if a crime is a general intent crime.

Sexual Assault is a general intent crime.

Lewdness With a Child is a specific intent crime.

Any person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with any part of the body 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, is guilty of Lewdness With a Child Under the Age of 14.

Consent in fact of a minor child under fourteen years of age to sexual activity is not a defense to a charge of Lewdness with a Child Under the Age of 14.

If the State fails to prove beyond a reasonable doubt that the Defendant willfully and lewdly committed any lewd or lascivious act upon or with any part of the body 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, then you must find the Defendant not guilty of Lewdness With a Child Under the Age of 14.

“Lewd is defined as: (1) pertaining to sexual conduct that is obscene or indecent, tending to moral impurity or wantonness; (2) evil, wicked or sexually unchaste or licentious; and (3) preoccupied with sex and sexual desire, lustful.

“Lascivious” is defined as: (1) tending to excite lust; (2) lewd; (3) indecent; (4) obscene; (5) relating to sexual impurity; and (6) tending to deprave the morals in respect to sexual relations.

The law does not require that the lust, passions or sexual desires of either of such persons actually be aroused, appealed to, or gratified.

A lewd or lascivious act does not require physical contact between the perpetrator and the victim.

1  
2       There is no requirement that the testimony of a victim of a sexual crime be  
3 corroborated, and his/her testimony standing alone, if believed beyond a reasonable doubt, is  
4 sufficient to sustain a verdict of guilty.

5       If you find that the testimony of a victim of a sexual crime is not corroborated, and  
6 you do not believe the victim's testimony beyond a reasonable doubt, then you must find the  
7 Defendant not guilty.

Where a child has been the victim of a sexual crime and does not remember the exact date of the act, the State is not required to prove a specific date, but may prove a time frame within which the act took place.

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

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

1 To constitute the crime charged, there must exist a union or joint operation of an act  
2 forbidden by law and an intent to do the act.  
3

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.

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

Evidence that the Defendant committed offenses other than that for which he is on trial, if believed, was not received and may not be considered by you to prove that he is a person of bad character or to prove that he has a disposition to commit crimes. Such evidence was received and may be considered by you only for the limited purpose of proving the Defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. You must weigh this evidence in the same manner as you do all other evidence in the case.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

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

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

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

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

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

You alone must judge the credibility or believability of the witnesses. In deciding whether testimony is true and accurate, use your common sense and experience.

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

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

When a trial witness fails, for whatever reason, to remember a previous statement made by that witness, the failure of recollection constitutes a denial of the prior statement that makes it a prior inconsistent statement. The previous statement is not hearsay and may be considered both substantively and for impeachment

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

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

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.

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.

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the Defendant is guilty or not guilty.

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

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

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

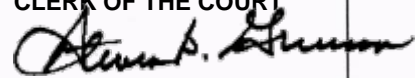
1  
2 If, during your deliberation, you should desire to be further informed on any point of  
3 law or hear again portions of the testimony, you must reduce your request to writing signed  
4 by the foreperson. The officer will then return you to court where the information sought  
5 will be given you in the presence of, and after notice to, the district attorney and the  
6 Defendant and his counsel.

7 Playbacks of testimony are time-consuming and are not encouraged unless you deem  
8 it a necessity. Should you require a playback, you must carefully describe the testimony to  
9 be played back so that the court recorder can arrange her notes. Remember, the court is not  
10 at liberty to supplement the evidence.

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



DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

PLAINTIFF(S),

CASE NO.: C-16-318461-1  
DEPARTMENT 28

vs.

Hearing Date: 06/18/2019  
Hearing Time: 1:30 p.m.



GUSTAVO ADONAY GUNERA-  
PASTRANA,  
#2697473,

DEFENDANT(S)

**FILE WITH  
MASTER CALENDAR**

**ORDER SCHEDULING STATUS HEARING: AT REQUEST OF COURT**

TO: Steven B. Wolfson, Esq.  
District Attorney

Sandra K. DiGiacomo, Esq.  
Chief Deputy District Attorney

Michelle Sudano, Esq.  
Chief Deputy District Attorney

Daren F. Imlay, Esq.  
Public Defender

Kevin C. Speed, Esq.  
Chief Deputy Public Defender

Tegan C. Machnich, Esq.  
Deputy Public Defender

///

///

1  
2  
3 YOU ARE HEREBY ORDERED TO APPEAR in District Court, 200 Lewis  
4 Avenue, Department 28 (15C), on the 18th day of June, 2019, at 1:30 p.m., for status  
5 hearing in this matter. Appearances are mandatory.

6 DATED this 18th day of June, 2019.

7  
8 

9  
10 RONALD J. ISRAEL  
11 DISTRICT COURT JUDGE  
C-16-318461-1

12 CERTIFICATE OF SERVICE

13 I hereby certify that on or about the date signed, a copy of this Order was electronically served to the proper  
14 parties as follows:

15 Steven B. Wolfson, Esq.  
District Attorney  
[damotions@ClarkCountyDA.com](mailto:damotions@ClarkCountyDA.com)

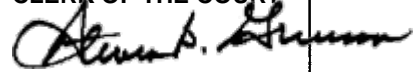
16 Sandra K. DiGiacomo, Esq.  
Chief Deputy District Attorney  
[Sandra.DiGiacomo@ClarkCountyDA.com](mailto:Sandra.DiGiacomo@ClarkCountyDA.com)

17 Michelle Sudano, Esq.  
Chief Deputy District Attorney  
[Michelle.Sudano@ClarkCountyDA.com](mailto:Michelle.Sudano@ClarkCountyDA.com)

18 Daren F. Imlay, Esq.  
Public Defender  
Tegan C. Machnich, Esq.  
Deputy Public Defender  
[PDclerk@ClarkCountyNV.gov](mailto:PDclerk@ClarkCountyNV.gov)

19  
20 Kevin C. Speed, Esq.  
Chief Deputy Public Defender  
[SpeedKC@ClarkCountyNV.gov](mailto:SpeedKC@ClarkCountyNV.gov)

21  
22  
23   
24  
25  
26 Sandra Jeter  
Judicial Executive Assistant



DARIN F. IMLAY, PUBLIC DEFENDER  
NEVADA BAR NO. 5674  
KEVIN C. SPEED, DEPUTY PUBLIC DEFENDER  
NEVADA BAR NO. 8895  
**PUBLIC DEFENDERS OFFICE**  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
Telephone: (702) 455-4685  
Facsimile: (702) 455-5112  
SpeedKC@clarkcountynv.gov  
*Attorneys for Defendant*

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

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-16-318461-1
	)	
v.	)	DEPT. NO. XXVIII
	)	
GUSTAVO ADONAY	)	
GUNERA-PASTRANA,	)	DATE: August 7, 2019
	)	TIME: 9:00 a.m.
Defendant,	)	

**MOTION FOR A JUDGMENT OF ACQUITTAL AFTER A VERDICT OF GUILTY,  
OR IN THE ALTERNATIVE,  
MOTION FOR NEW TRIAL BASED UPON PER SE JURY MISCONDUCT**

COMES NOW, the Defendant, GUSTAVO ADONAY GUNERA-PASTRANA, by and through KEVIN C. SPEED, Chief Deputy Public Defender and hereby asks this Honorable Court for an Order setting aside the verdict returned in this case on 17 June 2019, and to enter a Judgment of Acquittal on all counts; or in the alternative, to enter an Order for a new trial based on the blatant misconduct of the jury, pursuant to NRS 175.381(2) and 176.515.

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1 This Motion is made and based upon all the papers and pleadings on file herein, the  
2 Memorandum of Points and Authorities, attached Exhibits, and oral argument permitted at the  
3 time set for hearing this Motion.

4 DATED this 8th day of July, 2019.

5 DARIN F. IMLAY  
6 CLARK COUNTY PUBLIC DEFENDER

7  
8 By: /s/Kevin C. Speed  
9 KEVIN C. SPEED, #8895  
10 Deputy Public Defender  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### STATEMENT OF RELEVANT FACTS

The following facts are taken from the events that occurred during the jury trial in the instant matter. Having no access to transcripts at this time, all facts are the recollections of defense counsel, and as such, are stated on information and belief.

Jury trial in the case of State of Nevada v. Gustavo Gunera-Pastrana commenced in the Eighth Judicial District Court, Clark County, Department XXVIII on 4 June 2019. The Defendant was facing four counts:

Count I: Lewdness with a Child Under the Age of 14

Count II: Sexual Assault with a Minor Under 14 Years of Age

Count III: Sexual Assault with a Minor Under 14 Years of Age

Count IV: Lewdness with a Child Under the Age of 14

The parties presented their cases in chief in a trial rife with conflicting testimony. Some things, however, were certain. Because there was no scientific or medical evidence, the jury at the close of evidence was left with the *only* complaining witness' outrageously inconsistent accusations which should have served to utterly destroy her credibility and led the jury to the only reasonable conclusion that supported Mr. Gunera-Pastrana's theory of the case – *that the allegations against Mr. Gunera-Pastrana were absolutely false and that they stemmed from the complainant's defiant desire not to obtain meaningful work which ran counter to her step-father's (the Defendant) wishes for the able-bodied members of the household to earn a living to help with support and subsistence.*

1 The jury retired to deliberate on Friday, 14 June 2019. Both the Deputy District  
2 Attorneys, Sandra DiGiacomo and Michelle Sudano, and defense counsel were notified later that  
3 afternoon that the jury had posed a question to the Court concerning playback of CPS hearing  
4 footage, from February of 2017, which had been admitted into evidence as part of the  
5 government's case. The Court ordered that the trial would recommence for the requested  
6 playback on Monday, 17 June 2019.  
7

8 On that following Monday, after the CPS hearing playback, the Court received another  
9 note from the jury advising that it had reached a decision as to Counts 1 and 4, but that it was  
10 still undecided on Counts 2 and 3. After meeting with counsel for the parties outside the presence  
11 of the retired jurors, the Court instructed the jury to "continue deliberating." At approximately  
12 5:05 PM on 17 June 2019, the jury returned its verdict of guilty on all counts. Defense counsel  
13 asked that the jury be polled for agreement and unanimity to which all of the jurors responded  
14 that the verdict as read was in fact theirs, individually and collectively. It was immediately after  
15 this point, when the jurors were thanked for their service and dismissed by the court to return to  
16 the jury services office, that the instant controversy arose.  
17

18  
19 Early on Tuesday, 18 June 2019, this Court issued an Order scheduling a status hearing  
20 for 1:30 PM that same afternoon. At the 1:30 hearing the parties learned that at some point after  
21 the jury's dismissal on Friday after the rendering of its verdict, the jury foreperson, "Mr. C.",  
22 informed the court's bailiff that the jury had "...Googled" the definition of the term "...common  
23 sense." Counsel for the Defendant requested an evidentiary hearing wherein Mr. Speed and Ms.  
24 Machnich would question each of the jurors for clarification as to when the misconduct occurred,  
25 when the court's staff was notified and to learn the extent to which this per se violation of the  
26 court's repeated admonishments, disregard for Jury Instruction #22 (**Exhibit A**) and dereliction  
27  
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1 of their sworn duty as jurors in this case so tainted the proceedings necessitating the absolute  
2 need for a new trial. This Court granted the defense's request and ordered that the parties  
3 reconvene on 21 June 2019, for an evidentiary hearing.

4 On 21 June 2019, the parties heard testimony from Mr. C. and from the court's bailiff.  
5 We learned from Mr. C.:

- 6 • that on the second day of deliberations, in the jury room, "...a few people looked  
7 it (the term, "common sense") up at the time."  
8
- 9 • Mr. C. testified that he, personally, did not look up the term, and he did not use  
10 his cellular phone to conduct the research, but instead at least two other jurors  
11 looked up the term on various cellular phones that were permitted to be brought  
12 into the deliberation room. At least one of the Googling jurors was a female  
13 although Mr. C. could not recall exactly who the actual Google users were.  
14
- 15 • Mr. C. testified that the entire group reviewed the definition(s) that were retrieved  
16 from the Google searches and that it occurred "...towards the end of  
17 deliberations."  
18

19 From Officer M. we learned that:

- 20 • He was notified about the Google search by the members after the verdict was  
21 delivered to the court and read by the clerk.  
22
- 23 • Officer M. testified that as the jury was walking out of the courtroom following  
24 the reading of the verdict, the jury foreperson, Mr. C., spontaneously uttered,  
25 "...it took Googling common sense to get them to reach a verdict."  
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- Officer M. notified the Court approximately 15 minutes later, immediately after the completion of other official duties pertaining to the secure escort of the dismissed jurors to the jury services office of the RJC.

The defense believes that the evidence of Mr. Gunera-Pastrana's guilt in this case was insufficient to support the conviction by the jury. If, however, this Court is not inclined to dismiss the unproven but convicted of charges against the Defendant, the defense submits that the Court must grant Mr. Gunera-Pastrana's motion for a new trial based on jury misconduct.

## LEGAL ARGUMENT

### I.

NRS 175.381 (2) states in pertinent part that "the Court may, on a motion of a defendant or on its own motion, which is made after the jury returns a verdict of guilty, set aside the verdict and enter a judgment of acquittal if the evidence is insufficient to sustain a conviction." The Nevada Supreme Court held that "where there is truly insufficient evidence to convict, a defendant must be acquitted." State v. Purcell, 110 Nev. 1389, 887 P. 2d 276 (1994). The Court clarified that "in contrast to conflicting evidence, insufficiency of the evidence occurs where the prosecution has not produced minimum threshold of evidence upon which a conviction may be based, even if such evidence were believed by the jury." *Id.* at 1394.

In the instant case, this Court heard testimony from the complaining witness, "M.M.", that was so inconsistent and nonsensical that it required an amendment to the charging document by the prosecution so that the offenses as pled would match with the rambling, confused and convoluted testimony from its main witness. In the prosecution's opening statement, it indicated to the jury that the evidence would describe some amalgamation of events as told by M.M. to her brother, to her mother, to the Las Vegas Metropolitan Police Department, to CPS, to the family

1 court and at preliminary hearing. As it turned out, *all of M.M.'s stories of alleged abuse that*  
2 *were supposed to cover just two distinct sets of events – 1) “...checking the scars” and 2)*  
3 *“...what was going to happen when the defendant came home from work” – substantially*  
4 *differed in many ways from each other*, which was meticulously pointed out by counsel for the  
5 defense in cross examination. The guilty verdicts that the prosecution ultimately secured were  
6 not possibly based on proof beyond a reasonable doubt. Rather, the verdict smacks of  
7 compromise and/or “reverse jury nullification” by a panel that was so confused and conflicted  
8 that it could neither acquit outright, which was what should have been the outcome in light of  
9 such an anemic case by the State, nor come to any sort of consensus about what Gustavo  
10 *probably could have done*, that it resorted to Googling terms in the jury instructions in order to  
11 reach a corrupt decision in which our system of justice cannot place any confidence whatsoever.  
12

## 13 II.

14  
15 The Defendant fully understands that a criminal conviction is not to be lightly overturned.  
16 The alleged jury misconduct must be analyzed in the context of the trial as a whole. Meyer v.  
17 State, 119 Nev. 554, 80 P.3d 447 (2003). Only by doing so can it be determined whether there is  
18 a reasonable probability that the jury’s dereliction of duty affected the verdict. *Id.* at 565, 456. In  
19 order to prevail on a motion for a new trial based on juror misconduct, a defendant must present  
20 admissible evidence sufficient to establish: 1) the occurrence of juror misconduct, and 2) a  
21 showing that the misconduct was prejudicial, *i.e.*, that there was a reasonable probability or  
22 likelihood that the [jury] misconduct affected the verdict. *Id.* at 564, 455. Jurors are prohibited  
23 from conducting an independent investigation and informing other jurors of the results of that  
24 investigation. *Id.* at 572, 460. Finally, the misconduct that occurred in this case is *extrinsic* as  
25 well as *intrinsic* in both nature and manner. *Id.* at 572, 460.  
26

27 At the 21 June 2019 evidentiary hearing, Mr. Gunera-Pastrana presented admissible  
28

1 evidence showing that misconduct had indeed occurred, satisfying the first Meyer prong.  
2 Thereafter, first, the jury foreperson's testimony concerning the degree and pervasiveness of the  
3 jury's group-wide research and the dissemination and consideration of the results of their  
4 impermissible Google search strongly inferred that prejudice resulted. Then, after Officer M.'s  
5 testimony revealing that Mr. C. had expressed how "...it took Googling common sense to get  
6 [the jury] to reach a verdict," the aforementioned inference of prejudice was irrefutably  
7 confirmed. Based on the evidence adduced at the hearing on this issue, the defense respectfully  
8 submits that this Court has no choice but to find that the average, hypothetical juror could have  
9 been affected by the extraneous information discovered by this jury's impermissible Google  
10 search, and that there was a reasonable probability that the search and the information produced  
11 therefrom affected the verdict. In fact, *the Court heard competent, relevant, credible and*  
12 *admissible evidence from the foreman and its bailiff that this was exactly what happened!*  
13

#### 14 CONCLUSION

15  
16 Because of the insufficiency of the evidence presented by the government in Mr. Gunera-  
17 Pastrana's criminal trial, and the unfair prejudice created by the jury's misconduct during its  
18 deliberations, a clear denial of due process resulted. The Defendant respectfully requests that this  
19 Court grant his motion for acquittal, or in the alternative, for a new trial.  
20

21 DATED this 8th day of July, 2019.

22 DARIN F. IMLAY  
23 CLARK COUNTY PUBLIC DEFENDER

24 By: /s/Kevin C. Speed  
25 KEVIN C. SPEED, #8895  
26 Deputy Public Defender  
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YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion for a Judgement of Acquittal After a Verdict of Guilty, or in the Alternative, Motion for New Trial Based Upon Per Se Jury Misconduct on for hearing before the Court on the 7<sup>th</sup> day of August, at 9:00 a.m. in District Court Department 28.

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

## CERTIFICATE OF ELECTRONIC SERVICE

District Attorney's Office  
E-Mail Address:  
Jennifer.Georges@clarkcountyda.com

9

# **Exhibit A**

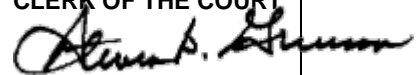
During the course of this trial, and your deliberations, you are not to:

- (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.

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
7/8/2019 9:35 AM  
Steven D. Grierson  
CLERK OF THE COURT



State of Nevada

vs

Gustavo Gunera-Pastrana

Case No.: C-16-318461-1

Department 28

**NOTICE OF HEARING**

Please be advised that the Defendant's Motion for a Judgment of a Quittal After a Verdict of Guilty, or in the Alternative, Motion for New Trial Based Upon Per Se Jury Misconduct in the above-entitled matter is set for hearing as follows:

**Date:** July 22, 2019

**Time:** 9:00 AM

**Location:** RJC Courtroom 15C  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

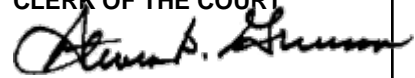
STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Miriam Vazquez  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Miriam Vazquez  
Deputy Clerk of the Court



1 **OPPS**

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 SANDRA DIGIACOMO  
6 Chief Deputy District Attorney  
7 Nevada Bar #006204  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 THE STATE OF NEVADA,

15 Plaintiff,

16 -vs-

17 **GUSTAVO ADONAY GUNERA-**  
18 **PASTRANA,**  
19 **#2697473**

20 Defendant.

CASE NO: **C-16-318461-1**

DEPT NO: **XXVIII**

21 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR A JUDGMENT OF**  
22 **ACQUITTAL AFTER A VERDICT OF GUILTY, OR IN THE ALTERNATIVE,**  
23 **MOTION FOR NEW TRIAL BASED UPON PER SE JURY MISCONDUCT**

24 DATE OF HEARING: **AUGUST 7, 2019**  
25 TIME OF HEARING: **9:00 AM**

26 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
27 District Attorney, through SANDRA K. DIGIACOMO, Chief Deputy District Attorney, and  
28 hereby submits the attached Points and Authorities in this State's Opposition to Defendant's  
Motion for a Judgment of Acquittal after a Verdict of Guilty, or in the Alternative, Motion for  
New Trial Based upon Per Se Jury Misconduct.

This Opposition is made and based upon all the papers and pleadings on file herein, the  
attached points and authorities in support hereof, and oral argument at the time of hearing, if  
deemed necessary by this Honorable Court.

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE PERTINENT TO THIS OPPOSITION**

3 On September 30, 2016, Defendant, GUSTAVO GUNERA-PASTRANA, was charged  
4 by way of Criminal Information with the crimes of Lewdness with a Child Under the Age of  
5 14 (Category A Felony – NRS 201.230) and Sexual Assault with a Minor Under Fourteen  
6 Years of Age (Category A Felony – NRS 200.364, 200.366). Defendant was arraigned on  
7 October 12, 2016 and the matter was set for jury trial.

8 Defendant's jury trial commenced on June 4, 2019. The matter was submitted to the  
9 jury for deliberations on Friday, June 14, 2019. The jury returned on Monday, June 17, 2019  
10 in order to continue deliberating. On June 17, 2019, the jury received a playback of a portion  
11 of the trial testimony. Following the playback, the jury advised that they had reached a verdict  
12 on the two lewdness counts, but were at an impasse on the remaining counts. That same day,  
13 the jury returned a verdict finding Defendant guilty of two counts of Lewdness with a Child  
14 Under the Age of 14 and two counts of Sexual Assault with a Minor Under Fourteen Years of  
15 Age. Defendant was remanded into custody without bail and the matter was set for sentencing.  
16 On June 18, 2019, this Court returned the matter to calendar to address a potential issue that  
17 had occurred during jury deliberations. On June 21, 2019, this Court conducted an evidentiary  
18 hearing at which the jury foreperson testified. Following the testimony of the foreperson, this  
19 Court vacated Defendant's sentencing date and set a briefing schedule to allow Defendant to  
20 file a Motion for New Trial. The matter was set for argument and decision on August 7, 2019.

21 Defendant filed the instant Motion on July 8, 2019. The State's Opposition follows.

22 **STATEMENT OF FACTS PERTINENT TO THIS OPPOSITION<sup>1</sup>**

23 **I. FACTS REGARDING M.M.**

24 On July 12, 2016, LVMPD was notified reference the sexual abuse of the victim in this  
25 case, which occurred at multiple locations, to include 3642 Boulder Highway, #254, Las  
26 Vegas, Nevada, 89121. The victim is M.M. and was around age 13 at the time of the crimes.  
27 Defendant is the victim's mother's boyfriend. Officers Kravetz and Delaria responded to the

28 

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<sup>1</sup> Unless otherwise noted, the State cites to the preliminary hearing transcript because the trial transcripts have not yet been prepared.

1 listed residence where they spoke to the victim and her mother, Meili Casillas-Ortiz. The  
2 victim's mother indicated that her daughter disclosed sexual abuse by Defendant and she  
3 feared for her life and that of her family.

4 The victim told Officer Kravetz that Defendant began molesting her a year prior, by  
5 inappropriately touching her body and kissing her on the mouth. Defendant began touching  
6 the victim's entire body, including her vagina, about a year prior. She recalled one occasion  
7 where Defendant dropped his pants and stuck one of his fingers inside her vagina. Defendant  
8 would sexually assault the victim while her mother was at work and they were home alone.

9 On July 11, 2016, the victim was home with Defendant and he kissed her on the mouth  
10 while attempting to touch her in an inappropriate manner. The victim was able to extricate  
11 herself from the situation but Defendant threatened, "I'll kill your mother and your brothers if  
12 you tell anyone". Later that evening, M.M. told her mother about Defendant sexually abusing  
13 her, and that he threatened to kill all of them if she refused to have sex with him.

14 On July 12, 2016, Defendant told M.M. that she would have to have sexual relations  
15 with him when he returned from work and her mother left for work. M.M. reported what  
16 Defendant said to her mother, as she was extremely scared that she would be forced to have  
17 sexual relations with Defendant. M.M. was terrified and shaking as she explained these things  
18 to Officer Kravetz. The victim's mother also indicated that she was terrified of Defendant and  
19 that he had threatened her several times in the past. She was certain that Defendant would  
20 harm her and/or the children. While officers were still present in the driveway, Defendant  
21 drove up in a truck. M.M.'s brother, Jose, was also in the truck. Defendant observed the  
22 officers and fled westbound inside the mobile home complex. Officers captured and detained  
23 Defendant prior to his leaving the area.

24 On September 30, 2016, the victim testified at a preliminary hearing of this matter.  
25 Specifically, she testified that in August 2015, she was on the living room couch and  
26 Defendant touched her vagina with his hand. PHT, p. 6. The victim had some surgery down  
27 near her belly button and Defendant told her he was going to check it. Defendant placed his  
28 hand under her clothes and rubbed her vagina with it. Defendant told the victim not to tell her

1 mother because he would go to jail. PHT, pp. 7-8.

2 In June 2016, M.M. was in the master bedroom, sitting on the bed. Defendant came  
3 into the room and told her he was there to get her baby brother, which was a lie. Defendant  
4 told the victim to lie down and she told him no. Defendant told the victim that if she did not  
5 lie down he was going to do something to her brother. Defendant put his finger inside the  
6 victim's vagina. Defendant also put his mouth on the victim's vagina. PHT, pp. 10-11. The  
7 victim tried telling Defendant that she was on her period, even though she wasn't, in order to  
8 prevent him from touching her. Defendant told the victim that he was going to take her baby  
9 brothers away and do something bad to her brother and mom. PHT, p. 12.

10 On July 11, 2016, the victim was in the living room and Defendant told her that her  
11 time was over and she had to have sex with him. Defendant told the victim that if she did not  
12 have a sexual relationship with him he was going to kick her out of the house and because she  
13 didn't work, she was no one in the world. PHT, pp. 13-14. The victim told Defendant that  
14 she did not work because she was not old enough and that she hadn't chosen that life.  
15 Defendant told her that he chose it for her. The victim told Defendant that he was not her  
16 owner and she would listen to her mother. Defendant told her that he didn't care because she  
17 was his woman. Defendant kissed the victim, on the mouth, with his mouth and tongue. When  
18 Defendant left the house the victim immediately called her mother and told her everything that  
19 had happened. The police were called the following day. PHT, pp. 14-15.

## 20 **II. FACTS REGARDING POST-TRIAL EVIDENTIARY HEARING**

21 At the evidentiary hearing on June 21, 2019, the jury foreperson testified that two jurors  
22 used their phones to google the term "common sense" because another jury did not understand  
23 what it meant. The definition was then read out loud in the jury deliberation room in the  
24 presence of all the jurors. This incident took place toward the end of deliberations on Monday,  
25 June 17, 2019, and after the jury had already written a note indicating that they had reached a  
26 verdict on Counts 1 and 4.

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1 **LEGAL ARGUMENT**

2 **I. THERE IS NO MERIT TO DEFENDANT’S MOTION FOR A JUDGMENT OF**  
3 **AQUITTAL**

4 Defendant fails to provide an adequate basis for his Motion for Judgment of Acquittal.  
5 NRS 175.381(2) governs motions for acquittal and provides that:

6 The court may, on a motion of a defendant or on its own motion,  
7 which is made after the jury returns a verdict of guilty or guilty but  
8 mentally ill, set aside the verdict and enter a judgment of acquittal if  
9 the evidence is insufficient to sustain a conviction. The motion for a  
judgment of acquittal must be made within 7 days after the jury is  
discharged or within such further time as the court may fix during that  
period.

10 NRS 175.381(2). When determining the sufficiency of the evidence, the Court first must  
11 construe the evidence “in the light most favorable to the prosecution ... then determine whether  
12 any rational trier of fact could have found the essential elements of the crime beyond a  
13 reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781 (1979). However,  
14 the Court is not at liberty to sit as a thirteenth juror and make credibility determinations  
15 regarding the witnesses. Evans v. State, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996).

16 Defendant seems to conflate the legal standard for a motion for judgment of acquittal  
17 with the legal standard for a motion for new trial. The Nevada Supreme Court has recognized  
18 that grounds for a new trial may exist “where the trial judge finds that the evidence of guilt is  
19 conflicting, and after an independent evaluation of the evidence, disagrees with the jury's  
20 verdict of guilty.” Id. Conflicting evidence occurs where “there is sufficient evidence  
21 presented at trial which, if believed, would sustain a conviction, but this evidence is contested  
22 and the district judge, in resolving the conflicting evidence differently from the jury, believes  
23 the totality of evidence fails to prove the defendant guilty beyond a reasonable doubt.” Id.  
24 (quoting State v. Walker, 109 Nev. 683, 685–86, 857 P.2d 1, 2 (1993)). Where such conflicting  
25 evidence exists, the Court may grant a defendant’s motion for a new trial.

26 By contrast, insufficient evidence means that, “the prosecution has not produced a  
27 minimum threshold of evidence upon which a conviction may be based, *even if such evidence*  
28 *were believed by the jury.*” Evans, 112 Nev. at 1193, 926 P.2d at 279 (quoting State v. Purcell,

1 110 Nev. 1389, 1394, 887 P.2d 276, 279 (1994) (emphasis in original) A trial court is not free  
2 to overturn a verdict and bar the prosecution from a new trial merely because it disagrees with  
3 the outcome or to supplant the jury's credibility determinations with its own; rather, a trial  
4 court may only grant a motion for acquittal where the evidence was insufficient to sustain a  
5 guilty verdict, not merely where the evidence was conflicting. Evans, 112 Nev. at 1193, 926  
6 P.2d at 279. This standard does not allow the district court to act as a "thirteenth juror" and  
7 reevaluate the evidence and the credibility of the witnesses. Id.

8 Here, Defendant has not sought a motion for new trial based on the allegedly  
9 inconsistent testimony of M.M. Rather, Defendant has sought a judgment of acquittal based  
10 on the supposed insufficiency of the evidence. Defendant, however, fails to explain how the  
11 evidence is insufficient to support a verdict. The crux of Defendant's argument seems to be  
12 that M.M.'s testimony was "inconsistent and nonsensical." Defendant's Motion at 6. This,  
13 however, is not the appropriate standard for a motion for judgment of acquittal.

14 When taken in the light most favorable to the State, the evidence was clearly sufficient  
15 to support a conviction. M.M. testified to several different occasions where Defendant touched  
16 her over the course of roughly a year. During the timeframe in question, Defendant often had  
17 access to M.M. without another adult present in the home. M.M.'s mother noticed that around  
18 the time the abuse began, M.M. became withdrawn and stopped referring to Defendant as  
19 "dad." M.M.'s mother worked six days a week and M.M. was often at home watching her  
20 younger siblings. Defendant worked sporadically laying tile. When he did work, Defendant  
21 would often take M.M.'s younger brother, Jose, to work sites and leave him there while he  
22 returned to the home to "check on" M.M. and the other children. Defendant would almost  
23 always take M.M.'s mother to work and pick her up each day; as a result, he knew that she  
24 could not arrive home earlier than expected and surprise him.

25 In the first incident, M.M. was in the living room when Defendant sat her on his lap  
26 and asked to check the scars on her stomach from a recent surgery. Defendant briefly checked  
27 M.M.'s scars and then began to rub her vaginal area underneath her clothes. M.M.'s mother  
28

1 was at work during this incident and Jose was in his room. Following the incident, Defendant  
2 told M.M. not to tell anyone.

3 Several months later, there was another incident while M.M.'s mother was at work.  
4 Defendant took Jose to work with him and then left him there while he went back to the house.  
5 Defendant came into the bedroom where M.M. was caring for her younger brothers and pulled  
6 down her shorts. Defendant inserted his fingers into M.M.'s vagina and licked her vagina as  
7 well. The conduct stopped when one of M.M.'s younger brothers started to cry. As M.M.  
8 turned around she saw that Defendant had pulled his pants down and she saw his penis.

9 There was an additional incident where Defendant kissed M.M. with tongue while Jose  
10 was outside and her mom was at work. Following that incident, Defendant acted as though  
11 nothing had happened and left to take Jose to wash the car.

12 On July 11, 2016, Defendant told M.M. that her time was up and the following day she  
13 was going to have sex with him after he took her mother to work. M.M. called her mom,  
14 hysterical, and told her what was happening. They decided to act normally that night because  
15 they were not sure how Defendant would react. The following morning, they waited for  
16 Defendant to leave for work with Jose. M.M.'s mother called police, who responded to the  
17 home. While police were at the residence, Defendant and Jose returned home. Defendant  
18 rounded the corner, where police were waiting outside his residence, and then sped away from  
19 the home. Defendant was pulled over a short distance away with Jose in the vehicle.

20 In addition to the physical contact between Defendant and M.M. there were also several  
21 other times where Defendant made sexual comments to M.M. Throughout all the incidents,  
22 Defendant would often tell M.M. that if she told anyone what was happening, he would take  
23 her younger brothers away or hurt her mom and Jose. Defendant also attempted to convince  
24 M.M. that even if she told her mother or anyone else, no one would believe her. Several months  
25 before she told her mom, M.M. broke down and told Jose, without giving specific details, that  
26 Defendant would touch her. Once M.M. told Jose what was going on, he would try not to leave  
27 M.M. alone with Defendant and would send her messages to let her know if Defendant had  
28 left him at a worksite and was heading back to the house.

1 When viewed in the light most favorable to the State, a rational trier of fact could, and  
2 did, find Defendant guilty. As such, Defendant's Motion for Judgment of Acquittal must be  
3 denied.

4 **II. THERE IS NO MERIT TO DEFENDANT'S MOTION FOR A NEW TRIAL**

5 Equally without merit is Defendant's request for a new trial based on jury misconduct.  
6 The Nevada Supreme Court has recognized that jury misconduct can involve intrinsic issues,  
7 such as a violation of the juror's oath, or extrinsic issues such as influence from third parties.  
8 Meyer v. State, 119 Nev. 554, 561, 80 P.3d 447, 453 (2003). Regardless of the source,  
9 however, not all instances of jury misconduct require reversal of a jury verdict. Id. at 562, 80  
10 P.3d at 453; see also Lamb v. State, 127 Nev. 26, 46, 251 P.3d 700, 713 (2011) (affirming a  
11 verdict despite the bailiff's improper communication with the jury because the communication  
12 did not introduce incorrect law into the proceedings); Tanksley v. State, 113 Nev. 997, 1003,  
13 946 P.2d 148, 152 (1997) (affirming verdict where one juror conducted independent  
14 experiment after all other jurors had already decided upon guilty verdict and experiment did  
15 not appear to have swayed juror's decision).

16 Before a defendant can prevail on a motion for a new trial based on juror misconduct,  
17 the defendant must present admissible evidence sufficient to establish: (1) the occurrence of  
18 juror misconduct, and (2) a showing that the misconduct was prejudicial. Once such a showing  
19 is made, the trial court should grant the motion. Prejudice is shown whenever there is a  
20 reasonable probability or likelihood that the juror misconduct affected the verdict. Meyer, 119  
21 Nev. at 563–64, 80 P.3d at 455. Certain types of misconduct, such as jury tampering, create a  
22 presumption of prejudice. Id. To the contrary, "[j]urors' exposure to extraneous information  
23 via independent research or improper experiment is [] unlikely to raise a presumption of  
24 prejudice. In these cases, the extrinsic information must be analyzed in the context of the trial  
25 as a whole to determine if there is a reasonable probability that the information affected the  
26 verdict." Id. at 565, 80 P.3d at 456.

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1 The Meyer Court created a list of factors which the trial court should consider in  
2 evaluating juror misconduct. The list included a review of how the material was introduced to  
3 the jury, the length of time it was discussed by the jury, the timing of its introduction, whether  
4 the information was ambiguous, vague, or specific in content, whether it was cumulative of  
5 other evidence adduced at trial, whether it involved a material or collateral issue, whether it  
6 involved inadmissible evidence. Meyer, 119 Nev. at 566, 80 P.3d at 456. The Nevada Supreme  
7 Court recognized that its factors were not exhaustive and that a trial court must consider the  
8 extrinsic evidence in light of the trial as a whole and the weight of the evidence. Id. Finally,  
9 the trial court must apply an objective test in order to determine whether an average,  
10 hypothetical juror would be influenced by the juror misconduct. The trial court may not  
11 consider the subjective effects of any extrinsic evidence or misconduct on the actual jurors in  
12 the case. Id. To this end, NRS 50.065 provides that:

13 2. Upon an inquiry into the validity of a verdict or indictment:

14 (a) A juror shall not testify concerning the effect of anything upon the  
15 juror's or any other juror's mind or emotions as influencing the juror  
16 to assent to or dissent from the verdict or indictment or concerning the  
juror's mental processes in connection therewith.

17 (b) The affidavit or evidence of any statement by a juror indicating an  
effect of this kind is inadmissible for any purpose.

18 NRS 50.065.

19 Here, the State acknowledges that the jurors' actions of googling a term during  
20 deliberations constitutes juror misconduct. Defendant, however, cannot demonstrate that this  
21 conduct was prejudicial. As an initial matter, Defendant relies heavily on the jury foreperson's  
22 statement to this Court's marshal that "it took googling common sense to get [the jury] to reach  
23 a verdict." Defendant's Motion at 8. That comment, however, is not appropriately before this  
24 Court and must not factor into this Court's ruling. As such, the State requests that this portion  
25 of the marshal's testimony be stricken from the record. The foreperson's comment, elicited  
26 through the marshal, focuses on the jury's subjective thought processes and delves into how  
27 the jury conducted its deliberation. Thus, this information is precisely what NRS 50.065  
28 prohibits. See Meyer, 119 Nev. at 567, 80 P.3d at 457 (prohibiting statements by jurors about

1 the actual effect of juror misconduct on the deliberations or their individual decision).

2 The only admissible evidence adduced at the evidentiary hearing was that, after the jury  
3 had already reached its guilty verdict on two counts, at least one juror googled the definition  
4 of “common sense” and shared that definition with the remaining jurors. There was no  
5 testimony adduced about how long the jurors discussed the improperly obtained definition.  
6 This conduct, however, does not require reversal of Defendant’s convictions. In Bowman v.  
7 State, 132 Nev. Adv. Op. 74, 387 P.3d 202, 204 (2016), the Nevada Supreme Court reversed  
8 a defendant’s conviction after learning that the jury had conducted independent experiments  
9 to test both the prosecution and defense’s theories of the case. There, the misconduct was  
10 deemed prejudicial because it dealt with the central issue to the case. Cf  
11 Meyer, 119 Nev. at 554, 573, 80 P.3d at 447 (finding independent research by a juror was  
12 reversible because it dealt with specific theory of defense presented during trial) with Jeffries  
13 v. State, 397 P.3d 21, 27 (Nev. 2017), reh'g denied (Sept. 29, 2017), reconsideration en banc  
14 denied (Jan. 18, 2018) (affirming a murder conviction after learning that a juror had researched  
15 the effects of a guilty plea and announced that he was against the penalties for murder) and  
16 Barker v. State, 95 Nev. 309, 314, 594 P.2d 719, 722 (1979) (reversal not warranted where  
17 jury foreperson researched effects of heroin addiction on mental processes after defense  
18 elicited that prosecution witness was addicted to heroin, but this was not central to  
19 impeachment of the witness or the State’s case).

20 Several U.S. Circuit Courts have addressed the specific issue of jurors looking up terms  
21 in the dictionary during deliberations. The Sixth Circuit has determined that the following  
22 inquiry is appropriate:

23 When a jury makes unauthorized use of a dictionary, the trial judge  
24 should determine whether the jury *actually substituted the dictionary*  
25 *definition* of a legal term for that given in the instructions. *If any*  
26 *jurors substituted the dictionary definition, the court should*  
27 *determine whether any use of the dictionary definition resulted in*  
28 *prejudice to the defendant.* After the judge makes the required  
investigation, the decision whether to grant a new trial should be  
reviewed only for abuse of discretion.

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1 United States v. Gillespie, 61 F.3d 457, 459 (6th Cir. 1995) (quoting United States v.  
2 Griffith, 756 F.2d 1244, 1252 (6th Cir. 1985) (emphasis in original). In Gillespie the Sixth  
3 Circuit affirmed a conviction after determining that the defendant failed to carry his burden to  
4 show that the jury had substituted the dictionary definition for a legal term with the definition  
5 provided in the jury instructions. Id. Similarly, the D.C. Circuit affirmed a defendant's  
6 conviction after learning that the jury had looked up the term "enterprise" in a dictionary  
7 during deliberations. United States v. Williams-Davis, 90 F.3d 490, 503 (D.C. Cir. 1996).  
8 There, the Court was satisfied that the misconduct was not prejudicial because the term only  
9 appeared in the statute under which the defendant had been charged, and did not deal with the  
10 necessary elements of any of the charges. In United States v. Cheyenne, 855 F.2d 566, 567  
11 (8th Cir. 1988), the Eighth Circuit affirmed a defendant's murder conviction after the jury used  
12 a dictionary to define the terms "callous" and "wanton" because these terms were not central  
13 to the definition of "malice aforethought" and the information gleaned from the dictionary did  
14 not significantly alter the definition provided in the jury instruction. In Marino v. Vasquez,  
15 812 F.2d 499, 506 (9th Cir. 1987), the Ninth Circuit reversed a conviction where the term  
16 researched, "malice," was an essential element to the charged offenses and there was also  
17 evidence to suggest that the jury had performed experiments testing the government's theory  
18 of the case against the defense theory. In Marino, the Court found that the dictionary definition  
19 differed from the instruction provided in the jury instructions. Id. The Ninth Circuit, however,  
20 did not vacate all of the convictions, but rather affirmed the convictions on the charges  
21 unrelated to the jury misconduct. Id.

22 Here, there was no research done dealing with a specific theory of the case. Rather, the  
23 jury googled a term that was already defined within the instructions. Instruction 23 informed  
24 the jury that:

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

1 Instructions to the Jury, Instruction 23, State v. Gustavo Adonay Gunera-Pastrana, C-16-  
2 318461-1, June 17, 2019.

3 Contrary to Meyer or Bowman, where the jury was conducting research and  
4 experiments which went to the heart of the unique issues of the case, the jury here inquired  
5 into the definition of an ancillary term. Similar to the Williams-Davis case, the term searched  
6 was not a legal term of art, but rather a common term. There has been no evidence to suggest  
7 that the definition that the jury received was contrary to that provided in the jury instructions,  
8 or to suggest that the definition any way introduced improper law or evidence into the jury  
9 deliberation process. Furthermore, the term “common sense” does not appear as an element in  
10 either the lewdness statutes or the sexual assault statutes, but was only used to explain for the  
11 jurors how to conduct their deliberations. As such, Defendant has failed to demonstrate that  
12 the jurors’ conduct prejudiced their verdict and his motion for new trial must be denied.

13 In the event that this Court does determine that the jury misconduct was prejudicial, the  
14 State submits that only the verdicts as to Counts 2 and 3 should be disturbed. The objective  
15 evidence presented in this matter was that the juror misconduct did not occur until after the  
16 jury had already submitted a note to this Court stating that they had reached a verdict on Counts  
17 1 and 4. As such, it is apparent beyond a reasonable doubt that no reasonable hypothetical  
18 juror could have been influenced by outside research on those counts because a verdict had  
19 already been reached and the deliberations were focusing solely on Counts 2 and 3 at the time  
20 of the misconduct.

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**CONCLUSION**

For the foregoing reasons, the State respectfully requests that Defendant’s Motion for a Judgment of Acquittal after a Verdict of Guilty, or in the Alternative, Motion for New Trial Based upon Per Se Jury Misconduct be DENIED.

DATED this 22nd day of July, 2019.

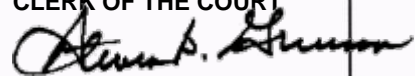
Respectfully submitted,  
  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
  
BY /s/ SANDRA DIGIACOMO  
SANDRA DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006204

**CERTIFICATE OF SERVICE**

I hereby certify that service of the above and foregoing was made this 22ND day of JULY, 2019, to:

KEVIN SPEED, DPD  
mcmahaae@ClarkCountyNV.gov  
  
BY /s/ HOWARD CONRAD  
Secretary for the District Attorney's Office  
Special Victims Unit

hjc/SVU



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11 Attorney for Plaintiff

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

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

12 -vs-

13 **GUSTAVO ADONAY GUNERA-**  
14 **PASTRANA,**  
15 **#2697473**

Defendant.

CASE NO: C-16-318461-1

DEPT NO: XXVIII

16 **FINDINGS OF FACT, CONCLUSIONS OF**

17 **LAW AND ORDER**

18 DATE OF HEARING: AUGUST 7, 2019  
19 TIME OF HEARING: 9:00 AM

20 THIS CAUSE having presented before the Honorable RONALD ISRAEL, District  
21 Judge, on the 7th day of August, 2019; Petitioner being present, represented by KEVIN  
22 SPEED, DPD; Respondent being represented by STEVEN B. WOLFSON, Clark County  
23 District Attorney, by and through MICHELLE SUDANO, Deputy District Attorney; and  
24 having considered the matter, including briefs, transcripts, arguments of counsel, and  
25 documents on file herein, the Court makes the following Findings of Fact and Conclusions of  
26 Law:

27 //

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**FINDINGS OF FACT**

1  
2           1.       On September 30, 2016, Defendant, GUSTAVO GUNERA-PASTRANA, was  
3 charged by way of Criminal Information with two counts of Lewdness with a Child Under the  
4 Age of 14 (Category A Felony – NRS 201.230) and two counts of Sexual Assault with a Minor  
5 Under Fourteen Years of Age (Category A Felony – NRS 200.364, 200.366). Defendant was  
6 arraigned on October 12, 2016 and the matter was set for jury trial.

7           2.       Defendant's jury trial commenced on June 4, 2019. The matter was submitted to  
8 the jury for deliberations on Friday, June 14, 2019. The jury returned on Monday, June 17,  
9 2019 in order to continue deliberating. On June 17, 2019, the jury received a playback of a  
10 portion of the trial testimony. Following the playback, the jury advised that they had reached  
11 a verdict on Counts 1 and 4, the lewdness counts, but were at an impasse on Counts 2 and 3,  
12 the sexual assault counts. The jury was instructed to continue deliberating. That same day, the  
13 jury returned a verdict finding Defendant guilty of all four counts. Defendant was remanded  
14 into custody without bail and the matter was set for sentencing.

15          3.       After the jury had been released, this Court's marshal learned of a potential issue  
16 that had occurred during jury deliberations. On June 18, 2019, this Court returned the matter  
17 to calendar to address the jury issue, and scheduled the matter for an evidentiary hearing.

18          4.       On June 21, 2019, this Court conducted an evidentiary hearing at which the jury  
19 foreperson testified. The jury foreperson testified that, during deliberations, two jurors used  
20 their phones to google the term "common sense" because another juror did not understand  
21 what it meant. The definition was then read out loud in the jury deliberation room in the  
22 presence of all the jurors. This incident took place toward the end of deliberations on Monday,  
23 June 17, 2019, and after the jury had already written a note indicating that they had reached a  
24 verdict on Counts 1 and 4.

25          5.       Following the testimony of the foreperson, this Court vacated Defendant's  
26 sentencing date and set a briefing schedule to allow Defendant to file a Motion for New Trial.  
27 On July 8, 2019, Defendant filed a Motion for Judgement of Acquittal After a Verdict of  
28 Guilty, or in the Alternative, Motion for a New Trial Based Upon Per Se Jury Misconduct.

1 The State filed an Opposition on July 22, 2019. The matter came before this Court for argument  
2 on August 7, 2019, at which time this Court made the following findings.

3 **CONCLUSIONS OF LAW**

4 1. NRS 175.381(2) governs motions for acquittal and provides that:

5 The court may, on a motion of a defendant or on its own motion, which  
6 is made after the jury returns a verdict of guilty or guilty but mentally  
7 ill, set aside the verdict and enter a judgment of acquittal if the  
8 evidence is insufficient to sustain a conviction. The motion for a  
judgment of acquittal must be made within 7 days after the jury is  
discharged or within such further time as the court may fix during that  
period.

9 NRS 175.381(2). When determining the sufficiency of the evidence, the Court first must  
10 construe the evidence “in the light most favorable to the prosecution ... then determine whether  
11 any rational trier of fact could have found the essential elements of the crime beyond a  
12 reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781 (1979). However,  
13 the Court is not at liberty to sit as a thirteenth juror and make credibility determinations  
14 regarding the witnesses. Evans v. State, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996).

15 2. A trial court is not free to overturn a verdict and bar the prosecution from a new  
16 trial merely because it disagrees with the outcome or to supplant the jury’s credibility  
17 determinations with its own; rather, a trial court may only grant a motion for acquittal where  
18 the evidence was insufficient to sustain a guilty verdict, not merely where the evidence was  
19 conflicting. Evans, 112 Nev. at 1193, 926 P.2d at 279.

20 3. Defendant bases his Motion for Acquittal on the purported inconsistencies in the  
21 testimony of the victim, M.M. Defendant’s counsel brought out the inconsistencies in the  
22 testimony during the trial, while counsel for the State explained the reasons why testimony of  
23 a child of M.M.’s age might be inconsistent over a number of statements and a number of  
24 years. The jury had this information to consider at the time of their deliberations and they  
25 returned guilty verdicts. Given the age of M.M. at the time of the initial disclosure and the  
26 number of statements made over several years, the inconsistencies are not unexpected in this  
27 type of case. Therefore, Defendant’s arguments regarding M.M.’s inconsistencies are not  
28 sufficient to warrant granting a motion for acquittal on the grounds of insufficient evidence.

1           4.     The Nevada Supreme Court has recognized that jury misconduct can involve  
2 intrinsic issues, such as a violation of the juror's oath, or extrinsic issues such as influence  
3 from third parties. Meyer v. State, 119 Nev. 554, 561, 80 P.3d 447, 453 (2003). Not all  
4 instances of jury misconduct require reversal of a jury verdict. Id. at 562, 80 P.3d at 453.  
5 Certain types of misconduct, such as jury tampering, create a presumption of prejudice. Id. To  
6 the contrary, "[j]urors' exposure to extraneous information via independent research or  
7 improper experiment is...unlikely to raise a presumption of prejudice. In these cases, the  
8 extrinsic information must be analyzed in the context of the trial as a whole to determine if  
9 there is a reasonable probability that the information affected the verdict." Id. at 565, 80 P.3d  
10 at 456.

11           5.     Before a defendant can prevail on a motion for a new trial based on juror  
12 misconduct, the defendant must present admissible evidence sufficient to establish: (1) the  
13 occurrence of juror misconduct, and (2) a showing that the misconduct was prejudicial. Once  
14 such a showing is made, the trial court should grant the motion. Prejudice is shown whenever  
15 there is a reasonable probability or likelihood that the juror misconduct affected the verdict.  
16 Meyer, 119 Nev. at 563–64, 80 P.3d at 455.

17           6.     The Meyer Court created a list of factors which the trial court should consider  
18 in evaluating juror misconduct. The list included a review of how the material was introduced  
19 to the jury, the length of time it was discussed by the jury, the timing of its introduction,  
20 whether the information was ambiguous, vague, or specific in content, whether it was  
21 cumulative of other evidence adduced at trial, whether it involved a material or collateral issue,  
22 whether it involved inadmissible evidence. Meyer, 119 Nev. at 566, 80 P.3d at 456. The  
23 Nevada Supreme Court recognized that its factors were not exhaustive and that a trial court  
24 must consider the extrinsic evidence in light of the trial as a whole and the weight of the  
25 evidence. Id. The trial court must apply an objective test in order to determine whether an  
26 average, hypothetical juror would be influenced by the juror misconduct.

27           7.     The trial court may not consider the subjective effects of any extrinsic evidence  
28 or misconduct on the actual jurors in the case. Id. To this end, NRS 50.065 provides that:

1                   2. Upon an inquiry into the validity of a verdict or indictment:

2                   (a) A juror shall not testify concerning the effect of anything upon the  
3                   juror's or any other juror's mind or emotions as influencing the juror  
4                   to assent to or dissent from the verdict or indictment or concerning the  
5                   juror's mental processes in connection therewith.

6                   (b) The affidavit or evidence of any statement by a juror indicating an  
7                   effect of this kind is inadmissible for any purpose.

8                   NRS 50.065.

9                   8.       Several U.S. Circuit Courts have addressed the specific issue of jurors looking  
10                  up terms in the dictionary during deliberations. The Sixth Circuit has determined that the  
11                  following inquiry is appropriate:

12                  When a jury makes unauthorized use of a dictionary, the trial judge  
13                  should determine whether the jury *actually substituted the dictionary*  
14                  *definition* of a legal term for that given in the instructions. *If any jurors*  
15                  *substituted the dictionary definition, the court should*  
16                  *determine whether any use of the dictionary definition resulted in*  
17                  *prejudice to the defendant.* After the judge makes the required  
18                  investigation, the decision whether to grant a new trial should be  
19                  reviewed only for abuse of discretion.

20                  United States v. Gillespie, 61 F.3d 457, 459 (6th Cir. 1995) (quoting United States v.  
21                  Griffith, 756 F.2d 1244, 1252 (6th Cir. 1985) (emphasis in original). In Gillespie the Sixth  
22                  Circuit affirmed a conviction after determining that the defendant failed to carry his burden to  
23                  show that the jury had substituted the dictionary definition for a legal term with the definition  
24                  provided in the jury instructions. Id. Similarly, the D.C. Circuit affirmed a defendant's  
25                  conviction after learning that the jury had looked up the term "enterprise" in a dictionary  
26                  during deliberations. United States v. Williams-Davis, 90 F.3d 490, 503 (D.C. Cir. 1996).  
27                  There, the Court was satisfied that the misconduct was not prejudicial because the term only  
28                  appeared in the statute under which the defendant had been charged, and did not deal with the  
29                  necessary elements of any of the charges. In so ruling, the D.C. Circuit decided that "jury  
30                  consideration of a dictionary definition of that [legally irrelevant] word does not implicate the  
31                  dangers usually associated with this form of juror misconduct." Id. at 502 (quoting 821 F. Supp  
32                  727, 739). In United States v. Cheyenne, 855 F.2d 566, 567 (8th Cir. 1988) the Eighth Circuit  
33                  affirmed a defendant's murder conviction after the jury used a dictionary to define the terms

1 “callous” and “wanton” because these terms were not central to the definition of “malice  
2 aforethought” and the information gleaned from the dictionary did not significantly alter the  
3 definition provided in the jury instruction. In Marino v. Vasquez, 812 F.2d 499, 506 (9th Cir.  
4 1987), the Ninth Circuit reversed a conviction where the term researched, “malice,” was an  
5 essential element to the charged offenses, the Court found that the dictionary definition  
6 differed from the instruction provided in the jury instructions, and there was also evidence to  
7 suggest that the jury had performed experiments testing the government’s theory of the case  
8 against the defense theory.

9 9. “[B]efore a federal constitutional error can be held harmless, the court must be  
10 able to declare a belief that it was harmless beyond a reasonable doubt.” Chapman v.  
11 California, 386 U.S. 18, 24, 87 S. Ct. 824, 828 (1967).

12 10. The evidentiary hearing in this case established the occurrence of juror  
13 misconduct. The testimony of the jury foreperson was credible. That testimony established  
14 that, during deliberations, at least one juror used their cell phone to complete a google search  
15 for the definition of “common sense.” That definition was then shared with all the other jurors.

16 11. The term that the jury googled in this case, “common sense,” was not a term  
17 contained in the charges against Defendant, nor was it a term found in the definitions of any  
18 of the charges against Defendant. Rather, in every case, the jury is instructed that they can and  
19 should use their common sense during deliberations. The term searched was inconsequential  
20 and extraneous to the finding of guilt. Furthermore, the search did not occur until after the jury  
21 had already found Defendant guilty of two of the counts. Courts have affirmed convictions on  
22 more serious misconduct by jurors, involving either more extensive research by jurors, or  
23 research of terms more central to the defense theory of the case. As such, based on the nature  
24 and circumstances of the jury misconduct in this case, this Court is satisfied beyond a  
25 reasonable doubt that no prejudice can be found from the search of “common sense.”

26 //

27 //

28 //

**ORDER**


THEREFORE, **IT IS HEREBY ORDERED** that the Motion for Judgement of Acquittal After a Verdict of Guilty, or in the Alternative, Motion for a New Trial Based Upon Per Se Jury Misconduct shall be, and it is, denied.

DATED this 16 day of August, 2019.

  
DISTRICT JUDGE <sup>MF</sup>  
RONALD J. ISRAEL  
*C-16-318461-1*

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY

  
SANDRA DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006204

hjc/SVU

*Steven D. Grierson*

AJOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

GUSTAVO ADONAY GUNERA-PASTRANA  
#2697473

Defendant.

CASE NO. C-16-318461-1

DEPT. NO. XXVIII

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1 and 4 – LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category A Felony) in violation of NRS 201.230; and COUNT 2 and 3 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony) in violation of NRS 200.364, 200.366; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNTS 1 and 4 – LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category A Felony) in violation of NRS 201.230; and COUNT 2 and 3 – SEXUAL ASSAULT

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquitted
<input type="checkbox"/> Guilty Plea with Sent. (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input checked="" type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition	

461

1 WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony) in violation of  
2 NRS 200.364, 200.366; thereafter, on the 25<sup>th</sup> day of September, 2019, the Defendant was  
3 present in Court for sentencing with counsel KEVIN SPEED, Deputy Public Defender, and  
4 good cause appearing,  
5

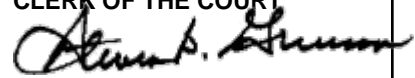
6 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition  
7 to the \$25.00 Administrative Assessment Fee, \$600.00 Restitution to Clark County Social  
8 Services, \$240.00 to Victims of Crime and \$150.00 DNA Analysis Fee including testing to  
9 determine genetic markers plus \$3.00 DNA Analysis Fee, the Defendant is sentenced to the  
10 Nevada Department of Corrections (NDC) as follows: COUNT 1 – LIFE with parole eligibility  
11 after serving a MINIMUM of TEN (10) YEARS, CONCURRENT with COUNT 2; COUNT 2  
12 – LIFE with parole eligibility after serving a MINIMUM of THIRTY-FIVE (35) YEARS;  
13 COUNT 3 – LIFE with parole eligibility after serving a MINIMUM of THIRTY-FIVE (35)  
14 YEARS, CONCURRENT with COUNT 2; and COUNT 4 – LIFE with parole eligibility after  
15 serving a MINIMUM of TEN (10) YEARS, CONCURRENT with COUNT 2; with ONE  
16 THOUSAND ONE HUNDRED SEVENTY-ONE (1,171) DAYS credit for time served.  
17  
18

19 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION is  
20 imposed to commence upon release from any term of imprisonment, probation or parole. In  
21 addition, before the Defendant is eligible for parole, a panel consisting of the Administrator of  
22 the Mental Health and Development Services of the Department of Human Resources or his  
23 designee; the Director of the Department of corrections or his designee; and a psychologist  
24 licensed to practice in this state; or a psychiatrist licensed to practice medicine in Nevada must  
25 certify that the Defendant does not represent a high risk to re-offend based on current accepted  
26 standards of assessment.  
27  
28

1           ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in  
2 accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any release from  
3 custody.  
4

5           DATED this 26 day of September, 2019.

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7   
8 RONALD J. ISRAEL  
9 DISTRICT COURT JUDGE  
10 C-16-318461-1  
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**NOAS**

DARIN F. IMLAY, PUBLIC DEFENDER  
NEVADA BAR No. 5674  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
(702) 455-4685  
Attorney for Defendant

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-16-318461-1
	)	
v.	)	DEPT. NO. XXVIII
	)	
GUSTAVO ADONAY GUNERA-PASTRANA,	)	
	)	
Defendant.	)	

**NOTICE OF APPEAL**

TO: THE STATE OF NEVADA

STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,  
NEVADA and DEPARTMENT NO. XXVIII OF THE EIGHTH JUDICIAL  
DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE  
COUNTY OF CLARK.

NOTICE is hereby given that Defendant, Gustavo Adonay  
Gunera-Pastrana, presently incarcerated in the Nevada State  
Prison, appeals to the Supreme Court of the State of Nevada from  
the judgment entered against said Defendant on the 26 day of  
September, 2019, whereby he was convicted of Cts. 1 and 4 -  
Lewdness with a Child Under the Age of 14; Cts. 2 and 3 - Sexual  
Assault with a Minor Under Fourteen Years of Age and sentenced to  
\$25 Admin. Fee; \$600 Restitution to Clark County Social Services,  
\$240 to Victims of Crime and \$150 DNA analysis fee including  
testing to determine genetic markers plus \$3 DNA analysis fee; Ct.  
1 - 10 years to Life in prison concurrent with Ct. 2; Ct. 2 - 35  
years to Life in prison; Ct. 3 - 35 years to Life in prison,

1 concurrent with Ct. 2; Ct. 4 - 10 years to Life in prison,  
2 concurrent with Ct. 2; 1,171 days CTS. Special sentence of  
3 lifetime supervision; ordered to register as a sex offender within  
4 48 hours of release from custody.

5 DATED this 16 day of October, 2019.

6 DARIN F. IMLAY  
7 CLARK COUNTY PUBLIC DEFENDER

8  
9 By: /s/ Howard S. Brooks  
10 HOWARD S. BROOKS, #3374  
11 Chief Deputy Public Defender  
12 309 S. Third Street, Ste. 226  
13 Las Vegas, Nevada 89155  
14 (702) 455-4685  
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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that service of the above and foregoing  
was made this 16 day of October, 2019, by Electronic Filing to:

District Attorneys Office  
E-Mail Address:

[PDMotions@clarkcountyda.com](mailto:PDMotions@clarkcountyda.com)

[Jennifer.Garcia@clarkcountyda.com](mailto:Jennifer.Garcia@clarkcountyda.com)

[Eileen.Davis@clarkcountyda.com](mailto:Eileen.Davis@clarkcountyda.com)

/s/ Carrie M. Connolly  
Secretary for the  
Public Defender's Office

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 04, 2016**

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C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

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**October 04, 2016      10:00 AM      Initial Arraignment**

**HEARD BY:** De La Garza, Melisa      **COURTROOM:** RJC Lower Level Arraignment

**COURT CLERK:** Kristen Brown

**RECORDER:** Kiara Schmidt

**REPORTER:**

**PARTIES**

**PRESENT:**      Derjavina, Ekaterina      Attorney for the State  
                                 Gunera-Pastrana, Gustavo Adonay      Defendant  
                                 State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- COURT ORDERED, matter CONTINUED for counsel's appearance.

CUSTODY (COC)

10/06/16 10:00 AM ARRAIGNMENT COURT (LLA)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 06, 2016**

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C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

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**October 06, 2016      10:00 AM      Arraignment Continued**

**HEARD BY:** De La Garza, Melisa      **COURTROOM:** RJC Lower Level Arraignment

**COURT CLERK:** Kristen Brown

**RECORDER:** Kiara Schmidt

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Bunnett, Matthew T.	Attorney for the State
	Gaston, Tyler	Attorney for the Defendant
	Gunera-Pastrana, Gustavo Adonay	Defendant
	Public Defender	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- COURT ORDERED, matter CONTINUED for Mr. Speed's presence.

CUSTODY (COC)

10/12/16 10:00 AM ARRAIGNMENT CONTINUED (LLA)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 12, 2016**

C-16-318461-1      State of Nevada  
vs  
Gustavo Gunera-Pastrana

**October 12, 2016      9:00 AM      Arraignment Continued**

**HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**PARTIES**

<b>PRESENT:</b>	Ferreira, Amy L. Gunera-Pastrana, Gustavo Adonay Speed, Kevin State of Nevada	Deputy District Attorney Defendant Deputy Public Defender Plaintiff
-----------------	--	--

**JOURNAL ENTRIES**

- Deft assisted by Spanish interpreter Alexandra Andrade.

Deft WAIVED a formal reading of the Information. DEFT. GUNERA-PASTRANA ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial on January 3, 2017. Mr. Speed noted he will not be in the jurisdiction that close to the holiday. Upon Court's inquiry, Deft objected to setting trial for January 30th. COURT ORDERED, January 3rd trial date STANDS.

**CUSTODY (COC)**

11-30-16	9:00 AM	STATUS CHECK: TRIAL READINESS
12-28-16	9:00 AM	CALENDAR CALL
1-3-17	1:00 PM	JURY TRIAL

PRINT DATE: 10/18/2016

Page 1 of 1

Minutes Date: October 12, 2016

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

## COURT MINUTES

November 30, 2016

C-16-318461-1      State of Nevada  
vs  
Gustavo Gunera-Pastrana

**November 30, 2016      9:00 AM      Status Check: Trial  
Readiness**

**HEARD BY:** Gonzalez, Elizabeth

**COURTROOM:** RJC Courtroom 14C

**COURT CLERK:** Susan Jovanovich

**RECORDER:** Jill Hawkins

**REPORTER:**

## PARTIES

<b>PRESENT:</b>	Ferreira, Amy L.	Chief Deputy District Attorney
	Gunera-Pastrana, Gustavo Adonay	Defendant
	Public Defender	
	Speed, Kevin	Deputy Public Defender
	State of Nevada	Plaintiff

## JOURNAL ENTRIES

Deft. present in custody with assistance from Certified Spanish Court Interpreter, Maria Peters. Mr. Speed advised Calendar Call is one month away, and he does not think defense will be ready for trial on January 3, 2017. Additionally, Deft. has invoked, and defense does not know if Deft. understands about invoking and rushing into a trial if defense is not ready. Upon Court's inquiry, Mr. Speed estimated one week for trial. Court stated it will leave the trial date where it is, and parties can return at Calendar Call to discuss scheduling. Trial date STANDS.

CUSTODY (COC)

12/28/16 9:00 A.M. CALENDAR CALL

1/03/17 1:00 P.M. TRIAL BY JURY

PRINT DATE: 11/30/2016

Page 1 of 2

Minutes Date: November 30, 2016



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 21, 2016

C-16-318461-1      State of Nevada  
vs  
Gustavo Gunera-Pastrana

**December 21, 2016      9:00 AM      Defendant's Motion to Continue Trial**

**HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**PARTIES**

<b>PRESENT:</b>	Demonte, Noreen C.	Deputy District Attorney
	Gunera-Pastrana, Gustavo Adonay	Defendant
	Speed, Kevin	Deputy Public Defender
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Deft assisted by Spanish interpreter Jeffrey Hanks.

Ms. Demonte advised the State has no opposition to continuing trial to any date other than February. Mr. Speed advised Deft has indicated that he will never waive his right to a speedy trial and will not agree to continuing trial to March 13; however, that is the best that can be done. Court inquired of Mr. Speed when, if earlier than March 13, he can be ready. Mr. Speed stated he will be ready later than that date. COURT ORDERED, given the invocation trial will NOT be moved further than the March 13, 2017 stack. Trial VACATED and RESET to March 13, 2017 understanding that Deft is MAINTAINING his right to a speedy trial.

**CUSTODY**

1-18-17	9:00 AM	DEFENDANT'S MOTION FOR DISCOVERY
2-8-17	9:00 AM	STATUS CHECK: TRIAL READINESS

PRINT DATE: 01/13/2017

Page 1 of 2

Minutes Date: December 21, 2016

**C-16-318461-1**

3-8-17          9:00 AM          CALENDAR CALL

3-13-17          1:00 PM          JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****January 18, 2017**

C-16-318461-1      State of Nevada  
                                  vs  
                                  Gustavo Gunera-Pastrana

**January 18, 2017      9:00 AM      Motion for Discovery**

**HEARD BY:** Cory, Kenneth**COURTROOM:** RJC Courtroom 16A**COURT CLERK:** Michele Tucker**RECORDER:** Lisa Lizotte

<b>PARTIES</b>	Ferreira, Amy L.	Attorney for the State
<b>PRESENT:</b>	Gunera-Pastrana, Gustavo Adonay	Defendant
	Speed, Kevin	Attorney for the Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

Defendant Gunera-Pastrana PRESENT in custody.

Mr. Speed listed the discs requested from the Clark County School District. Ms. Ferreira argued there is no requirement under NRS 174 and the Brady law. Mr. Speed advised he would request the information, but requested the State issue a subpoena. COURT ORDERED, the Public Defender's Office to the subpoena. Mr. Speed requested CPS's records. COURT ORDERED, records can be requested by way of subpoena. Further arguments by counsel.

COURT ORDERED, the following:

1. The complete Clark County School District student files for M.M. (DOB: 12/5/2002), these records are to include any and all disciplinary reports and records maintained at each individual elementary and middle school that J.B. has attended in the CCSD; DENIED, defendant may serve any necessary subpoenas upon the Clark County School District.

2. Any and all information from the Clark County Department of Family Services - CPS (Child Protective Services) Division including memoranda, reports, UNITY notes, pleadings, certificates,

PRINT DATE: 03/06/2017

Page 1 of 2

Minutes Date: January 18, 2017

letters, e-mails, interview transcripts, specialists notes, voluntary statements (oral and written) concerning: M.M. , all information to be provided in un-redacted form to the Court for review in chambers and dissemination to the District Attorney and defense counsel; GRANTED, defendant may serve any necessary subpoenas upon the Department of Family Services - CPS

3. Any LVMPD records, photographs, investigative notes, all audio recordings, and video recordings for Event Number(s) 160712-1162; GRANTED.

4. Any and all records or information concerning financial benefits, fees, reimbursement for travel expenses and/or any payments for rent or other services provided to Meili Casillas-Ortiz or to M.M. by the Clark County District Attorney's office, the Clark County Victim Witness Advocacy Center, the Department of Family Services (CPS), or any other state or county governmental agency; GRANTED. The State also being directed to inquire with the family of the complaining witness concerning the receipt of any counseling services either provided by the District Attorney's Office, the Victim Witness Advocacy Center or any other assistance agency, counseling services received from providers referred by the District Attorney's office, the VWAC or any other assistance agency or private provider counseling services, and to disclose confirmation or denial of receipt of said services to the Defendant's counsel.

5. Evidence, to include any DNA analyses and/or medical reports, related to any medical or forensic examinations conducted on the person of the Defendant by LVMPD officers, detectives or staff, or by police department personnel at the Clark County Detention Center, and any SANE exam reports or other medical records created in the course of the investigation of the allegations in the instant case; GRANTED.

6. Recordings of any intercepted telephone communications (jail calls) between the Defendant and any party where Mr. Pastrana is speaking on telephones in the Clark County Detention Center; GRANTED.

7. Copies of any intercepted written communication alleged to have been made by Mr. Pastrana at any time during his incarceration at the Clark County Detention Center; GRANTED.

8. The Defendant asks that this Court execute Certificate(s) of Materiality for the purpose of obtaining documents that may exist and/or are held outside the Court's physical jurisdiction in discovery pursuant to NRS 174.425(1), Nevada's Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings; DENIED.

Mr. Speed to prepare the Order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 23, 2017**

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C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

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**January 23, 2017      9:00 AM      Motion to Suppress**

**HEARD BY:** Cory, Kenneth      **COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Michele Tucker

**RECORDER:** Lisa Lizotte

<b>PARTIES</b>	Clemons, Jennifer M.	Attorney for the State
<b>PRESENT:</b>	Gunera-Pastrana, Gustavo Adonay	Defendant
	Speed, Kevin	Attorney for the Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

Defendant Gunera-Pastrana PRESENT in custody. Maria Gomez, Interpreter, also present.

Mr. Speed argued as to suppressing as there needs to something in the record indicating the defendant understood. Ms. Clemons suggested the matter be continued for the Court to review the transcripts. Mr. Speed suggested holding a Jackson v. Denno hearing. COURT ORDERED, Hearing SET.

CUSTODY

2/16/17 9:00 AM JACKSON V. DENNO

February 08, 2017

C-16-318461-1      State of Nevada  
vs  
Gustavo Gunera-Pastrana

<b>PARTIES</b>	Gunera-Pastrana, Gustavo Adonay	Defendant
<b>PRESENT:</b>	Jobe, Michelle Y.	Attorney for the State
	Speed, Kevin	Attorney for the Defendant
	State of Nevada	Plaintiff

## 478

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 15, 2017**

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C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

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**February 15, 2017**

**Minute Order**

**HEARD BY:** Cory, Kenneth

**COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Michele Tucker

**JOURNAL ENTRIES**

- Please be advised due to the Court's schedule, COURT ORDERS, the Calendar Call  
RESCHEDULED from Wednesday, 3/8/17 to Wednesday, 3/1/17 for the 3/13/17 trial.

RESCHEDULED TO: 3/1/17 9:00 AM

CLERK'S NOTE: The above minute order has been distributed to: Jeff Banks, Esq.  
(banksjm@clarkcountynv.gov). /mlt

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 23, 2017**

C-16-318461-1      State of Nevada  
vs  
Gustavo Gunera-Pastrana

**February 23, 2017      1:30 PM      Jackson v Denno Hearing**

**HEARD BY:** Cory, Kenneth      **COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Michele Tucker

**RECORDER:** Lisa Lizotte

<b>PARTIES</b>	Clemons, Jennifer M.	Attorney for the State
<b>PRESENT:</b>	Gunera-Pastrana, Gustavo Adonay	Defendant
	Speed, Kevin	Attorney for the Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

Mr. Speed advised the purpose of the hearing is to find out if the defendant understood the admonition. Court inquired if the defendant's statements would be used during trial. Ms. Clemens advised this was Ms. Ferreira's case; do not believe there were any statements made, do not want to hinder Ms. Ferreira at trial if there are. Mr. Speed advised he like the interpreter who was at the interview to come in and see if the defendant recognizes her.

Maria Jimenez sworn & testified;  
Detective Denise Huth sworn and testified; and  
Lawrence Samples sworn and testified.

Mr. Speed argued any statements must be suppressed as there is no way to know the defendant knew he was entitled to counsel, whether defendant understood his rights, and argued the defendant's will was overborne. Ms. Clemens argued as to the length of the interview. The defendant was offered water and was not threatened. Statements by the Court as to Miranda, volunteer test, and how long defendant was in custody before the interview. Ms. Clemens advised the Court she had found the CAD report and provided Mr. Speed with a copy of it. The date on the report is 7/12/2016 when the call came in and they take the defendant into custody at 11:13 am. The Court is satisfied

PRINT DATE: 03/07/2017

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Minutes Date: February 23, 2017

there is no factor that would have a real impact on the Court's decision. Court inquired if the CAD report needed to be made part of the record. Mr. Speed advised he has information and belief that his client was arrested on the 11th of July and was held in custody for well over 12 hrs if the interview occurred at 3:00 in the afternoon. If the Court is satisfied with the representations that are contained in the report he will be too. Court STATED it would make a difference in making a totality test if the State can show the defendant was not arrested before the interview. If the State can show what they have represented so far is correct the Court would find for a totality of circumstances it was a voluntary statement. At this point the Court does not find the defendant's will was overborne and he maintained his innocence. Further arguments by counsel. Mr. Speed requested the State inquire if there were any body cams. Court directed the State to inquire. Ms. Clemens advised if there is body cam footage she can provide a link to defense counsel; metro will not turn over hard copy of the footage, as that is their policy. Mr. Speed moved for an Order directing the Metro Police Department to turn over any body cam footage from this arrest and he would not limit it to this particular event number, but from this arrest to the Court. COURT ORDERED, the footage to be turned over to this Court. Mr. Speed advised he would have in Order to Chambers by Monday, February 27, 2017. Mr. Speed requested a CD of the JAVS recording.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 01, 2017**

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C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

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**March 01, 2017      9:00 AM      Calendar Call**

**HEARD BY:** Cory, Kenneth      **COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Michele Tucker

**RECORDER:** Lisa Lizotte

<b>PARTIES</b>	Ferreira, Amy L.	Attorney for the State
<b>PRESENT:</b>	Gunera-Pastrana, Gustavo Adonay	Defendant
	Speed, Kevin	Attorney for the Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

Defendant Gunera-Pastrana PRESENT in custody.

Mr. Speed advised an offer has been made and rejected. Mr. Speed further advised there are still pending issues and he hesitates to say ready for trial. Statements by Mr. Speed regarding the body cam and an order being submitted. Mr. Speed advised two weeks for trial. COURT ORDERED, Trial date VACATED and RESET.

CUSTODY

5/31/17 9:00 AM CALENDAR CALL

6/5/17 1:30 PM JURY TRIAL



Felony/Gross Misdemeanor

COURT MINUTES

January 08, 2018

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C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

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January 08, 2018      09:00 AM      Defendant's Motion in Limine for an Order Excluding  
Impermissible Evidence

HEARD BY:      Cory, Kenneth      COURTROOM: RJC Courtroom 16A

COURT CLERK: Tucker, Michele

RECORDER:      Lizotte, Lisa

REPORTER:

PARTIES PRESENT:

Amy L. Ferreira      Attorney for Plaintiff

Gustavo Adonay Gunera-Pastrana      Defendant

KEVIN SPEED      Attorney for Defendant

Public Defender      Attorney for Defendant

State of Nevada      Plaintiff

### JOURNAL ENTRIES

Defendant Gunera-Pastrana PRESENT, IN CUSTODY.

Ms. Ferreira advised no objection the Motion in Limine for an Order Excluding Impermissible Evidence, but if the door is opened the State will go there. Mr. Speed advised the defendant will be going into witness immigration status. Mr. Speed inquired if the Court had reviewed the records received from CPS. Court STATED it will notify counsel if the records have been received. Court advised the trial will have to be continued. Defendant advised he has paperwork for the Court. Ms. Ferreira objected to any ex parte review of the records. Defendant further stated he is having issues with counsel. Court ADMONISHED defendant to cooperate with his counsel. Mr. Speed advised the defendant has expressed his issues with and defendant is capable of representing himself. Court further ADMONISHED the defendant to confer with his counsel. Defendant STATED he refuses to give his paperwork to his counsel. COURT ORDERED, Trial date VACATED and Matter SET for Status Check.

CUSTODY

1/17/18 9:00 AM STATUS CHECK: RESETTING OF TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

January 17, 2018

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C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

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January 17, 2018      09:00 AM      Status Check: Reset Trial Date

HEARD BY:      Cory, Kenneth      COURTROOM: RJC Courtroom 16A

COURT CLERK: Tucker, Michele

RECORDER:      Lizotte, Lisa

REPORTER:

PARTIES PRESENT:

Amy L. Ferreira      Attorney for Plaintiff

Gustavo Adonay Gunera-Pastrana      Defendant

KEVIN SPEED      Attorney for Defendant

Public Defender      Attorney for Defendant

State of Nevada      Plaintiff

#### JOURNAL ENTRIES

Defendant Gunera-Pastrana PRESENT, IN CUSTODY.

Mr. Speed advised the defendant has WAIVED his right to a speedy trial and would take two weeks. Mr. Speed further advised the defendant refuses to share his paperwork with counsel and only wants to turn it over to the Court. Statements by the Defendant. Court ADMONISHED the defendant to provide his counsel with the paperwork and further STATED the Court would not be reviewing the papers. COURT ORDERED, Trial Date SET.

CUSTODY

1/22/18 9:00 AM STATUS CHECK: FAMILY COURT RECORDS

12/12/18 8:45 AM CALENDAR CALL

1/7/19 1:30 PM JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

January 22, 2018

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C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

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January 22, 2018      09:00 AM      Status Check: Records

HEARD BY:      Cory, Kenneth      COURTROOM: RJC Courtroom 16A

COURT CLERK: Tucker, Michele

RECORDER:      Lizotte, Lisa

REPORTER:

PARTIES PRESENT:

Bryan A. Schwartz      Attorney for Plaintiff

Gustavo Adonay Gunera-Pastrana      Defendant

KEVIN SPEED      Attorney for Defendant

Public Defender      Attorney for Defendant

State of Nevada      Plaintiff

#### JOURNAL ENTRIES

Defendant Gunera-Pastrana PRESENT, IN CUSTODY. Interpreter Ximena Fiene, also present.

Deputy District Attorney Bryan Schwartz advised he would stand in for Ms. Ferreira if there is nothing to be argued. Court gave summary of previous hearings. Court advised it had received and reviewed the documents from CPS and the Court will turn over the entire file which includes a CD of the hearings; a copy for the State and defense will be ready for pickup tomorrow. The Court has marked the pages it feels are material.

Felony/Gross Misdemeanor

COURT MINUTES

January 02, 2019

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C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

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January 02, 2019      09:00 AM      Calendar Call

HEARD BY:      Israel, Ronald J.      COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER:      Chappell, Judy

REPORTER:

PARTIES PRESENT:

Gustavo Adonay Gunera-Pastrana      Defendant

KEVIN SPEED      Attorney for Defendant

Sandra K. Digiacomio      Attorney for Plaintiff

State of Nevada      Plaintiff

#### JOURNAL ENTRIES

Deft. GUNERA-PASTRANA present, in custody. Spanish Interpreter, Ricardo Pico, present. Mr. Speed stated he was preparing to announce ready, However he was surprised with the Motion to Quash Subpoena filed and set for 01/23/19. State announced ready and stated there is information in the reports the mother is seeking a new visa and is a witness and a victim in this case. Colloquy regarding testimony, investigation of seeking a new visa and the immigration home foundation. COURT ORDERED, Trial VACATED and RESET. Upon Mr. Speeds inquiry, Court noted Counsel should respond to the Motion to Quash. Motion to Quash, stands.

CUSTODY

03/11/19 9:00 AM CALENDAR CALL

03/18/19 10:30 AM JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

January 23, 2019

C-16-318461-1      State of Nevada  
                                  vs  
                                  Gustavo Gunera-Pastrana

January 23, 2019      09:00 AM      Motion to Quash Subpoena Criminal Duces Tecum

HEARD BY:      Israel, Ronald J.      COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER:      Chappell, Judy

REPORTER:

PARTIES PRESENT:

Genevieve C. Craggs      Attorney for Plaintiff

Gustavo Adonay Gunera-Pastrana      Defendant

Kathia I. Pereira      Attorney for Other

KEVIN SPEED      Attorney for Defendant

State of Nevada      Plaintiff

#### JOURNAL ENTRIES

Deft. GUNERA-PASTRANA present, in custody. Spanish Interpreter, Jeff Hanks for Deft. Also present Kathia Pereira, Esq. appearing on behalf of the Immigrant Home Foundation. Ms. Pereira requested the Court refer to her Amended Motion as a Reply. Arguments by Counsel. Mr. Speed noted the subpoena granted by Judge Cory, to request the information from the Immigrant Home Foundation regarding the witness applying for a U-Visa. Stated noted they did not have that information from the immigrant Home Foundation. Further arguments. Colloquy regarding taking a deposition and discovery. Counsel noted depositions within a criminal case would require Court approval. Court noted counsel may only ask if she is filing with the Immigration Foundation for a U-Visa. Ms. Pereira explained the U-Visa is for victims of crime. State referred to NRS 174.175. Court suggested an affidavit of the witness, only stating she applied for the U-Visa, be provided to counsel. Ms. Pereira agreed. Court directed Ms. Pereira provide counsel an affidavit, within two weeks, only stating if she applied for the U-Visa and all other information is irrelevant. COURT ORDERED, Motion to Quash Subpoena Criminal Duces Tecum, DENIED IN PART, Under the condition they provide the affidavit, then the Motion is GRANTED.

CUSTODY

Felony/Gross Misdemeanor

COURT MINUTES

March 11, 2019

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C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

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**March 11, 2019                      09:00 AM      Calendar Call**

**HEARD BY:**      Israel, Ronald J.                      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Thomas, Kathy

**RECORDER:**      Chappell, Judy

**REPORTER:**

**PARTIES PRESENT:**

**Genevieve C. Craggs                      Attorney for Plaintiff**

**Gustavo Adonay Gunera-Pastrana                      Defendant**

**KEVIN SPEED                      Attorney for Defendant**

**State of Nevada                      Plaintiff**

### **JOURNAL ENTRIES**

Deft. GUNERA-PASTRANA present, in custody. Spanish interpreter, Irma Sanchez present for Deft. Mr. Speed noted he had a death in his family and would be leaving out-of-town. Court gave its condolences to Mr. Speed. State had no objection to continue the trial. Colloquy regarding scheduling issues and the age of the case. COURT ORDERED, Trial VACATED and RESET.

CUSTODY

05/29/19 9:00 AM CALENDAR CALL

06/03/19 10:30 AM JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

May 29, 2019

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C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

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May 29, 2019              09:00 AM      All Pending Motions (05/29/19)

HEARD BY:      Israel, Ronald J.              COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER:      Garcia, Trisha

REPORTER:

PARTIES PRESENT:

Gustavo Adonay Gunera-Pastrana              Defendant

KEVIN SPEED              Attorney for Defendant

Sandra K. Digiacomio              Attorney for Plaintiff

State of Nevada              Plaintiff

#### JOURNAL ENTRIES

DEFENDANT'S MOTION IN LIMINE TO EXCLUDE IMPERMISSIBLE EVIDENCE OF PRIOR INCIDENTS WHERE THE DEFENDANT PLEADED NOLO CONTENDERE: Deft. GUNERA-PASTRANA present, in custody. Spanish Interpreter, Soledad Garcia present for Deft. Arguments by Counsel regarding the Motion to exclude the prior incidents of domestic violence. Colloquy regarding the possible testimony at trial, avoiding opening the door to bring domestic violence in and the application and eligibility of the mothers pending U-Visa. Court suggested they hold a hearing outside the presence of the jury and further noted Court's preliminary ruling to deny the motion. Mr. Speed noted the victim is the child not the mother. Conference at the bench. State noted they would have a video testimony of the doctor. Court directed Mr. Speed to prepare the order.

CALENDAR CALL: Counsel and State announced ready, estimated 6 to 7 trial days with 10 to 18 witnesses. COURT ORDERED, Trial Date SET.

CUSTODY

06/04/19 10:30 AM JURY TRIAL (7 TRIAL DAYS)

Felony/Gross Misdemeanor

COURT MINUTES

June 04, 2019

C-16-318461-1      State of Nevada  
                                  vs  
                                  Gustavo Gunera-Pastrana

June 04, 2019      10:30 AM      Jury Trial

HEARD BY:      Israel, Ronald J.      COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER:      Chappell, Judy

REPORTER:

**PARTIES PRESENT:**

Gustavo Adonay Gunera-Pastrana	Defendant
KEVIN SPEED	Attorney for Defendant
Michelle L. Sudano	Attorney for Plaintiff
Sandra K. Digiacomo	Attorney for Plaintiff
State of Nevada	Plaintiff
Tegan Machnich	Attorney for Defendant

**JOURNAL ENTRIES**

Deft. GUNERA-PASTRANA present, in custody. Spanish Interpreters; Yul Hassmann and Soledad Garcia for the Deft.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: State noted there were no negotiations pending, the last offer that was pending was for child abuse with substantial bodily harm (8 to 20 years), Deft. rejected. Mr. Speed noted the last offer was with Deputy Ferreira (3 to 9 years) and it was rejected. State agreed and noted that offer was in December. Mr. Speed noted there was no offer as of today. Upon Court's inquiry, Mr. Speed noted he was not able to discuss with the Deft. the potential sentence, because an interpreter was not available at that facility. Court trailed matter for Counsel to speak with the Deft. with the interpreter present.

Later recalled: Upon Court's inquiry, Mr. Speed noted he discussed the charges facing his client and they were ready to proceed with trial. Counsel estimated 8 trial days and agreed to having 3 alternates and the alternate peremptory challenges could be from any seat. Colloquy regarding the trial scheduling issues. Court noted only one counsel each side may question the jury panel. Court directed Counsel to submit the proposed jury instructions by Thursday (agreed & not-agreed sets). Mr. Speed requested an issue be addressed out-side the presence of the State.

SEALED CONFERENCE: Out-side the presence of the State. Counsel noted a question of law regarding Family Court and effect of child custody issues. Colloquy. Court noted it could not change anything in Family Court, other then, if Deft. was convicted it could affect the custody issue. COURT ORDERED, Conference SEALED.

State present. Counsel received the jury list prior to the jury appearing and Ms. Machnich challenged the jury panel as to bias. Arguments by Counsel. Court noted the Jury Commissioner complied, the jury selection is random and being unable to obtain a statistical

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Minutes Date:

June 04, 2019

Prepared by: Kathy Thomas

cross section, Court further finds based on prior testimony of the Jury Commissioner stating they draw from a population of a cross section that does not discriminate in any way. COURT ORDERED, Deft's Oral Motion for a new jury panel, DENIED. State's Receipt of Copy for Discovery Provided, FILED IN OPEN COURT.

JURY PRESENT: Voir Dire.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Colloquy regarding Juror #123 and questioning of an incident that the juror explained regarding a State's witness. Counsel requested the Brady disclosures. State noted there was a Brady investigation and there was no record of an incident. State objected to turning over their Brady investigation and noted the State will not be calling that witness, this now would be irrelevant. State further noted they found juror #123 was fired from the Police Department. COURT, stated findings, noting the Officer would not be testifying and ORDERED, Deft's Oral request for documents, DENIED.

Evening recess.

CUSTODY

06/05/19 11:00 AM JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

June 05, 2019

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C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

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June 05, 2019      11:00 AM      Jury Trial

HEARD BY:      Israel, Ronald J.      COURTROOM: RJC Courtroom 15C

COURT CLERK: Tapia, Michaela

RECORDER:      Chappell, Judy

REPORTER:

PARTIES PRESENT:

Gustavo Adonay Gunera-Pastrana	Defendant
KEVIN SPEED	Attorney for Defendant
Michelle L. Sudano	Attorney for Plaintiff
Sandra K. Digiacomio	Attorney for Plaintiff
State of Nevada	Plaintiff
Tegan Machnich	Attorney for Defendant

#### JOURNAL ENTRIES

OUTSIDE THE PRESENCE OF POTENTIAL JURY. State requested the Court either admonish the jury panel regarding Juror #123's statements about one of the witnesses, or order a new panel. Argument by the State. Argument by counsel. Colloquy. POTENTIAL JURY PRESENT. Court thanked the panel for appearing, explained there had been improper statements yesterday and excused the jury panel. OUTSIDE THE PRESENCE OF POTENTIAL JURY. Ms. Digiacomio requested the Court inquire the jury panel regarding children during Voir Dire. Counsel made no objection. Ms. Machnich advised having read the new potential jury panel information, none had identified as Hispanic or Latino and requested the Jury Commissioner testify as to the lack of diversity of the panel. COURT ORDERED, request DENIED. POTENTIAL JURY PRESENT. Voir Dire Oath given. Voir Dire began. CONFERENCE AT BENCH. Voir Dire continued. CONFERENCE AT BENCH. COURT ORDERED, matter CONTINUED. OUTSIDE THE PRESENCE OF POTENTIAL JURY. Juror #026 present for private Voir Dire.

CUSTODY

CONTINUED TO: 6/6/19 9:30 AM

Felony/Gross Misdemeanor

COURT MINUTES

June 06, 2019

C-16-318461-1      State of Nevada  
                                  vs  
                                  Gustavo Gunera-Pastrana

June 06, 2019      09:30 AM      Jury Trial

HEARD BY:      Israel, Ronald J.      COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER:      Chappell, Judy

REPORTER:

**PARTIES PRESENT:**

Gustavo Adonay Gunera-Pastrana	Defendant
KEVIN SPEED	Attorney for Defendant
Michelle L. Sudano	Attorney for Plaintiff
Sandra K. Digiacomo	Attorney for Plaintiff
State of Nevada	Plaintiff
Tegan Machnich	Attorney for Defendant

**JOURNAL ENTRIES**

Deft. GUNERA-PASTRANA present, in custody. Spanish Interpreters: Jeff Hanks, Rafael Leal, Yul Haasmann, Mariella Lopez, Ximena Fiena and Ricardo Pico for the Deft.

PROSPECTIVE JURY PANEL PRESENT: Counsel acknowledged the presence of the jury. Voir Dire continued.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Colloquy regarding scheduling issues. Court excused the late arrival of juror 059.

PROSPECTIVE JURY PANEL PRESENT: Counsel acknowledged the presence of the jury. Voir Dire continued.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Court Interpreter, questioned regarding interpreters speaking of a case in the elevator. juror #086 was questioned. Counsel agreed the juror #086 could remain on the panel.

PROSPECTIVE JURY PANEL PRESENT: Counsel acknowledged the presence of the jury. Voir Dire continued. State passed the panel for cause. Defense Voir Dire.

PROSPECTIVE JURY PANEL PRESENT: State moved for a challenge for cause and Mr. Speed objected noting the State already passed the panel. COURT ORDERED, State's challenge for cause, DENIED. Colloquy regarding the Defense challenges for cause and scheduling issues.

Evening recess.

**CUSTODY**

Printed Date: 6/19/2019

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Minutes Date:

June 06, 2019

Prepared by: Kathy Thomas

06/07/19 9:00 AM DEFENDANT'S MOTION IN LIMINE

06/07/19 10:00 AM JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

June 07, 2019

C-16-318461-1      State of Nevada  
                                  vs  
                                  Gustavo Gunera-Pastrana

June 07, 2019      09:00 AM      All Pending Motions

HEARD BY:      Israel, Ronald J.      COURTROOM: RJC Courtroom 15C

COURT CLERK: Ortega, Natalie

RECORDER:      Chappell, Judy

REPORTER:

**PARTIES PRESENT:**

Gustavo Adonay Gunera-Pastrana	Defendant
KEVIN SPEED	Attorney for Defendant
Michelle L. Sudano	Attorney for Plaintiff
Sandra K. Digiacomo	Attorney for Plaintiff
State of Nevada	Plaintiff
Tegan Machnich	Attorney for Defendant

**JOURNAL ENTRIES**

DEFENDANT'S MOTION IN LIMINE TO EXCLUDE IMPERMISSIBLE EVIDENCE OF PRIOR INCIDENTS WHERE THE DEFENDANT PLEADED NOLO CONTENDERE...JURY TRIAL

As to Defendant's Motion in Limine to Exclude Impermissible Evidence of Prior Incidents where the Defendant Pleased NOLO Contendere:

Spanish Interpreter present Ximena Chica present assisting witness Meili Casillas. Spanish Interpreters Mariella Lopez, Mario Torres, and Soledad Garcia also present assisting Defendant.

OUTSIDE THE PRESENCE OF THE POTENTIAL JURY: Court indicated it would excuse juror number 086 due to financial hardship. Mr. Speed requested to excuse juror 068 noting due to his statement he could not be fair and impartial. No opposition by State. Meili Casillas SWORN and TESTIFIED. CONFERENCE AT BENCH. COURT NOTED the issue was not whether or not she was applying for a visa, it was because the Defense wanted to preclude the testimony as related to the domestic violence in total and to preclude her from saying anything as to the domestic violence as grounds for filing. Mr. Speed indicated that was correct. Arguments by counsel regarding the merits of Defendant's Motion in Limine to Exclude Impermissible Evidence of Prior Incidents where the Defendant Pleased NOLO Contendere. COURT FINDS the law was clear as to prior bad acts, convictions, and NOLO. This Court had difficulty with impeaching this witness based upon her filing for a U Visa. This Court would not prevent the witness from telling the truth that her application was not just based on the sexual allegations, but her statement, that it was based on domestic violence noting that she did not go into the details. The Court would not allow her to talk about the conviction. To preclude her from explaining that there was not just one cause or grounds, but they were both done simultaneously and together was equal to manufacturing evidence. It was not the reality and not the factual basis of her application. It excluded her basis and in fact was not obligated to

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Minutes Date:

June 07, 2019

Prepared by: Natalie Ortega

use that to impeach her. The Court would not preclude or require the State to instruct her. COURT FINDS she could say she was a victim of domestic violence if that was the basis for the application. It not a necessity to say what exactly occurred, but there was domestic violence by the Defendant. That was the basis along with the sexual allegations, that was the basis and application for the U-visa, therefore, COURT ORDERED, motion DENIED to preclude her from testifying other than how the Court explained it. Mr. Speed advised he would prepare the Order.

Colloquy regarding the emotional display by witness Casillas. Court noted the witness left the courtroom door crying and was being supported by the interpreter. Ms. Machnich noted the Defense concern was that the jurors saw her breakdown. Ms. Machnich requested to speak to the jurors individually. The marshall noted the jurors were spread all over and inquired of the jurors and two said they did not notice really what had occurred. Court noted an admonishment regarding anything that happens outside the courtroom should not be considered. Mr. Speed requested that the Court instruct the jurors as a group or individually noting that the Defense needed to know whether they observed the emotional breakdown and if that would impact the jury. Ms. Digiacomio argued that would highlight and suggested the Court provide an admonishment that anything that happens outside the courtroom should not be considered. COURT NOTED this was not uncommon and there was not a guarantee it would not happen again; however, the Court would admonish that they were not to pay attention to anything outside the courtroom whether a witness or not. The Court would ask them if they could not be fair and impartial based on what they did or did not see. Mr. Speed advised the Defense would stand by their request to have the eight to twelve people brought in; however, would submit.

INSIDE THE PRESENCE OF THE POTENTIAL JURY: Voir dire continued.

OUTSIDE THE PRESENCE OF THE POTENTIAL JURY: Challenges for cause placed on the record.

INSIDE THE PRESENCE OF SELECT POTENTIAL JURORS: Voir dire.

OUTSIDE THE PRESENCE OF THE POTENTIAL JURY: Jury selected.

CONTINUED TO: 06/10/19 11:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****June 10, 2019**

C-16-318461-1      State of Nevada  
                                 vs  
                                 Gustavo Gunera-Pastrana

**June 10, 2019                      11:00 AM      Jury Trial**

**HEARD BY:**      Israel, Ronald J.                      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Thomas, Kathy

**RECORDER:**      Chappell, Judy

**REPORTER:**

**PARTIES PRESENT:**

<b>Gustavo Adonay Gunera-Pastrana</b>	<b>Defendant</b>
<b>KEVIN SPEED</b>	<b>Attorney for Defendant</b>
<b>Michelle L. Sudano</b>	<b>Attorney for Plaintiff</b>
<b>Sandra K. Digiacomo</b>	<b>Attorney for Plaintiff</b>
<b>State of Nevada</b>	<b>Plaintiff</b>
<b>Tegan Machnich</b>	<b>Attorney for Defendant</b>

**JOURNAL ENTRIES**

Deft. GUNERA-PASTRANA present, in custody.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Colloquy regarding juror #272 bringing his four children to the courthouse today. Counsel agreed to use their Third Alternate Peremptory Challenge. Counsel confirmed the Peremptory Challenges.

SEALED HEARING: Out-side the presence of the State. Counsel noted concern of the Opening Statements, opening the door. Counsel explained the State was not allowed to bring in the domestic violence and prior convictions related to the mother and/or children. Court noted it could not imagine what the State will say and noted they would need to wait. COURT ORDERED, Hearing SEALED.

State present. Upon Court's inquiry, State provided the limited instruction, agreed by Counsel.

PROSPECTIVE JURY PANEL PRESENT: Clerk took the roll of the prospective jury. Jury and 3 secret alternates selected and sworn. Jury List FILED IN OPEN COURT. Clerk read the Information to the jury and stated the Defendant's plea thereto. Opening statements by Counsel. Exclusionary Rule. Testimony and exhibits presented. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Counsel noted the victim understands and speaks English, However during her testimony they will have a stand-by interpreter for her.

JURY PRESENT: Counsel acknowledged the presence of the jury. Further testimony and exhibits presented. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Mr. Speed moved for dismissal and noted on break the victim was sent to the back room and the State went in with the victim. State noted

**Printed Date: 6/15/2019**

**Page 1 of 2**

Minutes Date:

June 10, 2019

**Prepared by: Kathy Thomas**

they did not talk about testimony only comforting the victim. Arguments by Counsel. COURT ORDERED, Deft's Motion to Dismiss, DENIED.

JURY PRESENT: Counsel acknowledged the presence of the jury. Further testimony of the victim presented. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: State objected to Counsel reading from the transcript for impeachment of the victim. Arguments by Counsel. Court noted under NRS 50.135 regarding bring the witness in and will allow the Deft's cross. State noted if they are bringing this in, they should be able to read the entire document. Colloquy regarding cited cases. Court noted the transcript would not come into evidence, However the State may be allowed to rehabilitate and introduce the statement and read the transcript However it will not be admitted to go to the jury. At the request of Ms. Machnich, Court reminded the victim not to talk about her testimony.

Evening recess.

CUSTODY

06/11/19 10:30 AM JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

June 10, 2019

C-16-318461-1      State of Nevada  
                                  vs  
                                  Gustavo Gunera-Pastrana

June 10, 2019      11:00 AM      Jury Trial

HEARD BY:      Israel, Ronald J.      COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER:      Chappell, Judy

REPORTER:

**PARTIES PRESENT:**

Gustavo Adonay Gunera-Pastrana	Defendant
KEVIN SPEED	Attorney for Defendant
Michelle L. Sudano	Attorney for Plaintiff
Sandra K. Digiacomo	Attorney for Plaintiff
State of Nevada	Plaintiff
Tegan Machnich	Attorney for Defendant

**JOURNAL ENTRIES**

Deft. GUNERA-PASTRANA present, in custody. Spanish Interpreters for Deft.: Soldad Garcia, Rapheal Leal, Maria Peters.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Colloquy regarding juror #272 bringing his four children to the courthouse today. Counsel agreed to use their Third Alternate Peremptory Challenge. Counsel confirmed the Peremptory Challenges.

SEALED HEARING: Out-side the presence of the State. Counsel noted concern of the Opening Statements, opening the door. Counsel explained the State was not allowed to bring in the domestic violence and prior convictions related to the mother and/or children. Court noted it could not imagine what the State will say and noted they would need to wait. COURT ORDERED, Hearing SEALED.

State present. Upon Court's inquiry, State provided the limited instruction, agreed by Counsel.

PROSPECTIVE JURY PANEL PRESENT: Clerk took the roll of the prospective jury. Jury and 3 secret alternates selected and sworn. Jury List FILED IN OPEN COURT. Clerk read the Information to the jury and stated the Defendant's plea thereto. Opening statements by Counsel. Exclusionary Rule. Testimony and exhibits presented. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Counsel noted the victim understands and speaks English, However during her testimony they will have a stand-by interpreter for her.

JURY PRESENT: Counsel acknowledged the presence of the jury. Further testimony and exhibits presented. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Mr. Speed moved for dismissal and noted on

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Minutes Date:

June 10, 2019

Prepared by: Kathy Thomas

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GUSTAVO GUNERA-PASTRANA, ) No. 79861  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 THE STATE OF NEVADA, )  
 )  
 Respondent. )  
 )

DARIN IMLAY Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610  Attorney for Appellant	STEVE WOLFSON Clark County District Attorney 200 Lewis Avenue, 3 <sup>rd</sup> Floor Las Vegas, Nevada 89155  AARON FORD Attorney General 100 North Carson Street Carson City, Nevada 89701-4717 (702) 687-3538 Counsel for Respondent
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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 19 day of May, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

GUSTAVO GUNERA-PASTRANA, #1223501  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070

BY /s/ Carrie M. Connolly  
Employee, Clark County Public Defender's Office