

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.   )

Electronically Filed  
May 19 2020 10:51 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

9                                   **APPELLANT'S APPENDIX VOLUME III PAGES 501-729**

10

11   DARIN IMLAY

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13   309 South Third Street

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15   Attorney for Appellant

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Counsel for Respondent

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**Case No. 79861**

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break the victim was sent to the back room and the State went in with the victim. State noted 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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Felony/Gross Misdemeanor

# COURT MINUTES

**June 12, 2019**

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

**June 12, 2019**                      **8:30 AM**                      **Jury Trial**

**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Phyllis Irby

**RECORDER:** Judy Chappell

**REPORTER:**

## PARTIES

<b>PRESENT:</b>	Digiacomo, Sandra K.	Attorney for the State
	Gunera-Pastrana, Gustavo Adonay	Defendant
	Machnich, Tegan	Attorney for the Deft
	SPEED, KEVIN	Attorney for the Deft
	State of Nevada	Plaintiff
	Sudano, Michelle L.	Attorney for the State

## JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. The State has an AMENDED INFORMATION that they would like to admit COUNTS 2, 3 & 4.

Defense counsel objects to the late admittance of the AMENDED INFORMATION. The Court stated it will allow the AMENDED INFORMATION TO BE ADMITTED.

The State requested to admit the transcript and redacted video from FAMILY COURT. The Defense counsel objects to the video being admitted.

The Court will allow the State to bring in consistent statements. The Court WILL NOT ALLOW the transcript to go back with the jury. Both sides agreed that the transcript with redactions can be admitted as Court's exhibits.

JURY PRESENT. Testimony and exhibits presented (see worksheets)

OUTSIDE THE PRESENCE OF THE JURY. The Court gives Deft his rights to testify.

PRINT DATE: 06/27/2019

Page 1 of 2

Minutes Date: June 12, 2019



JURY PRESENT. Testimony and exhibits presented (see worksheets).

CONFERENCE AT THE BENCH

OUTSIDE THE PRESENCE OF THE JURY. Arguments by counsel regarding the HEARSAY RULE.,

JURY PRESENT. Testimony and exhibits presented (see worksheets).

COURT ORDERED, TRIAL CONTINUED. The Court recessed the Jury for the evening.

CUSTODY

6-13-19 9:00 AM JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

June 13, 2019

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

June 13, 2019      09:00 AM      Jury Trial

HEARD BY:      Israel, Ronald J.      COURTROOM: RJC Courtroom 15C

COURT CLERK: Jacobson, Alice; 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. Digiacomio	Attorney for Plaintiff
State of Nevada	Plaintiff
Tegan Machnich	Attorney for Defendant

### JOURNAL ENTRIES

OUTSIDE THE PRESENCE OF THE JURY: Kathy Thomas, Court Clerk Present. Deft. GUNERA-PASTRANA present, in custody. Spanish Interpreters for the Deft.; Soledad Garcia & Elissa Mendoza. State noted they had provided the Court and counsel a copy of their proposed jury instructions with sites. Ms. Machnich stated they would have their proposed jury instructions later today after the State rests.

JURY PRESENT: Parties acknowledge the presence of the jury. Testimony and exhibits presented. (See worksheets). State read the CPS Hearing Transcript.

Alice Jacobson, Court Clerk (Present from 10:45 AM- Noon). Further testimony, CPS video played and exhibits presented. (See worksheets). Amended Information, filed 06/12/19, read by the Clerk of the Court.

Kathy Thomas, Court Clerk (Present from 1:00 PM to 5:00 PM).

OUTSIDE THE PRESENCE OF THE JURY: Ms. Machnich noted the Defense will not be calling the Deft. and will rest. Upon Court's inquiry, Defendant confirmed he understood his right not to testify and had discussed the issues with his counsel.

JURY PRESENT: Defendant Rested. Jury to return tomorrow at 9:00 AM for instructions and closing arguments.

OUTSIDE THE PRESENCE OF THE JURY: Oral arguments regarding proposed jury instructions and verdict forms. Court signed instructions and verdict proposed and not signed and FILED IN OPEN COURT. Counsel to complete the changes of the instructions and return tomorrow at 8:30 AM to finalize the jury instructions.

Evening recess.

Printed Date: 6/20/2019

Page 1 of 2

Minutes Date:

June 13, 2019

Prepared by: Kathy Thomas

06/14/19 9:00 AM JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

June 14, 2019

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

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June 14, 2019      09:00 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: Maria Peters & Elissa Mendoza for Deft.

OUTSIDE THE PRESENCE OF THE JURY: Instructions settled.

JURY PRESENT: Court instructed the jury. Closing arguments.

Marshal and Judicial Executive Assistant sworn and given charge of the jury. Court Thanked and released the 3 secret alternate jurors. Amended Jury List FILED IN OPEN COURT.

At the hour of 12:21 PM the jury retired to deliberate.

OUTSIDE THE PRESENCE OF THE JURY: Jury Question discussed regarding a playback of the CPS. Court will recess the jury to return Monday to watch the playback and continue deliberations.

Weekend recess.

CUSTODY

06/17/19 10:30 AM JURY TRIAL

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

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**June 17, 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:**

<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. Digiacomio</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. Spanish Interpreters for the Deft.: Yul Haasmann, Mariella Lopez and Ricardo Pico.

OUTSIDE THE PRESENCE OF THE JURY: Court noted they will be able to show the playback of the State playing the CPS video hearing. Counsel agreed.

JURY PRESENT: Counsel acknowledged the presence of the jury. Court advised the Jury, they had received the jury request to playback the trial where the video of the CPS hearing was shown. Playback was conducted. Jury returned to deliberations.

OUTSIDE THE PRESENCE OF THE JURY: Court received another note from the Jury. Upon Court's inquiry, Counsel agreed to answer the question; "continue deliberating". Jury note and answer returned to the jury.

At the hour of 5:05 P.M. Verdict returned;

COUNT 1 - GUILTY OF LEWDNESS WITH A CHILD UNDER THE AGE OF 14  
COUNT 2 - GUILTY OF SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE  
COUNT 3 - GUILTY OF SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE  
COUNT 4 - GUILTY OF LEWDNESS WITH A CHILD UNDER THE AGE OF 14

Jury polled.

Court Thanked and excused the Jury. Jury Instructions and Verdict Form, FILED IN OPEN COURT.

COURT ORDERED, Deft REMANED into custody and matter SET for sentencing and referred to Parole and Probation (P & P) for and Pre-Sentence Investigation (PSI) Report and Psychosexual Evaluation.

CUSTODY

09/18/19 9:00 AM SENTENCING

Felony/Gross Misdemeanor

COURT MINUTES

June 18, 2019

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

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June 18, 2019      01:30 PM      At Request of Court: Evidentiary Hearing

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
Tyler Gaston	Attorney for Defendant

**JOURNAL ENTRIES**

Deft. GUNERA-PASTRANA present, in custody. Spanish Interpreter Ricardo Pico for Deft. Court noted the Marshal has advised the Court, the foreperson stated he googled "common sense". Mr. Speed inquired of when did it occur, if during deliberations, if he shared it with the entire jury panel and if it was used for their verdict. State agreed. COURT ORDERED, Matter SET for a hearing. Court directed Counsel to research this issue. Mr. Speed requested the hearing within 7 days. Colloquy regarding bringing one juror or all and if a subpoena would be needed. Court Clerk called the Juror- Coleman and was unable to leave a message due to his voicemail being full. Court to reach out to the Juror to request his presence for Friday.

**CUSTODY**

06/21/19 10:00 AM AT THE REQUEST OF THE COURT: EVIDENTIARY HEARING

CLERK'S NOTE: Following court the Judicial Executive Assistant (JEA) was able to reach Mr. Coleman and he was willing to appear on Friday.

Felony/Gross Misdemeanor

COURT MINUTES

June 21, 2019

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

June 21, 2019      10:00 AM      At Request of Court: Evidentiary Hearing  
HEARD BY:      Israel, Ronald J.      COURTROOM: RJC Courtroom 15C  
COURT CLERK: Natali, Andrea  
RECORDER:      Chappell, Judy  
REPORTER:

**PARTIES PRESENT:**

Gustavo Adonay Gunera-Pastrana	Defendant
KEVIN SPEED	Attorney for Defendant
Sandra K. DiGiacomo	Attorney for Plaintiff
State of Nevada	Plaintiff
Tegan Machnich	Attorney for Defendant

**JOURNAL ENTRIES**

APPEARANCES CONTINUED: Deft. present in custody with the assistance of Spanish Interpreter Yule Haasman.

**OUTSIDE THE PRESENCE OF THE JURY.**

COURT ADVISED, it was able to contact all of the jurors to come in, staggering their time, and the foreperson will be brought in first. FURTHER, it had researched this matter and ADVISED NRS 50.065 limited its inquiry. Mr. Speed argued that Marshal Moody be required to testify as to when the alleged incident occurred and when it was reported to the court. COURT NOTED, that was the reason the jury was here. Ms. DiGiacomo argued the Marshal's testimony was not necessary at this point unless the juror denied making the comment; noting she needed to know whether the foreperson researched "common sense" and whether that was conveyed to the other jurors. COURT FURTHER ADVISED as to what the jurors would be asked about. FURTHER, counsel could provide written briefs about using a dictionary and regarding what the foreperson said to the other jurors, if at all anything, whether the foreperson communicated with his fellow jurors; NOTED it would determine whether it was prejudicial.

**OUTSIDE THE PRESENCE OF THE JURY / IN THE PRESENCE OF FOREPERSON / JUROR NO. 7 BADGE 050.**

Sworn testimony by Juror no. 7 regarding googling the term "common sense", the timeframe in which the term was researched, the timeframe that the verdicts were reached on each count with respect to when the term was researched.

**OUTSIDE THE PRESENCE OF THE JURY.**

COURT ADVISED, the foreperson testified that it had happened and NOTED when the juror told the Court was outside the scope. Argument by Mr. Speed that the information about when the juror had notified the court, was important, as he may have had the opportunity to move for a mistrial. Colloquy regarding when counsel was notified of this matter and what had been conveyed to them. COURT ADVISED it happened after the jurors were leaving. Ms.



DiGiacomo stated she did not think the rest of the jurors needed to stay her. Counsel concurred there was no need to recall Juror no. 7. Mr. Speed regarding questioning the officers of the court as he now knew there was juror misconduct. Sworn testimony by Marshal Moody regarding it being after the verdict was read and he was taking the jurors into the jury room; additionally, that he had conveyed that information to the Judge after the jurors were already walking out. Upon Courts' inquiry on whether counsel wanted to hear from the rest of the jurors, Mr. Speed stated he believed the record was clear and Ms. DiGiacomo so agreed. COURT ORDERED, the jurors are ALLOWED TO LEAVE. Upon Mr. Speeds request, COURT FURTHER ORDERED the timeframe to file a motion for a new trial EXPANDED, matter SET for argument, and the parties were notified of the following briefing schedule:  
Defendant's motion DUE BY 7/8/19,  
State's response DUE BY 7/22/19,  
Defendant's reply DUE BY 8/2/19.

At the request of Ms. DiGiacomo, COURT FURTHER ORDERED, sentencing date VACATED and RESET for Status Check. FURTHER ORDERED, Deft. to REMAIN IN CUSTODY.

CUSTODY

8/7/19 - 9:00 AM - ARGUMENT: DEFENSE MOTION FOR NEW TRIAL ... STATUS CHECK:  
RESET SENTENCING DATE

Felony/Gross Misdemeanor

COURT MINUTES

August 07, 2019

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

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August 07, 2019      09:00 AM      All Pending Motions

HEARD BY:      Israel, Ronald J.      COURTROOM: RJC Courtroom 15C

COURT CLERK: Trujillo, Athena

RECORDER:      Chappell, Judy

REPORTER:

PARTIES PRESENT:

Gustavo Adonay Gunera-Pastrana      Defendant

KEVIN SPEED      Attorney for Defendant

Michelle L. Sudano      Attorney for Plaintiff

State of Nevada      Plaintiff

#### JOURNAL ENTRIES

ARGUMENT: DEFENSE MOTION FOR NEW TRIAL  
COURT ORDERED, motion DENIED.

DEFENDANT'S 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  
Counsel submitted. COURT STATED its findings and ORDERED, motion DENIED. State to prepare the order and findings of fact and conclusions of law and submit to opposing counsel before final submission to the Court. State requested a copy of JAVS. COURT SO ORDERED.

STATUS CHECK: RESET SENTENCING DATE  
COURT ORDERED, matter SET for sentencing.

CUSTODY

9/25/19 9:00 AM SENTENCING

Felony/Gross Misdemeanor

COURT MINUTES

September 25, 2019

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

September 25, 2019      09:00 AM      Sentencing

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. Digiacomo      Attorney for Plaintiff

State of Nevada      Plaintiff

### JOURNAL ENTRIES

Deft. GUNERA-PASTRANA present, in custody. Spanish Interpreter, Elissa Mendoza present for Deft. State noted the Pre-Sentence Investigation (PSI) Report recommended running counts consecutive. Argument by Mr. Speed. Pursuant to Verdict, DEFT GUNERA-PASTRANA ADJUDGED GUILTY of COUNTS 1 & 4- LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (F) and COUNTS 2 & 3 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, \$3.00 DNA Collection fee and Restitution in the amounts of \$600.00 payable to Clark County Social Services and \$240.00 payable to Victims of Crime. (Total Restitution of \$840.00); Deft. SENTENCED to

COUNT 1- LIFE with parole eligibility after serving a MINIMUM of TEN (10) YEARS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 2; and as to,

COUNT 2 - LIFE with parole eligibility after serving a MINIMUM of THIRTY-FIVE (35) YEARS, in the Nevada Department of Corrections (NDC), and as to,

COUNT 3 - LIFE with parole eligibility after serving a MINIMUM of THIRTY-FIVE (35) YEARS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 2; and as to,

COUNT 4 - LIFE with parole eligibility after serving a MINIMUM of TEN (10) YEARS, in the Nevada Department of Corrections (NDC), CONCURRENT with COUNT 2; with 1,171 DAYS credit for time served.

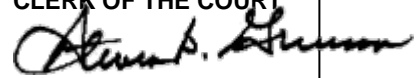
AGGREGATE TOTAL sentence is LIFE with parole eligibility after serving a MINIMUM of THIRTY-FIVE (35) YEARS.

FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION is imposed to commence upon release from any term of imprisonment, probation or parole. In addition,

before the Defendant is eligible for parole, a panel consisting of the Administrator of the Mental Health and Development Services of the Department of Human Resources or his designee; the Director of the Department of Corrections or his designee; and a psychologist licensed to practice in this state; or a psychiatrist licensed to practice medicine in Nevada must certify that the Defendant does not represent a high risk to re-offend based on current accepted standards of assessment.

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

NDC



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	CASE NO. C-16-318461-1
Plaintiff,	)	
vs.	)	
	)	DEPT. XI
GUSTAVO GUNERA-PASTRANA,	)	
	)	
Defendant.	)	<b>Transcript of Proceedings</b>
	)	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**ARRAIGNMENT**

WEDNESDAY, OCTOBER 12, 2016

APPEARANCES:

FOR THE STATE: AMY L. FERREIRA  
Chief Deputy District Attorney

FOR DEFENDANT: KEVIN C. SPEED  
Deputy Public Defender

ALSO PRESENT: ALEXANDRA ANDRADE  
Court Certified Spanish Interpreter

RECORDED BY: JILL HAWKINS, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 12, 2016, 9:07 A.M.

2 (Court was called to order)

3 THE COURT: Gustavo Gunera-Pastrana.

4 MR. SPEED: Good morning, Your Honor. Kevin Speed for  
5 Mr. Gunera-Pastrana who is present in custody with the  
6 assistance of the Spanish interpreter.

7 MS. FERREIRA: Good morning, Your Honor. Amy Ferreira  
8 on behalf of the State.

9 THE COURT: It's my understanding this is the  
10 continued arraignment.

11 MR. SPEED: That is correct, Your Honor.

12 THE COURT: How far did you get?

13 MR. SPEED: Not very. I don't think we made the stop  
14 in lower-level arraignment court.

15 MS. FERREIRA: We did. I think the defendant was  
16 actually taken back --

17 MR. SPEED: That's what happened.

18 MS. FERREIRA: -- before Mr. Speed arrived.

19 MR. SPEED: That is what happened.

20 THE COURT: Okay. So let me get to the right document  
21 here.

22 Good morning, sir. How are you today?

23 THE DEFENDANT: Very well.

24 THE COURT: Is your true name Gustavo Adonay Gunera-  
25 Pastrana?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that if that is not your  
3 true name you must disclose your true name to me today or all  
4 proceedings in this matter will be under the name of Gustavo  
5 Adonay Gunera-Pastrana?

6 THE DEFENDANT: Yes. That's my name.

7 THE COURT: How old are you, sir?

8 THE DEFENDANT: Thirty-five years old.

9 THE COURT: Are you able to understand me with the  
10 assistance of the court interpreter?

11 THE DEFENDANT: Of course. Yes.

12 THE COURT: Have you previously had the opportunity to  
13 review the Information filed on September 30th, 2016, charging  
14 you with lewdness with a child under the age of 14 and sexual  
15 assault with a minor under 14 years of age, both felonies?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you waive the formal reading of that  
18 Information here in court?

19 THE DEFENDANT: Yes.

20 THE COURT: You've had a chance to discuss it with  
21 your attorney?

22 THE DEFENDANT: Yes.

23 THE COURT: You feel like you understand the nature of  
24 the charges?

25 THE DEFENDANT: Yes.

1 THE COURT: How do you plead to the charges?

2 THE DEFENDANT: Not guilty.

3 THE COURT: Sir, you have a right to a trial within 60  
4 days. Would you like to invoke that right?

5 THE DEFENDANT: Of course. Yes.

6 THE COURT: Okay. So, Mr. Speed, that takes me to --  
7 my January stack is the quickest I can get you. That would be  
8 January 3rd.

9 THE CLERK: Status check trial readiness November 30  
10 at 9:00 a.m., calendar call December 28th at 9:00 a.m., jury  
11 trial January 3rd at 1:00 p.m..

12 MR. SPEED: Your Honor, in all likelihood I will not  
13 be in the jurisdiction that close to the holiday. What is the  
14 Court's next stack after this?

15 THE COURT: Well, I have January 3rd, January 9th,  
16 January 17th, January 23rd, January 30th, and then I go to  
17 March.

18 MR. SPEED: Can we have the January 30th stack?  
19 Is that all right with you?

20 MS. FERREIRA: I leave --- Court's indulgence.

21 MR. SPEED: The 30th will be fine. We'll set it. And  
22 if issues arise, we'll take them up with Your Honor.

23 THE COURT: Sir, your counsel has asked that instead  
24 of going on January 3rd that I set the trial for January 30th.  
25 Is that okay with you?



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THE DEFENDANT: No.

THE COURT: Okay. So it's January 3rd, Mr. Speed.

MR. SPEED: We'll be here that day.

THE COURT: All right. Thanks.

MR. SPEED: May I have those dates again, Madam Clerk,  
calendar call and trial date, please.

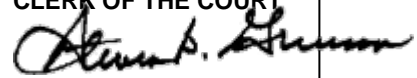
THE CLERK: Calendar call is December 28th at 9:00  
a.m., trial date is January 3rd at 1:00 p.m., status check  
November 30th, 9:00 a.m..

THE PROCEEDINGS CONCLUDED AT 9:11 A.M.

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



JILL HAWKINS, Court Recorder



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	CASE NO. C-16-318461-1
Plaintiff,	)	
vs.	)	
	)	DEPT. XI
GUSTAVO GUNERA-PASTRANA,	)	
	)	
Defendant.	)	<b>Transcript of Proceedings</b>
	)	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**STATUS CHECK**

WEDNESDAY, NOVEMBER 30, 2016

APPEARANCES:

FOR THE STATE: AMY L. FERREIRA  
Chief Deputy District Attorney

FOR DEFENDANT: KEVIN C. SPEED  
Deputy Public Defender

ALSO PRESENT: MARIA PETERS  
Court Certified Spanish Interpreter

RECORDED BY: JILL HAWKINS, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, NOVEMBER 30, 2016, 9:20 A.M.

2 (Court was called to order)

3 THE COURT: I need an interpreter. I've got an  
4 interpreter. Good morning, ma'am.

5 THE INTERPRETER: Good morning.

6 THE COURT: Good morning, sir. This is the time set  
7 for us to discuss whether we're going to be ready for trial.

8 Mr. Speed, how are we doing on being ready?

9 MR. SPEED: Your Honor, we -- we're about a month away  
10 from calendar call. Kevin Speed for Mr. Gunera-Pastrana who is  
11 present in custody. We are about a month away from calendar  
12 call. I don't think we're going to be ready. I have a couple  
13 of other trials scheduled for that same slot in early January.

14 And this is a case where Mr. Gunera-Pastrana invoked  
15 his right to a speedy trial. Now, I'm not sure whether my  
16 client understands fully that invoking your right to a speedy  
17 trial doesn't necessarily mean you're going to achieve the best  
18 result or you're helping your counsel achieve the best result by  
19 rushing into a jury trial, but I will explain those things to  
20 him as we get closer and closer to our trial date.

21 THE COURT: Well, right now he's invoked.

22 MR. SPEED: Right.

23 THE COURT: So I'm going to leave the trial where it  
24 is. If something happens or he decides to waive, then we can  
25 certainly have a discussion about rescheduling the trial.

1 MR. SPEED: He has not indicated that he's changed his  
2 mind on that with me; but, again, we'll discuss it as the time  
3 draws closer.

4 THE COURT: All right. Anything else?

5 MS. FERREIRA: Good morning, Your Honor. Amy Ferreira  
6 on behalf of the State. No, Your Honor.

7 THE COURT: If it goes, how long's it going to take?

8 MR. SPEED: One week.

9 THE COURT: All right.

10 MR. SPEED: It's a one-week trial.

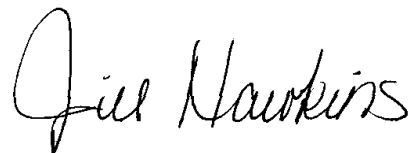
11 THE COURT: All right. Thank you. Have a nice day.

12 MS. FERREIRA: Thank you, Your Honor.

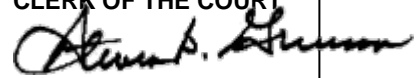
13 MR. SPEED: Thank you.

14 THE PROCEEDINGS CONCLUDED AT 9:22 A.M.

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

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24 JILL HAWKINS, Court Recorder



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	CASE NO. C-16-318461-1
Plaintiff,	)	
vs.	)	
	)	DEPT. XI
GUSTAVO GUNERA-PASTRANA,	)	
	)	
Defendant.	)	<b>Transcript of Proceedings</b>
	)	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON DEFENDANT'S MOTION TO CONTINUE TRIAL**

WEDNESDAY, DECEMBER 21, 2016

APPEARANCES:

FOR THE STATE: NOREEN C. DEMONTE  
Chief Deputy District Attorney

FOR DEFENDANT: KEVIN C. SPEED  
Deputy Public Defender

ALSO PRESENT: JEFFREY HANKS  
Court Certified Spanish Interpreter

RECORDED BY: JILL HAWKINS, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, DECEMBER 21, 2016, 9:23 A.M.

2 (Court was called to order)

3 THE COURT: This is my add on. Page 21.

4 MR. SPEED: Kevin Speed for Mr. Gunera-Pastrana who is  
5 present in custody. This is my motion to continue the trial  
6 date on an order shortening time. And I appreciate the Court  
7 accommodating us in this fashion.

8 THE COURT: Absolutely.

9 MS. DEMONTE: State has no opposition. We just  
10 request any date other than February.

11 MR. SPEED: We have a motion for discovery that I  
12 believe was calendared for January 18th. If the Court has  
13 reviewed that, we are asking for quite a bit of information that  
14 will take some time for us to obtain. If February is not good  
15 for the State, it certainly -- I don't anticipate it being good  
16 for us, either. So --

17 THE COURT: How about March 13th.

18 MR. SPEED: That's fine for now. And if we run into  
19 problems, we'll address them with the Court.

20 THE COURT: Mr. Gunera-Pastrana, is March 13th a good  
21 trial date for you?

22 MR. SPEED: Mr. Gunera-Pastrana has indicated to me  
23 that he will never waive his right to a speedy trial. That was  
24 part of the disagreement that we've had as attorney and client.  
25 That's not a good date for him. I can tell the Court that now,

1 but it's the best that we can do.

2 Does the Court have any idea who is going to be taking  
3 Your Honor's cases?

4 THE COURT: Yeah. My question, though, is -- that's  
5 not my question. My question is when is the earliest you can be  
6 ready?

7 MR. SPEED: Give me the March date now if that's the  
8 first --

9 THE COURT: No. I can give you earlier dates. That's  
10 why I'm asking --

11 MR. SPEED: I won't be ready earlier. I'm thinking  
12 probably later, if anything. But if March --

13 THE COURT: I'm not inclined --

14 MR. SPEED: -- is the first date --

15 THE COURT: -- to give you later than the first week  
16 of the March stack. That's the latest I'm inclined to give you,  
17 given his invocation. I certainly understand the discovery  
18 issues which are complicating this issue and making it hard for  
19 you to be effective without that information --

20 MR. SPEED: Right.

21 THE COURT: -- but I'm not willing to go further than  
22 that date. I would have set it earlier if you had available  
23 dates where you thought you could be ready based on the  
24 discovery that needs to be provided to you.

25 MR. SPEED: And there's no way I can make a

1 representation like that to the Court.

2 THE COURT: Okay. Then we'll go with the March 13th.  
3 I understand the defendant is maintaining his right to a speedy  
4 trial, and we will do our best to make sure that you go on that  
5 March 13th date. So you all need to make your best efforts to  
6 be ready.

7 THE CLERK: Status check trial readiness February 8 at  
8 9:00 a.m., calendar call March 8th at 9:00 a.m., jury trial  
9 March 13 at 1:00 p.m..

10 THE DEFENDANT: Thank you.

11 THE COURT: Thank you.

12 THE PROCEEDINGS CONCLUDED AT 9:26 A.M.

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

23 

24 JILL HAWKINS, Court Recorder





1 **RTRAN**

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4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

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7 THE STATE OF NEVADA, )  
8 )  
9 Plaintiff, ) CASE NO. C318461-1  
10 vs. ) DEPT. NO. 1  
11 )  
12 GUSTAVO GUNERA-PASTRANA, )  
13 )  
14 Defendant. )

15 **BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE**  
16 **WEDNESDAY, JANUARY 18, 2017 AT 10:36 A.M.**

17 **RECORDER'S CERTIFIED TRANSCRIPT RE:**  
18 **DEFENDANTS MOTION FOR DISCOVERY**

19 **APPEARANCES:**

20 **FOR THE STATE:** AMY L. FERREIRA  
21 Chief Deputy District Attorney

22 **FOR THE DEFENDANT:** KEVIN C. SPEED  
23 Deputy Public Defender

24 **ALSO PRESENT:** ALBERT VALENCIA  
25 Spanish Interpreter

Recorded by: LISA A. LIZOTTE, COURT RECORDER

1 (WEDNESDAY, JANUARY 18, 2017 AT 10:36 A.M.)

2 THE CLERK: Page 36, the State of Nevada versus Gustavo  
3 Pastrana, Case Number C318461. Defendant is present in custody.

4 MS. FERREIRA: Good morning, Your Honor. Amy Ferreira on  
5 behalf of the State.

6 MR. SPEED: Good morning, Your Honor. Kevin Speed for Mr.  
7 Gunera-Pastrana. He will require the assistance of the Spanish Interpreter.

8 THE COURT: Of a Spanish Interpreter?

9 MR. SPEED: Yes, Your Honor.

10 THE COURT: Okay. We don't have one, right?

11 MS. FERREIRA: He's here.

12 THE COURT: We do.

13 MR. SPEED: We do have one. All right.

14 THE INTERPRETER: Present, Your Honor.

15 THE COURT: All right. This is the defense motion for discovery.

16 MR. SPEED: That is correct, Your Honor. We have itemized,  
17 beginning at Page 7 of the motion, eight items of discovery, and I call those items  
18 using that term loosely. Some of them will be packets of information that we're  
19 seeking from the State at this time. The easiest, I guess, procedure to follow  
20 here would be to start with Number 1 on Page 7. We're asking the State to turn  
21 over the Clark County School District files for the complaining witness in the  
22 case. Her initials are M.M. and I have her date of birth listed at Line 13. This is a  
23 mistake on my part. I direct the Court's attention to Line 15. I've mistyped the  
24 initials of the complaining witness. That J.B. should be M.M.

25 THE COURT: Should be M.M.?

1 MR. SPEED: Yes, Your Honor.

2 THE COURT: All right. And what's the State's position on that?

3 MS. FERREIRA: And, Your Honor, certainly the State has no  
4 control over the Clark County School District. That's not a law enforcement  
5 agency, so certainly if Mr. Speed would like to attempt to get records he's more  
6 than welcome to send a subpoena and see how much compliance he gets, but I  
7 am under no obligation according to NRS 174 and the *Brady* case law to obtain  
8 those records.

9 THE COURT: Would that not be something you could get by  
10 subpoena?

11 MR. SPEED: We will try to subpoena the school district, Your  
12 Honor, but in my experience in dealing in these kinds of cases when we send our  
13 subpoenas to the school district we're usually met with a strongly worded letter  
14 saying to do all sorts of things.

15 THE COURT: Pound sand?

16 MR. SPEED: Judge Bell used to talk about something up a rope,  
17 but we won't use that language here this morning. It's easier to get the –

18 THE COURT: Did the State's –

19 MR. SPEED: -- information when the State issues their subpoenas.

20 THE COURT: Does the State have any objection to the Defendant  
21 obtaining these records by subpoena?

22 MS. FERREIRA: Well, certainly not. If they send a valid subpoena I  
23 mean I think that that's appropriate.

24 THE COURT: All right. Then we may have to go through whatever  
25 we have to go through.

1 MR. SPEED: We'll go through the process, we'll do what we have  
2 to do, what's directed by statute. If we receive one of those sternly worded  
3 letters can we return to court for settlement of the issue?

4 THE COURT: Yeah. Who issues the letter if you've had this  
5 experience before? What office?

6 MR. SPEED: Typically DA Civil.

7 THE COURT: DA Civil?

8 MR. SPEED: Yes. As counsel for the Clark County School District.

9 THE COURT: That will not happen here, is that correct?

10 MS. FERREIRA: That's beyond my realm of knowledge at this  
11 point. I've never heard that before. With CPS records certainly that's the case  
12 but with Clark County School District records I don't know why that would be.

13 THE COURT: Yeah. Well, so we can short circuit all the fun and  
14 games later on down the road, the Court will deny that as far as requiring the  
15 State to provide it but indicate that if they're sought by virtue of a subpoena  
16 duces tecum I do not want to hear an objection raised from the DA Civil division.

17 MS. FERREIRA: Well, and, Your Honor, I think some of that has to  
18 do with what is appropriate to be disclosed. Certainly you can't just say, hey, I  
19 want a subpoena for all this child's personal information.

20 THE COURT: Well, yeah. But you see, we can't – we can't – what  
21 are we going to do, say, okay, yeah, but, see, I wear the other hat. I'm not DA  
22 Criminal, I'm DA Civil. You have no objection to it. You're the attorney on the  
23 case.

24 MS. FERREIRA: Well, I don't have an objection if there are records  
25 that are proper to be turned over, but I don't expect the school district to turn over

1 every personal identifying piece of information. Same with like medical records.  
2 It takes a Court order to be able to get medical records. Same thing with CPS  
3 records. It's not just everything gets turned over. So what I'm saying is I don't  
4 have an opposition to him filing his own subpoena and trying to obtain records.  
5 I'm just not going to send a subpoena because I have no use for those records.

6 THE COURT: Well, I don't know. I just – the thing that bothers me  
7 is if we have the attorney on the case says, I don't have any objection, and then  
8 they go through this and they run into a brick wall because DA Civil says no.

9 MS. FERREIRA: Well, I just want the record to be –

10 MR. SPEED: Or counsel – or, Your Honor, counsel from the Clark  
11 County School District and the State views these bodies differently from you or I  
12 apparently. The State is making a distinction between law enforcement agencies  
13 and the Clark County School District. We view them all as state actors or  
14 government actors, agents of Clark County, so either it will be DA Civil who  
15 represents the school district or counsel for the Clark County School District.  
16 Either way these are attorneys who are employed by the County of Clark, this  
17 jurisdiction.

18 THE COURT: All right. Well, we'll have to – we'll have to take it as  
19 it comes but you'll have to issue your subpoenas and see what happens. All  
20 right. Number 2.

21 MR. SPEED: Any information from the Department of Family  
22 Services. These are the CPS records, and Ms. Ferreira did state that the  
23 information that we received from the party to whom – upon whom we served  
24 these subpoenas is usually telling us that they will ignore the subpoena or will not  
25 obey the commands therein and those are DA Civil attorneys.

1 THE COURT: Well, you know, I'm going to issue the order that you  
2 can – you can by way of subpoena seek these records, and if anybody is going  
3 to step up and say you can't get them they better not just refuse to give them.

4 MS. FERREIRA: And, Your Honor, I think –

5 THE COURT: I would expect them -- if a DA Civil thinks that it is not  
6 appropriate I would expect them to file a motion for a protective order.

7 MS. FERREIRA: And I think so long as Mr. Speed submits an order  
8 to the Court and Your Honor signs off that the CPS records should be turned  
9 over only in camera review for Your Honor to decide what's appropriate --

10 MR. SPEED: Well, the State can't –

11 MS. FERREIRA: -- that's the normal course of action.

12 MR. SPEED: Hold on, hold on, hold on, Ms. Ferreira. The State  
13 can't determine how I submit an order. Now, we believe that these CPS records  
14 are material and relevant to our defense, and if the State is in possession of  
15 those they're obligated to turn those over to us. If this Court is saying that it will  
16 require an order to compel the Department of Family Services to turn those  
17 orders then certainly we'll submit one, and whatever language the Court sees  
18 necessary in that –

19 THE COURT: That's the way – that's the way it typically –

20 MR. SPEED: -- we'll take that up with Your Honor.

21 THE COURT: That – as far as I'm aware that's what you have to do  
22 -- before you can create the duty you have to file the subpoena or get an order  
23 from the Court, and if somebody doesn't want to comply then it would behoove  
24 them to file a motion for a protective order rather than come in on a motion to be  
25 held in contempt of Court.

1 MR. SPEED: So as for Item Number 2, Your Honor, I will prepare a  
2 subpoena and also draft a copy of an order to the Department of Family Services  
3 and I'll run a copy of that order by Ms. Ferreira.

4 THE COURT: Let me ask you, Ms. Ferreira, the – is there – you  
5 began to say that there's a limit to what would be appropriate to be handed over  
6 under this one.

7 MS. FERREIRA: I'm sorry, I didn't hear what Your Honor said.

8 THE COURT: Huh?

9 MS. FERREIRA: I didn't hear what you said. I'm sorry.

10 THE COURT: You began to say that as long as it was limited in  
11 some fashion on Number 2 here.

12 MS. FERREIRA: Yes.

13 THE COURT: What is the limitation that would be appropriate?

14 MS. FERREIRA: Normally the records are turned over to the Court  
15 so that neither Mr. Speed nor myself sees the entirety of the records. The Court  
16 decides what is appropriate to be turned over in terms of what's relevant to this  
17 case, then the Court takes out those pages, gives them to both the defense and  
18 the State so that we have possession of them.

19 THE COURT: All right. Well, as much as I am not fond of getting in  
20 that position we'll do what we have to do, so if that's how they're going to comply  
21 then that's what they can do. Number 3, LVMPD records, photographs,  
22 investigative notes, audio recordings.

23 MR. SPEED: I believe we're going down the continuum from  
24 difficult to easy. This one should be easy for the State. If the police department  
25 is in possession of records, photographs, investigative notes, audio recordings,

1 video recordings for this particular event number, and that 1162 event number is  
2 the number associated with this case, then I believe that we are entitled to those.

3 THE COURT: Okay. Any objection to those?

4 MS. FERREIRA: I do because the defense can send a subpoena to  
5 the laboratory to get photographs. We have an agreement with them that they  
6 will comply with a Public Defender's subpoena to get those photographs, so Mr.  
7 Speed can certainly do that. I don't recall there being any photographs, but  
8 certainly if we need a definitive answer he can send a subpoena.

9 THE COURT: This is – the lab is a separate entity?

10 MS. FERREIRA: Yes.

11 THE COURT: That you contract with to provide their services,  
12 right?

13 MS. FERREIRA: No, it's through Metro.

14 MR. SPEED: This is news to me, Your Honor. I haven't heard –

15 THE COURT: Is it – is it – are the people that work in the lab, are  
16 they Metro employees?

17 MS. FERREIRA: Yes. They work for Metro is my understanding. I  
18 don't know what their contract specifically says.

19 THE COURT: Well, then, why wouldn't this fit within that class of  
20 matters or documents which is under the control of the State, of the District  
21 Attorney's office?

22 MS. FERREIRA: Well, Your Honor, I just certainly think that, you  
23 know, according to NRS 174 the State doesn't have to turn over everything in its  
24 possession, it has to turn over very specific items. I don't believe that this falls  
25 under those items. There's been a lot of kind of research into this particular area



1 by the administration in the DA's office. The position we take is that they will  
2 honor a subpoena by the defense when it comes to getting photographs, so  
3 that's the State's position.

4 THE COURT: So –

5 MR. SPEED: But under *Brady* and *Kyles*, and these are U.S.  
6 Supreme Court cases, the State has an affirmative duty to turn over material and  
7 relevant exculpatory evidence in a criminal case. Certainly the notes, the  
8 investigative materials that were obtained created by the police department in the  
9 investigation of the charges against my client would fall under that umbrella. I  
10 believe the Court agrees with that.

11 THE COURT: I tend to agree with you, but, you know, I think what  
12 the problem is is the specificity. If they have something – if you subpoena  
13 everything they've got and they come back and say, well, we'll give you this but  
14 we won't give you something else we've got then we can litigate over whether  
15 they have to turn it over or not, and I will tell you that from what I'm reading in  
16 Line 3 I would be likely to require it probably, but I'm not going to – I can't – I  
17 don't think we can just in the dark say, oh, sure, if you've got anything at all turn it  
18 over because it may be that there's some exception to what they have to turn  
19 over notwithstanding *Brady* and other cases.

20 MR. SPEED: Well, we know that there exists – there are extant  
21 audio recordings, video recordings and transcripts of those recordings from the  
22 complaining witness in the case, M.M., as well as her mother and perhaps  
23 another minor child who lived in the house with my client and the complaining  
24 witness's mother. Under this event number is how those items are stored in the  
25 police department's file and that file is then given to the District Attorney in

1 preparation for the prosecution of its case. We don't have any of that right now  
2 except –

3 THE COURT: Well, if you're talking about stuff –

4 MR. SPEED: -- except what's been turned over to us in pretrial –

5 THE COURT: -- that's in the possession –

6 MR. SPEED: -- discovery.

7 THE COURT: If you're talking about stuff that's in the possession of  
8 the DA then I haven't heard any objection to any specific thing that you may have  
9 in your possession.

10 MS. FERREIRA: And I may have misunderstood. I thought you  
11 were talking about photographs. If you're talking about recorded statements or  
12 transcripts certainly he's entitled to get recordings of interviews –

13 THE COURT: Well, he did –

14 MS. FERREIRA: -- that were conducted.

15 THE COURT: -- he did –

16 MR. SPEED: Specifically I did ask for photographs in this item in  
17 the motion.

18 THE COURT: Yeah. He did ask for photographs.

19 MS. FERREIRA: Oh, okay.

20 MR. SPEED: So, for example, when my client was arrested if there  
21 were photographs taken of him at the police station, if there were photographs  
22 taken of the complaining witness at the time she was being interviewed, all of  
23 those things are part of Metro's file under this event number and should be either  
24 in the possession of the District Attorney or still in the possession of the police  
25

1 department. We're asking for this Court to issue an order commanding the  
2 District Attorney to turn that over to us under *Brady* and *Kyles*.

3 THE COURT: I would do that with the proviso that if the DA  
4 determines that there's something that's not appropriate within what they have  
5 they have to file a motion for a protective order or do something to bring it back  
6 before the Court so we can make a determination.

7 MS. FERREIRA: So you're ordering me to get the photos, is that  
8 right?

9 THE COURT: Yes. Unless you – unless you determine that it's not  
10 appropriate in which event – because as I sit here today, you know, I'm a little  
11 rusty, guys. I need an opportunity to look at the authorities again, so if you think  
12 there's an issue there then bring it to the Court's attention with some authorities  
13 from both sides and we'll – we'll hash it out.

14 MR. SPEED: So as for – let me – because I'll be preparing the  
15 order on the motion, Your Honor, for Item Number 3 the Court is granting the  
16 motion insofar as it pertains to those items –

17 THE COURT: That are in the possession –

18 MR. SPEED: -- created by the police department under this  
19 particular event number that are in the possession of the District Attorney?

20 THE COURT: That are in the possession of the District Attorney,  
21 that's correct.

22 MR. SPEED: All right.

23 THE COURT: Number 4, information, financial benefits,  
24 reimbursement, travel expenses, payments for rent or other expenses provided  
25 to Ortiz and M.M. by the DA's office.

1 MR. SPEED: Again, Your Honor, we have learned through our  
2 experience that very often in cases like this where a family is being torn asunder  
3 the DA's office and other agencies under the DA's umbrella, particularly the  
4 Victim/Witness Advocacy Center, will provide benefits, certain financial benefits  
5 to witnesses in their prosecutions.

6 We want to be advised of any benefits that have been provided  
7 to the family in this case in the way of cell phone payments or rent for their  
8 apartment, help in applying for a U visa to possibly help this family remain in the  
9 United States if their citizenship or residency is in issue. We believe that all of  
10 those benefits are relevant, they are material, they speak to the credibility and  
11 the bias of their witnesses and we should be entitled to learn of that information.

12 THE COURT: And the State's position on that was – well, I'm not  
13 sure. What's the State's position on those items?

14 MS. FERREIRA: Well, Your Honor, certainly if the State were to  
15 have agreed to give a benefit for a witness it would have to be turned over as  
16 potential impeachment information, so if the State were paying the rent of  
17 somebody or something of that nature absolutely, I think that would need to be  
18 disclosed. Counsel is aware that there's a statutory requirement that witnesses  
19 be paid in the normal course of having to come to court, so certainly he is aware  
20 of that. If something becomes – or comes to my attention I will certainly let him  
21 know, but I can say, you know, right now that there has been no additional  
22 benefits in that regard such as rent or U visas or anything of that nature.

23 THE COURT: All right. That's the answer, then. Number 5,  
24 evidence to include DNA analyses, medical reports, forensic examinations by  
25 LVMPD --

1 MR. SPEED: I'm sorry to interrupt, Your Honor. Let me go back to  
2 Number 4 for just second. Number 4 is granted insofar as if the State becomes  
3 aware of any benefit or if the State is aware of any benefit then they will provide  
4 that information to us, make us aware of that?

5 THE COURT: That's correct, right? You don't have any problem  
6 with that?

7 MS. FERREIRA: Insofar as the things that he's mentioned,  
8 absolutely. I mean I can tell the Court that sometimes there are referrals for  
9 counseling agencies that the State doesn't provide. We provide a referral and  
10 whatever happens after that happens, so certainly I don't think I need to turn that  
11 over because it's not in my possession.

12 MR. SPEED: Well, but hold on now. It is in your possession if  
13 referrals for counseling are being provided to these witnesses, and these  
14 counseling services may or may not have a contract with either the  
15 Victim/Witness Advocacy Center or with the District Attorney's office.

16 THE COURT: Well, the only way it would become discoverable it  
17 seems to me is if the State is paying for it, right? The fact they give them a  
18 referral to somebody without more doesn't mean that the – that the witness is  
19 getting some financial benefit out of it. If the State is paying for it then it does.

20 MR. SPEED: Well, the witness is receiving the benefit of the service  
21 being provided by the particular provider. The way that the State benefits here is  
22 that they have witnesses who are satisfied with whatever service or referral that  
23 the DA provides to them in exchange for testimony that will be favorable to their  
24 prosecution. Now, if the DA's office –

25 THE COURT: What I hear you –

1 MR. SPEED: -- is in the business of referring out clients or  
2 witnesses –

3 THE COURT: What I hear you assuming in that is that the State is  
4 paying for it. I mean if the State gives somebody a referral and they say, gee, I  
5 need counseling and say, well, here's three people –

6 MR. SPEED: Right.

7 THE COURT: -- and that's it, they don't confer any benefit, I don't  
8 consider that to be – to reach the level of conferring a benefit that *Brady* or *Giglio*  
9 or 173 is it – 173 is reaching for.

10 MR. SPEED: These are subcontractors, if the Court would imagine  
11 them that way, subcontractors who have a relationship with the State. You send  
12 – speaking to the DA's office, for example, you send us clients, we'll have our  
13 services available to you when you need them. Well, we'll always need your  
14 kinds of services because we'll always have victims of crime, people who need  
15 battered women's counseling or abused children's counseling or things like that,  
16 services like that, so –

17 THE COURT: If you think that it's conferring a benefit if the State is  
18 not paying for it then you're going to have to show me some authority. If you  
19 think it falls under the discovery, the ambit of discoverable stuff I think you're  
20 going to have to show me that the mere referral without more is enough to trigger  
21 that, otherwise I'm – it seems to me the more rational approach is to say, if the  
22 State is actually conferring a benefit then yes, but the mere referral does not –  
23 does that – do you know if the State pays for any of those services?

24 MS. FERREIRA: I don't know the specifics of the payment, but I  
25 can tell the Court that witnesses or victims are allowed to participate in

1 counseling whether they are for the State, so to speak, or against the State, so to  
2 speak, so there are multiple cases where – and I’m just going to throw out as an  
3 example domestic violence victims who may not want to have anything to do with  
4 the prosecution who partake in counseling, so I think the courts have kind of  
5 taken the approach that, well, that can’t be perceived as a benefit, then, if people  
6 who are anti – you know, the State of Nevada are also partaking in these  
7 services.

8 THE COURT: Yeah. All right. Well, without more I think where I  
9 draw the line is still you have to be able to show that they’re conferring a benefit,  
10 and I’m not aware – as I said I’m pretty rusty at this stuff now, but I’m not aware  
11 of any case law or statute that says that the mere referral without more is  
12 conferring a benefit which is discoverable.

13 MR. SPEED: I anticipate that line of inquiry, then, making the  
14 contracts, the agreements between the State and these agencies to which they  
15 refer their potential clients discoverable, and if I come before Your Honor asking  
16 about information pertaining to those kinds of agreements, contractual  
17 agreements, a gentlemen’s handshakes between Steve Wolfson and service  
18 providers, counseling providers, I think we’re going to have a –

19 THE COURT: What’s a handshake? What’s in a handshake?

20 MR. SPEED: An agreement to provide these services for us. You’ll  
21 have –

22 THE COURT: You mean provide it – in other words, what I hear  
23 you saying is provide them for us, we will pay you.

1 MR. SPEED: We will send you the client. We will send you a book  
2 of business. If we're not paying for it we'll send you – we'll refer you clients who  
3 will use your service and they can pay for them themselves with –

4 THE COURT: You're going to have to show me more authority to  
5 reach that level.

6 MR. SPEED: Well, I won't be able to show the Court authority  
7 unless I can establish that these relationships exist –

8 THE COURT: All right. So –

9 MR. SPEED: -- and this isn't me making this kind of thing up, Your  
10 Honor.

11 THE COURT: No, I understand that.

12 MR. SPEED: The – counsel for the government said we refer out  
13 our witnesses to different counseling services. As of today I don't know if that's  
14 taken place, but if they are –

15 THE COURT: Well, then, in order –

16 MR. SPEED: -- taking place we'll let the defense know.

17 THE COURT: In order to reach that it sounds like you may have to  
18 do some further discovery, you know, whether it's by subpoena or other things so  
19 that you can show to the Court that there's an actual benefit being conferred  
20 upon.

21 MR. SPEED: Will counsel for the government concede, then, that  
22 their witnesses have received counseling services either through the  
23 Victim/Witness Advocacy Center or through one of these referrals from the DA's  
24 office?  
25



1 MS. FERREIRA: And I can't concede to something I don't know. I  
2 have no idea which particular victims go to counseling until I call their parents,  
3 since we're dealing with minor children, and say, hey, have you taken your kid to  
4 counseling. That's the only way I find out about it.

5 MR. SPEED: Can the State do that, then, at least inquire if the  
6 complaining witness has received some counseling and let us know that and if so  
7 through what service?

8 MS. FERREIRA: I will be glad to inquire whether the child in this  
9 case has received counseling because I don't have a problem with it. I don't  
10 think that the law requires me to do that but to be fair to defense at this point I will  
11 ask that question. As far as getting information about when she goes, the  
12 therapist she sees, if she's going at all is a different story, but I will inquire at this  
13 point whether she has gone to counseling.

14 MR. SPEED: And we can come back to court for the answers to  
15 those questions because if she is going to counseling then that raises a whole  
16 other basket of discoverable issues, but moving on to Number 6 I believe the  
17 Court did read that one, evidence to include DNA analyses reports, things of that  
18 nature. I don't know – and I'll be honest with the Court here. I don't know if any  
19 DNA tests were performed in this particular case, but if there were we would like  
20 copies of those reports as well as the Metro Forensic Lab Standard Operating  
21 Procedures Manual so that if there are questions about the results that they  
22 obtained we can show those to our experts.

23 MS. FERREIRA: I don't have any opposition, as I set forth in my  
24 response, to getting any results of testing that was done because I believe that  
25 that's appropriate under NRS. In terms of policy and procedure manuals that's

1 something different, so I don't have an opposition to getting the results of any  
2 testing that was done and turning it over to the defense.

3 THE COURT: So I'm not sure I quite understood. You're willing to  
4 go to a certain length but what is the limit?

5 MS. FERREIRA: The law requires that if there is any kind of  
6 medical or forensic testing done the results of such medical or forensic testing  
7 are required to be turned over to the defense. The State absolutely agrees with  
8 that. So the State will turn over the results of the test. Mr. Speed is making an  
9 argument that he wants something outside the realm of the results of the tests.  
10 He wants operating procedures of the lab that does the testing. That's not  
11 something that is required under NRS 174, so the State –

12 THE COURT: You're referring there to this request for forensic  
13 examinations conducted?

14 MS. FERREIRA: No, that's fine. The results of forensic  
15 examinations is fine, no opposition to that.

16 THE COURT: All right. SANE exam reports?

17 MS. FERREIRA: Right. No opposition.

18 THE COURT: Okay. Well, that seems to be everything, then. All  
19 right. So that one is granted to that extent at least. Number 6, recordings,  
20 intercepted telephone communication, jail calls between the Defendant and any  
21 party where Mr. Pastrana is speaking on the telephones in the Clark County  
22 Detention Center.

23 MS. FERREIRA: And, Your Honor, I don't have any calls at this  
24 point. I haven't been listening to the Defendant's jail calls. Certainly I'm not  
25 going to start listening to them for the defense. He can certainly inquire of those

1 himself. Certainly if I happen upon something I will certainly turn them over, but  
2 at this point I have nothing because I've listened to nothing.

3 THE COURT: Okay. Number 7, copies of intercepted written  
4 communications alleged to be made by the Defendant during his incarceration at  
5 CCDC.

6 MS. FERREIRA: And the same, Your Honor. I haven't looked at his  
7 mail. I haven't intercepted any of his communications. I don't intend to use  
8 anything at trial since it's not in my possession or in my knowledge. If something  
9 changes and something comes to my attention and I intend to use it and/or it's  
10 exculpatory in any way certainly I will turn it over to Mr. Speed, but at this point  
11 as with the phone calls I have no written communication.

12 THE COURT: All right. Number 8, he wants the Court to issue a  
13 certificate of materiality. I guess I'm pretty rusty. I've never heard of a Court  
14 issuing a certificate of materiality on something --

15 MR. SPEED: Sure. It was Judge Gonzalez who I'll say blazed the  
16 trail in this area of the law. When we deal in these kinds of cases that may or  
17 may not have witnesses or evidence that is not contained within our jurisdiction,  
18 then what is required -- because most of our 50 states -- I believe all of the 50  
19 states at this point are all signatories on the Uniform Act to Secure the  
20 Attendance of Witnesses from out of state in criminal proceedings. Each state  
21 has a different statute --

22 THE COURT: So that's what you're aiming at is out of state?

23 MR. SPEED: That's correct. If there's any evidence that exists on  
24 this -- on those bases, and I'll list those in the order just like Item Number 6 and  
25 Item Number 7 granted insomuch as if there is evidence that exists outside of the

1 state and the State is using it in its prosecution, we expect to be informed of that  
2 information and its existence.

3 THE COURT: Now we passed from something in another state that  
4 may or may not be connected to this to actual evidence that the State is going to  
5 introduce –

6 MR. SPEED: No, no, no. If it's – I wouldn't ask for information in  
7 another state that's not connected to our case. That's why it's a certificate of  
8 materiality. The mere fact that the Court would be executing something like that  
9 means that –

10 THE COURT: Doesn't that require somebody to at their peril decide  
11 whether – whether some piece of evidence fits?

12 MR. SPEED: Not at their peril. That's why we continue to  
13 investigate the cases, Your Honor. If we find out that there was a cousin or a  
14 nephew or a counseling service, jumping back to our earlier item, in Texas or in  
15 New Mexico or Arizona that the complaining witness took -- went to or her  
16 mother took her to then we would be entitled to those notes, that counseling  
17 service's records.

18 THE COURT: So long as the State has it?

19 MR. SPEED: Right.

20 THE COURT: Okay. If the State has it –

21 MR. SPEED: What happens – what happens if we serve a  
22 subpoena or issue a subpoena on an out of state agency they're going to tell us,  
23 we don't have to comply with this subpoena because it's not issued by a Court of  
24 competent jurisdiction within our state.

1 THE COURT: Maybe I need to see what a certificate of materiality  
2 says. If it's an open-ended kind of thing then I'm not generally in favor of it. If it's  
3 something that is fine-tuned and specifically fine-tuned to our statute 174, then,  
4 yeah, maybe we can do that. I assume you have a –

5 MR. SPEED: And certainly, Your Honor, we can do that.

6 THE COURT: -- you have a copy suitable for framing of such a  
7 certificate?

8 MR. SPEED: Always, yes.

9 THE COURT: Well, why don't you submit it to the Court and we'll  
10 take a look at it.

11 MR. SPEED: We can certainly do that. I believe that is everything  
12 that I have, Your Honor, unless the Court has any questions for us.

13 THE COURT: I do not. Anything else from the State?

14 MS. FERREIRA: No, Your Honor. Thank you.

15 THE COURT: All right.

16 MR. SPEED: We'll see the Court next week on our motion to  
17 suppress.

18 THE COURT: Oh, boy. I can hardly wait. Yeah. Very good. We'll  
19 see you then.

20 MS. FERREIRA: Thank you, Your Honor.

21 MR. SPEED: January 23<sup>rd</sup> on the motion to suppress.

22 (Whereupon, the proceedings concluded.)

23 \* \* \* \* \*

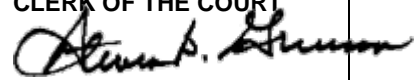
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

 —  
LISA A. LIZOTTE  
Court Recorder



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
GUSTAVO GUNERA-PASTRANA, )  
)  
Defendant. )

CASE NO. C318461-1  
DEPT. NO. 1

BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE  
MONDAY, JANUARY 23, 2017 AT 10:15 A.M.

**RECORDER'S CERTIFIED TRANSCRIPT RE:  
DEFENDANT'S MOTION TO SUPPRESS ALL ORAL AND WRITTEN  
STATEMENTS MADE BY THE DEFENDANT TO DETECTIVES D. HUTH AND  
L. SAMPLES**

APPEARANCES:

FOR THE STATE: JENNIFER CLEMONS  
Chief Deputy District Attorney

FOR THE DEFENDANT: KEVIN C. SPEED  
Deputy Public Defender

ALSO PRESENT: MARIA GOMEZ  
Spanish Interpreter

Recorded by: LISA A. LIZOTTE, COURT RECORDER

1 (MONDAY, JANUARY 23, 2017 AT 10:15 A.M.)

2 THE CLERK: Page 20, the State of Nevada versus Gustavo  
3 Pastrana, Case Number C318461.

4 THE COURT: There's our motion to suppress.

5 MR. SPEED: Good morning, Your Honor. Kevin Speed for Mr.  
6 Gunera-Pastrana who is present in custody with the assistance of the Spanish  
7 Interpreter.

8 MS. CLEMONS: Jennifer Clemons for the State.

9 THE COURT: Good morning.

10 MS. CLEMONS: Good morning.

11 THE COURT: All right. This is on for Defendant's motion to  
12 suppress all oral and written statements. Do you want to capsulize what your  
13 argument is?

14 MR. SPEED: Very briefly, Your Honor. We believe that Mr.  
15 Gunera-Pastrana is entitled to have the statement given to Detectives Huth and  
16 Samples suppressed because of case law that says that in addition to having his  
17 amendment – or his constitutional rights read to him there must be something in  
18 the record that shows that the suspect or the interrogee understood his rights,  
19 and there is nothing in the record to indicate that he understood the rights as they  
20 were read to him.

21 After reading the department issued *Miranda* card to Mr.  
22 Gunera-Pastrana and then having a – it looked like – it appeared to be another  
23 Officer from the transcripts of the interview repeat what was being read in  
24 Spanish they just dived headlong into questioning without any consideration as to  
25 whether or not the person that they were interrogating understood his rights.



1 THE COURT: Okay. What say –

2 MR. SPEED: I'm not sure – also this. I made an additional copy of  
3 the two interviews or two interrogations to Detectives Huth and Samples. I don't  
4 know if the Court got a copy of those. I'm not sure what was filed with our  
5 original motion but I do know I have in excess of 100 pages.

6 THE COURT: We don't have them. I – so far I've just gone off of  
7 what was provided.

8 MR. SPEED: The Court just has the motion? It does not have the  
9 exhibits?

10 THE COURT: That's correct.

11 MR. SPEED: May I approach? I did make a courtesy copy.

12 THE COURT: Okay. Thank you. All right. What says the State?

13 MS. CLEMONS: Your Honor, Jennifer Clemons for the State. I'm  
14 covering this for Ms. Ferreira, so I'm basically going off of what her opposition  
15 states. I think that the – she included a portion of the waiver of the *Miranda*  
16 *Rights* and it looks like an interpreter began to interpret what was being said and  
17 the Defendant jumped in and said yes. There was also an interpreter present  
18 throughout the entire interview, and it appeared the Defendant understood  
19 English and wanted to proceed in English.

20 That's kind of the only representations I can make because I  
21 have not read the actual interview. I don't know if Your Honor wants to pass this  
22 to read the interview, but based upon Amy Ferreira's briefing, you know, the  
23 State doesn't have any concerns with the confession being involuntary.

24 THE COURT: I'm actually – I am inclined to do that because  
25 whatever is in the transcript is all important here --

1 MS. CLEMONS: I agree.

2 THE COURT: -- to the argument. Mr. Speed, do you have any  
3 problem with that?

4 MR. SPEED: I don't have a problem with that at all, Your Honor. As  
5 a matter of fact we were about to ask the Court to set it down for a *Jackson v*  
6 *Denno* hearing –

7 THE COURT: Okay.

8 MR. SPEED: -- and that would give – obviously would give Your  
9 Honor more time to review the transcript of the interviews.

10 THE COURT: Yeah. All right. That's what we'll do. We'll continue  
11 this for a *Jackson v Denno* hearing. How long would you anticipate it will take us  
12 to conduct that?

13 MR. SPEED: It would depend on how long it would take for us to  
14 get the two Detectives in, and I know that this is a very busy time of the year for  
15 the Special Victim's Unit Detectives. I'm not sure if we can get both Detectives  
16 Huth and Samples in at the same time or if we'd have to bifurcate or how that  
17 would work.

18 THE COURT: Well, I would hope we don't drag this thing out so  
19 long that – I hope we don't have to. You wouldn't have any notion of how quickly  
20 we could get the Officers in?

21 MS. CLEMONS: No. I mean we could – I mean I think we could set  
22 a date as early as two weeks and see who's available when. We couldn't do it  
23 sooner than two weeks but that would be the quickest.

24 THE COURT: All right. Let's do that.  
25

1 MR. SPEED: Our trial is set in March. This isn't one of the  
2 February settings. If we could have 21 days or three weeks I think that would be  
3 better. We can get everybody out of the way, and I know that I have a trial set to  
4 begin in February with Ms. Clemons, so the longer the better as long as we don't  
5 run right up against our trial setting is good for us.

6 THE COURT: So do you want to go out 21 days? Is that what  
7 you're saying?

8 MR. SPEED: Yes, Your Honor. That's probably the best.

9 MS. CLEMONS: Whatever defense wants to do I'm fine with.

10 THE COURT: Okay. We'll set it, then.

11 (Court conferring with the Clerk.)

12 THE COURT: I'm going to put it on a Thursday morning at 9:00  
13 o'clock.

14 THE CLERK: February 16<sup>th</sup> at 9:00 a.m.

15 MR. SPEED: Thank you, Your Honor.

16 MS. CLEMONS: Thank you.

17 THE COURT: All right. We'll see you then.

18 (Whereupon, the proceedings concluded.)

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

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LISA A. LIZOTTE  
Court Recorder



1 **RTRAN**

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4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

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7 THE STATE OF NEVADA, )  
8 )  
9 Plaintiff, ) CASE NO. C318461-1  
10 vs. ) DEPT. NO. 1  
11 )  
12 GUSTAVO GUNERA-PASTRANA, )  
Defendant. )

13  
14 **BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE**  
15 **WEDNESDAY, FEBRUARY 8, 2017 AT 9:06 A.M.**

16 **RECORDER'S CERTIFIED TRANSCRIPT RE:**  
17 **STATUS CHECK: TRIAL READINESS**

18 **APPEARANCES:**

19 **FOR THE STATE:** MICHELLE Y. JOBE  
20 Chief Deputy District Attorney  
21 **FOR THE DEFENDANT:** KEVIN C. SPEED  
22 Deputy Public Defender  
23 **ALSO PRESENT:** CARLOS CALVO  
24 Spanish Interpreter

25 Recorded by: LISA A. LIZOTTE, COURT RECORDER

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(WEDNESDAY, FEBRUARY 8, 2017 AT 9:06 A.M.)

THE CLERK: Page 4, the State of Nevada versus Gustavo Pastrana, Case Number C318461.

MR. LISK: Your Honor, we need to trail this. This is a specialty teams case and they should be on their way.

THE COURT: All right. We'll recall it.

(Whereupon, the case was trailed and then recalled at 9:59 a.m.)

THE CLERK: Page 4, the State of Nevada versus Gustavo Pastrana, Case Number C318461. Defendant is present in custody with the Interpreter.

MR. SPEED: Good morning, Your Honor. Kevin Speed for Mr. Gunera-Pastrana who is present in custody. This was a status check for trial readiness that was set by Judge Gonzalez before the case was transferred to this department. I would remind the Court that we have a *Jackson versus Denno* hearing scheduled for the 16<sup>th</sup> and both sides are ready to proceed with that, so we're – we're good to go as far as scheduling is concerned. We'll be back on the 16<sup>th</sup>.

MS. JOBE: That is correct, and for the record Michelle Jobe standing in for Amy Ferreira.

THE COURT: All right. So we'll see you on the 16<sup>th</sup> you said?

MR. SPEED: Yes, sir. Thank you.

MS. JOBE: Thank you.

THE COURT: We'll see you then. Thank you.

(Whereupon, the proceedings concluded.)

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

 —  
LISA A. LIZOTTE  
Court Recorder



1 **RTRAN**

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4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

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7 THE STATE OF NEVADA, )  
8 )  
9 Plaintiff, ) CASE NO. C318461-1  
10 vs. ) DEPT. NO. 1  
11 )  
12 GUSTAVO GUNERA-PASTRANA, )  
Defendant. )

13  
14 **BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE**  
15 **THURSDAY, FEBRUARY 23, 2017 AT 1:35 P.M.**

16 **RECORDER'S CERTIFIED TRANSCRIPT RE:**  
17 **JACKSON V DENNO HEARING**

18 **APPEARANCES:**

19 **FOR THE STATE:** JENNIFER CLEMONS  
Chief Deputy District Attorney  
20  
21 **FOR THE DEFENDANT:** KEVIN C. SPEED  
Deputy Public Defender  
22  
23 **ALSO PRESENT:** NOELLE TATTON  
Spanish Interpreter  
24

25 Recorded by: LISA A. LIZOTTE, COURT RECORDER



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(THURSDAY, FEBRUARY 23, 2017 AT 1:35 P.M.)

THE COURT: Will counsel enter your appearance, please?

MS. CLEMONS: Jennifer Clemons for the State.

MR. SPEED: And Kevin Speed for Mr. Gunera-Pastrana, Judge,  
who is present in custody.

THE COURT: All right. And do we have a Spanish Interpreter?

THE INTERPRETER: We do, Your Honor. Noelle Tatton, State  
Certified Spanish Interpreter.

THE COURT: Thank you. All right. We're here on a *Jackson v*  
*Denno* hearing. How do you wish to proceed?

MS. CLEMONS: It's my understanding, Your Honor, my memory  
from the last time we had this in court I believe you took copies of the transcripts  
—

THE COURT: Yes.

MS. CLEMONS: -- and you were going to review those --

THE COURT: Yes.

MS. CLEMONS: -- to see if we needed to have witnesses.

THE COURT: Yes. I have those here. So the question is whether  
you want live witnesses?

MS. CLEMONS: Correct. Whether you felt that you could rule  
based upon the transcripts or whether you wanted to have live witnesses.

MR. SPEED: I have spoken with the District Attorney's office, Your  
Honor. We do have the witnesses available if the Court wants to hear testimony  
from those people.

MS. CLEMONS: Correct.

1 THE COURT: Who would the witness be?

2 MR. SPEED: One is Detective Huth, I think Detective Samples and  
3 the Spanish Interpreter who assisted the officers with their interrogation of Mr.  
4 Gunera-Pastrana.

5 MS. CLEMONS: That's correct.

6 THE COURT: Well, I leave it to you. If you think that it's necessary  
7 or that it helps or adds to the – your arguments in relation to the voluntariness –

8 MR. SPEED: Well, the focus of our motion is in trying to determine  
9 whether Mr. Gunera-Pastrana actually understood the very vague, in my opinion,  
10 admonition of his rights before the detectives started with their questioning, so  
11 I've asked the State to bring in both detectives as well as the Spanish Interpreter,  
12 and when we sat down this afternoon I fielded a question from our interpreter  
13 here today asking whether or not the interpreter who assisted in the interview  
14 was certified.

15 I'm not sure what that means or if that confers upon a person  
16 any additional qualifications that would make them better suited for that kind of  
17 business. I don't even know if this person is certified or not and whether that was  
18 – that information was shared with Mr. Gunera-Pastrana on the night of his  
19 interview and in helping him to understand what his rights were. I think that's the  
20 key issue that we'll be trying to drill down and figure out this afternoon.

21 THE COURT: All right. What is probably a silly question, but before  
22 we go through all of this does the State intend to use the statements?

23 MS. CLEMONS: Your Honor, this isn't my case. I'm covering this  
24 for Ms. Ferreira. I mean he doesn't make any admission, so this is kind of a  
25 unique situation. What can happen, though, during trial is certain statements that

1 he did say during these interviews may become relevant and the State may want  
2 to use them, so – and I can't predict, you know, what's going to happen and I  
3 don't want to limit Ms. Ferreira in any way during her trial.

4 THE COURT: All right. Well, then, it sounds like we need to do the  
5 hearing. I still leave it to either of you, if you feel that it's helpful to put on a  
6 witness we can do that, otherwise you can argue based off of the transcripts.  
7 What's your pleasure?

8 MR. SPEED: Court's indulgence.

9 THE COURT: Sure.

10 MR. SPEED: After conferring with my client and the interpreter here  
11 furnished for us by the Court, Your Honor, I think it would be best if we have the  
12 translator or the interpreter who assisted the detectives with their interview come  
13 and see whether or not Mr. Gunera-Pastrana recognizes her as the person who  
14 helped him out or helped the detectives in this case on the evening in question.

15 THE COURT: All right.

16 MS. CLEMONS: That's fine.

17 THE COURT: All right. Let's have the interpreter come in. Are we  
18 going to swear her as a witness, then? Are you going to inquire of her?

19 MR. SPEED: Yes, Your Honor.

20 THE COURT: All right.

21 MARIA JIMENEZ,  
22 having been called as a witness, was duly sworn and testified as follows:

23 THE CLERK: Please be seated. Please state your name and spell  
24 it for the record.

25 THE WITNESS: Maria Jimenez, M-a-r-i-a, J-i-m-e-n-e-z.

1 THE COURT: Thank you. You may proceed.

2 DIRECT EXAMINATION

3 BY MR. SPEED:

4 Q Ms. Jimenez, I represent – I'm Kevin Speed. I represent Mr.  
5 Gunera-Pastrana who is seated to my left. Do you recognize Mr. Gunera-  
6 Pastrana?

7 A I think so.

8 Q Do you recall –

9 A I would have to look at him closer with my glasses. He's kind of  
10 blurry. Do you –

11 THE COURT: Go ahead. You may use your glasses.

12 Q (By Mr. Speed) He's much nicer looking than I am. I can say that.

13 A Yes.

14 THE COURT: I believe your eyes must be worse than mine. All  
15 right. So you do recognize the Defendant here?

16 THE WITNESS: Yes.

17 THE COURT: All right. Go ahead, Mr. Speed.

18 Q (By Mr. Speed) And, Ms. Jimenez, on the evening of January 12<sup>th</sup>,  
19 2016 at approximately 3:00 o'clock in the – I'm sorry, the afternoon of January  
20 12<sup>th</sup> at approximately 3:00 o'clock did you conduct an interview with Detectives  
21 D. Huth and –

22 A Larry.

23 Q -- L. Samples with Mr. Gunera-Pastrana?

24 A Yes, sir, I did.

25 Q And that interview was conducted in Spanish?

1           A     Both Spanish and English. Well, they say it in English and I say it in  
2 Spanish.

3           Q     So you translated into Spanish from the detectives' questions in  
4 English for Mr. Gunera-Pastrana?

5           A     Yes, sir.

6           Q     Do you have a copy of that interview transcript in front of you now?  
7 Did you bring one to court with you?

8           A     No, sir. I reviewed it yesterday completely.

9           Q     Okay. And can you recall from your review whether Detective Huth –  
10 I believe Detective Huth was the first detective to speak with Gustavo, whether  
11 Detective Huth advised him of his rights under *Miranda*?

12          A     Yes.

13          Q     And did he do that, to your memory?

14          A     Yes.

15               THE COURT: Are we speaking only of the Huth interview or also  
16 the other one?

17               MR. SPEED: This is the Huth interview first because after the Huth  
18 interview, Your Honor, that's when all of the – if we'll call them admissions at  
19 some point later on were made and that's when he received his advisement  
20 under *Miranda*.

21               THE COURT: All right.

22          Q     (By Mr. Speed) And can you recall, Ms. Jimenez, what my client  
23 said after he was advised of his rights under *Miranda*?

24               I'll ask a better question. Do you remember whether he  
25 acknowledged that he understood his rights?

1           A     Yes. I think it either said yes or yeah.

2           Q     At any time did he ask you after being advised of his rights if you  
3 could repeat Detective Huth's question?

4           A     Not that I remember, sir.

5           Q     And do you remember him ever asking for a lawyer?

6           A     No, sir.

7           Q     Did he express an interest to remain silent or an intention to remain  
8 silent?

9           A     Not that I remember, sir.

10          Q     And you were the only interpreter or translator who was present with  
11 the detectives?

12          A     Yes, sir.

13          Q     About Detectives Huth and Samples, were they wearing plain clothes  
14 or were they in their uniforms, police uniforms?

15          A     Plain clothes.

16          Q     And where was the interview conducted, if you remember?

17          A     At 701 North Pecos.

18          Q     And what building is that?

19          A     Building K.

20          Q     I'm sorry, what agency –

21          A     It's the Southern –

22          Q     -- or business is occupied –

23          A     -- Nevada Children's Assessment Center.

24          Q     Okay. Was my client in custody or was he in handcuffs at the time?

25          A     I don't remember that, sir.

1 Q Were Detectives Huth or Samples or both armed at the time of the  
2 interview?

3 A I'm sorry, I don't remember that either.

4 Q Were you armed?

5 A No, sir.

6 Q Ms. Jimenez, we've heard a little bit this morning about certification  
7 or interpreter/translators having some sort of certification. Can you explain what  
8 that is if you know to the Court, please?

9 A Well, for Metro we take a series of tests and after we pass them we  
10 go on to the next test, to the next test until you finally pass them all and then you  
11 have to go through a review process.

12 Q And have you been through those tests or been assessed by that  
13 review process?

14 A Yes, sir.

15 Q Do you receive some sort of certification after those things are  
16 completed?

17 A Yes, sir.

18 Q Have you received that certification?

19 A Yes, sir.

20 THE COURT: If you know, what is it called? What kind of – what  
21 do they call that kind of certification?

22 THE WITNESS: Just Spanish Translator certification for Metro.

23 THE COURT: Okay. Thank you.

24 Q (By Mr. Speed) Are you familiar with another kind of certification that  
25 is issued by the Supreme Court of the State of Nevada?



1           A     Yes, sir.

2           Q     Do you possess that certification as well?

3           A     No, sir.

4           Q     On the evening of – the afternoon of January 16<sup>th</sup> of last year did you  
5 have your Metropolitan Police Department certification?

6           A     Yes, sir.

7           THE COURT: January 12<sup>th</sup> was it?

8           MR. SPEED: January 12<sup>th</sup>, I'm sorry, of 2016.

9                     Court's indulgence. May I have the Court's indulgence for just  
10 a few moments, Your Honor? There's some confusion.

11           THE COURT: All right.

12           MR. SPEED: We don't have anything further from Ms. Jimenez,  
13 Your Honor.

14           THE COURT: Any questions from Ms. Clemons?

15           MS. CLEMONS: Briefly, Your Honor.

16                     CROSS-EXAMINATION

17 BY MS. CLEMONS:

18           Q     Do you recall when this interview was conducted if it was wintertime  
19 or summertime?

20           A     No, I'm sorry.

21           Q     The interview with Detective Huth, who was present in the room  
22 during that interview?

23           A     I think it was just the three of us.

24           Q     So who –

25           A     Detective Huth, myself and him.

1 Q What about the interview with Detective Samples, who was present  
2 during that interview?

3 A Just me, Samples and him.

4 Q Okay. So these were two interviews but they were separate? Is that  
5 fair to say?

6 A Yes.

7 Q Okay. So the detectives weren't in the room together? Is that fair?

8 A No -- yes.

9 Q Okay. So they were not in the room together?

10 A Right.

11 Q Okay. How long have you worked for Metro?

12 A Nine years.

13 Q And have you been a translator the whole time?

14 A Yes.

15 Q What's your job description?

16 A Spanish Interpreter.

17 Q What do you do on a day-to-day basis at work?

18 A At work I -- we work on transcripts, we go out on field calls. If an  
19 officer has a Spanish speaker and they don't speak English then we go out to the  
20 street or someone's home and interpret.

21 Q And then also you help translate interviews like in this case? Is that  
22 fair?

23 A Yes. Yes.

24 Q Let's go over real quick when you went over -- or you translated the  
25 Defendant's rights as Detective Huth read them.

1           A     Yes.

2           Q     So your job is basically to translate as accurately as possible what  
3 the detective is saying to the Defendant? Is that fair?

4           A     Yes, ma'am.

5           Q     And then in the reverse to translate into English as accurately as you  
6 can what the Defendant is saying?

7           A     Yes, ma'am.

8           Q     And are there times when you do a suspect interview where a  
9 Defendant may anticipate what you're going to translate and answer before  
10 you're able to finish translating?

11          A     Yes.

12          Q     Do you recall if that happened in this case?

13          A     No, I don't.

14          Q     Okay. When Detective Huth read the rights to the Defendant do you  
15 recall if she did that by memory or off a card?

16          A     No, I don't.

17          Q     Okay. And do – when you did the translation it appears that you  
18 went line by line so it was one sentence and then you translated. Does that  
19 sound right?

20          A     Yes, ma'am.

21          Q     Do you recall that the Defendant, when you went to translate the  
22 question, do you understand these rights, he answered yes before you were able  
23 to finish the translation?

24          A     No, I don't remember.

25          Q     Would it help to refresh your recollection to look at the transcript?

1 A Sure. Sure.

2 MS. CLEMONS: May I approach, Your Honor?

3 THE COURT: You may.

4 THE WITNESS: I see it there.

5 Q (By Ms. Clemons) Okay. Did that help refresh your recollection?

6 A Yes.

7 Q Okay. So did the Defendant, in fact, kind of anticipate or answer yes  
8 before you had an opportunity to finish translating?

9 A Yes.

10 Q But then did you go and finish translating that sentence?

11 A Yes, I did.

12 Q Okay. At any point after you finished translating, do you understand  
13 these rights, did the Defendant wish that he did not want to speak anymore?

14 A Not that I remember.

15 Q Do you recall if there were times during the interview that you  
16 reminded the Defendant to speak in shorter or fewer sentences?

17 A Yes.

18 Q And what's the reason for that?

19 A He must have been saying his sentences too long and I have to  
20 retain the information exactly as he says it, I don't summarize, so if he goes too  
21 long I can't remember it. So if he says it shorter then I do remember exactly what  
22 he said.

23 Q Okay. So that's to ensure accuracy?

24 A Yes.

25 Q And 701 North Pecos, you mentioned that's the CAC?

1 A Yes.

2 Q That is not a police station; is that correct?

3 A No.

4 Q Okay. The room that you conducted this interview in are there bars  
5 to handcuff people to or what does the room look like?

6 A Yes. Yes. There are some bars.

7 Q Okay.

8 A It's either a bar or two bars.

9 Q You mentioned that you were familiar with a certification issued by  
10 the Supreme Court of Nevada.

11 A Yes.

12 Q What is that?

13 A From – I read up on it because I was interested at one point, and I  
14 just know that there's state and national certification for translators and  
15 interpreters.

16 Q And that's not a certification required by Metro?

17 A No, ma'am.

18 Q How many hours did your training to be a translator take?

19 A I think it was a total of like three months.

20 Q So are those like eight hour days or how many hours a day would  
21 you be in training?

22 A In the beginning it was nine and a half hour days and now they've cut  
23 them to six hour days.

24 Q Once you get your certification with Metro do you have to take tests  
25 to keep it up or is it good once you get it?

1           A     It's good once you get it.

2           Q     Do you ever have any kind of peer reviews to make sure your  
3 translations are accurate?

4           A     Yes.

5           Q     And how often does that occur?

6           A     They're random.

7           Q     Random, okay. Are you familiar with how Metro generates event  
8 numbers?

9           A     Yes.

10          Q     If the event number in this case indicated a 160712 starting date  
11 what would that mean to you?

12          A     That would be the year, month and day.

13          Q     So 16 would be 2016?

14          A     Yes.

15          Q     07 would be July?

16          A     Yes.

17          Q     And 12 would be the 12<sup>th</sup> of July?

18          A     Yes.

19          Q     If this case had an event number 160712 would that indicate that this  
20 event occurred on July 12<sup>th</sup>, 2016?

21          A     Yes.

22          Q     So if a transcript indicated that the interview happened in January do  
23 you have reason to believe that that would be correct or incorrect?

24                THE COURT: You have solved our dilemma.

25                THE WITNESS: I don't understand.

1 Q (By Ms. Clemons) Okay. I'm sorry. So if – when event numbers are  
2 generated when do they get the date in the first part of it?

3 A On the day of the event they get generated the event date or the  
4 case number.

5 Q Okay. So –

6 THE COURT: Do you want me to show her?

7 MS. CLEMONS: Yeah. I was going to ask to approach.

8 THE COURT: This is Detective Huth and he says – the event  
9 reflects that it is –

10 THE WITNESS: July.

11 Q (By Ms. Clemons) Did that help you remember whether or not this  
12 interview was in the winter or summertime?

13 A No, I'm sorry. I don't remember.

14 Q That's fine. Have you ever seen an interview conducted in January  
15 of 2016 but given a July 2016 event number?

16 A I can't say that I have, no.

17 MS. CLEMONS: And, Your Honor, may I approach real quick?

18 THE COURT: Yeah. The end, the last page of that Huth interview  
19 says July.

20 MS. CLEMONS: Oh, it does?

21 THE COURT: Yeah.

22 Q (By Ms. Clemons) And also – this is Detective Samples' interview.  
23 What date does that indicate the interview took place on?

24 A July 12<sup>th</sup>.

25 Q Okay.

1 MS. CLEMONS: I don't have any further questions.

2 THE COURT: All right. Does that prompt any questions for you, Mr.

3 Speed?

4 MR. SPEED: Nothing further, Your Honor.

5 THE COURT: I have a couple of questions. You did both of the

6 interviews?

7 THE WITNESS: Yes.

8 THE COURT: For Huth and for Samples?

9 THE WITNESS: Yes.

10 THE COURT: Were they back-to-back?

11 THE WITNESS: From what I remember, yes.

12 THE COURT: Do they have any kind of a system – I've seen

13 people translating before where they can only do it for a while and then they

14 need a break and they bring – they keep circulating in more translators. Do they

15 ever do that in your job?

16 THE WITNESS: It's never happened to me unless I was being

17 relieved. It's never gone so many hours –

18 THE COURT: It doesn't go that long?

19 THE WITNESS: -- that we needed a break.

20 THE COURT: Do you happen to recall about how long these two

21 interviews took?

22 THE WITNESS: It didn't seem very long.

23 THE COURT: Okay. All right. Does that prompt any other

24 questions?

25 MR. SPEED: No, Your Honor.



1 MS. CLEMONS: Nothing from the State.  
2 THE COURT: Thank you, ma'am. You may step down.  
3 THE WITNESS: Thank you.  
4 THE COURT: Is this witness excused?  
5 MS. CLEMONS: Yes.  
6 MR. SPEED: Yes, Your Honor.  
7 THE COURT: Thank you, ma'am. You're excused.  
8 MR. SPEED: Court's indulgence for just a minute.  
9 Your Honor, we call Detective Huth to the stand, please.

10 THE COURT: Very good.

11 DENISE HUTH,  
12 having been called as a witness, was duly sworn and testified as follows:

13 THE CLERK: Please be seated. Please state your name and spell  
14 it for the record.

15 THE WITNESS: It's Detective Denise Huth, D-e-n-i-s-e, H-u-t-h.

16 THE COURT: You may proceed.

17 DIRECT EXAMINATION

18 BY MR. SPEED:

19 Q Detective Huth, do you recognize my client seated to my left?

20 A Yes.

21 Q And do you recall conducting an interview with him, interrogating  
22 him, as it were, on July 12<sup>th</sup> of 2016?

23 A Yes.

24 Q And where was that interview conducted?  
25

1           A     It was held at the Southern Nevada Children's Assessment Center at  
2 701 North Pecos, Building K, Las Vegas, Nevada 89101.

3           Q     At the time of that interview were you wearing plain clothes or were  
4 you in a police uniform?

5           A     Plain clothes.

6           Q     And were you armed at the time of that interview?

7           A     Yes.

8           Q     And do you carry your service weapon in a shoulder holster or a hip  
9 holster?

10          A     Hip holster.

11          Q     Was it exposed? Was it outside of your shirt or concealed?

12          A     Concealed.

13          Q     Now, we just learned that the room in which the interview was  
14 conducted has bars for maintaining the custody of suspects. Was Mr. Gunera-  
15 Pastrana handcuffed or chained to one of the bars in the interview room?

16          A     I believe he was.

17          Q     He was. And when was Gustavo arrested? Do you remember that?

18          A     I believe he was arrested the same day when they found him at his  
19 apartment or at the house.

20          Q     So you did not arrest Gustavo?

21          A     I was not present at the house when he was taken in – when he was  
22 detained, no.

23          Q     Were you told -- without getting into what another officer or detective  
24 may have said to you, but were you informed about how long Mr. Gunera-  
25

1 Pastrana had been in custody or had been detained when your interview  
2 commenced?

3 A I wasn't told how long he had been in there.

4 Q You weren't told?

5 A I would be -- that I recall. I didn't refresh my memory on that  
6 particular portion, but I was contacted when the -- I had been contacted when the  
7 report came out.

8 Q So as you testify this afternoon you don't know how long he was in  
9 custody before your interview began?

10 A I'd have to refresh my notes on my memory.

11 Q Did you ask Gustavo how long he was in custody before the  
12 recorded portion of your interview began?

13 A I didn't ask him that.

14 Q So you don't know if he had had any sleep before approximately  
15 3:00 o'clock in the afternoon on the 12<sup>th</sup>?

16 A I think one of the questions I asked him was if he had eaten but I  
17 didn't ask him if he had any sleep.

18 Q Didn't ask him that. And I understand that Detective Samples was  
19 able to observe your interview with Gustavo through a two-way mirror in the  
20 Children's Advocacy Center interview room; is that right?

21 A There's no two-way mirror. There was a camera --

22 Q A camera?

23 A -- that goes onto a computer in another room.

24 Q So almost like a closed circuit television screen or something like  
25 that?

1 A Similar to that.

2 Q Okay.

3 MR. SPEED: That's all I have, Your Honor. Nothing further.

4 THE COURT: Any questions?

5 MS. CLEMONS: Just briefly, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. CLEMONS:

8 Q So this interview occurred July 12<sup>th</sup>, 2016?

9 A Yes.

10 Q And you went over his *Miranda* rights with him?

11 A Yes, I did.

12 Q Is that from memory or from a form?

13 A That's from a card.

14 Q From a card. Okay. That's your Metro issued card?

15 A Yes.

16 Q And there was obviously an interpreter there as well and she  
17 interpreted what you said –

18 A Yes.

19 Q -- to the Defendant? And then in converse she would interpret what  
20 he said to you?

21 A That's correct.

22 Q And was the – the interview was audio and video recorded; is that  
23 right?

24 A That's correct.

25 Q Who was present in the interview?

1           A     In the interview room itself was I was present, the Hispanic  
2 interpreter and the Defendant.

3           Q     So although Officer Samples was watching he wasn't present in that  
4 room; is that correct?

5           A     That's correct.

6           Q     When Officer Samples did his interview did you watch in the other  
7 room?

8           A     I had – we can have the camera on our computer but I was typing  
9 the arrest report, so I wasn't watching as far as watching and listening to it  
10 because I was doing other work.

11          Q     Okay. Fair enough. Do you recall how long the interview lasted,  
12 your portion of the interview?

13          A     I would have to recheck the notes.

14          Q     Okay. If the transcript indicated the interview began at 1503 hours  
15 and ended at 1600 hours does that sound about right?

16          A     That would be about right, yes.

17          Q     Did you ever threaten the Defendant during the interview?

18          A     No, I did not.

19          Q     Did you ever use any physical force on him?

20          A     No, I did not.

21          Q     Did he appear to be injured in any way or suffering from any kind of  
22 mental deficiency?

23          A     Not that I noticed, no.

24          Q     Did he have any issues answering any of the questions that you  
25 asked him? Was he able to follow along what you were saying?

1           A     Yes, he was.

2           Q     And did you also offer or allow him to drink water during the  
3 interview?

4           A     Yes.

5           Q     And lastly, the Defendant didn't actually make any admissions in this  
6 case during the interview; is that correct?

7           A     That's correct.

8           MS. CLEMONS: Nothing further, Your Honor.

9           THE COURT: Anything further?

10          MR. SPEED: No, Your Honor.

11          THE COURT: Do you happen to recall how long Detective  
12 Samples' interview ran?

13          THE WITNESS: I don't know. I don't know a rough estimate even.  
14 I mean I guess that I was watching as I was doing my other paperwork, but I  
15 don't think I was – if I was – I don't think I had the earphones on. I was just  
16 watching to make sure nothing physical happened.

17          THE COURT: Did you feel that your interview was productive with  
18 him or turned up anything new you didn't know or some such thing?

19          THE WITNESS: Some of – not really. He didn't – he didn't make  
20 any disclosures. He said his – his – yeah. There wasn't really much that he  
21 indicated that was beneficial I would think.

22          THE COURT: Okay. All right. Thank you. Does that prompt any  
23 further questions?

24          MR. SPEED: It does, Your Honor.

25          THE COURT: May this officer be excused, then?

1 MR. SPEED: Well, no, it does prompt another question, Your  
2 Honor. I'm sorry.

3 THE COURT: Oh, I'm sorry. I didn't hear.

4 REDIRECT EXAMINATION

5 BY MR. SPEED:

6 Q Detective Huth, you said that after your initial interview was  
7 completed and Detective Samples took over you returned to a work station to  
8 complete your arrest report; yes?

9 A That's correct.

10 Q But you just testified to the Court that you didn't find your interview  
11 with – or your portion of the interview with Gustavo to be very productive  
12 because he didn't make any admissions; right?

13 A Correct. He didn't confess to anything.

14 Q So you still believed you had your man even though he didn't admit  
15 to anything and there was no evidence other than the complaining witness's  
16 allegations?

17 A There's other – sometimes the arrest isn't just based on getting a  
18 confession from someone, it's based on all the evidence and the statements  
19 combined.

20 Q You didn't know how long Gustavo had been in custody or detained;  
21 right?

22 A I guess I would have to review my notes, but I'm only informed when  
23 – if I'm the detective assigned to the case I'm giving the – you know, I'm advised  
24 when the case comes out and then I, you know, respond at least or have them  
25 come to the office and start the interviews in that case.

1 Q And to your knowledge was Gustavo arrested immediately after  
2 Detective Samples finished his interview – arrested and charged with what he’s  
3 in court for?

4 A Well, I was doing the paperwork to arrest him, yes.

5 MR. SPEED: That’s all. Nothing further, Your Honor.

6 MS. CLEMONS: Let me just clarify real quick.

7 RECROSS-EXAMINATION

8 BY MS. CLEMONS:

9 Q So you get the call – when you say the case comes out what do you  
10 mean by that?

11 A Sometimes we get reports through the Child Protective Services  
12 hotline which is into our – what we call our inbox in the computer, so we’re  
13 notified that way. Sometimes we get a call from patrol and they notify us. If I’m  
14 what’s called in the bucket for that day, which means I’m taking the reports, then  
15 I would get the call from patrol and then work out, you know, the semantics of,  
16 you know, who comes to the office, who gets interviewed, if the detective has to  
17 go to the scene, that type of thing.

18 Q Do you recall how you got assigned this case?

19 THE INTERPRETER: The Interpreter because of repetition, Your  
20 Honor, I’m sorry, was not able to hear that.

21 THE COURT: All right.

22 Q (By Ms. Clemons) Do you recall how you were assigned this case?

23 A I don’t recall exactly. I believe patrol was called, so I believe patrol  
24 responded to the scene.

25



1 Q Okay. And had you conducted any other interviews prior to the  
2 Defendant's interview?

3 A Yes.

4 Q Who did you conduct interviews with?

5 A We spoke with the victim, the brother and the mother.

6 Q Was that – did you do those interviews after you had learned the call  
7 had come out? So basically let me – I want to make sure I understand the  
8 chronology. You get assigned the case and patrol notifies you of the case. Do  
9 you know at that point whether or not the Defendant is in custody or they  
10 arrested him?

11 A I believe they told me that he had tried to leave the scene, so – and  
12 he was stopped leaving the scene.

13 Q Okay. And then you interview the sister, the brother and the mom; is  
14 that right?

15 A We interviewed the victim right away.

16 Q I'm sorry, the victim?

17 A Yeah. We interviewed the victim right away to find out exactly what  
18 happened.

19 Q Okay. And where did you do that interview at?

20 A We do it at the Southern Nevada Children's Assessment Center.

21 Q So all these interviews, did they all happen at the CAC?

22 A Yes.

23 Q And how did the Defendant get from wherever he was to the CAC, if  
24 you know?

25

1           A     I'm not sure. Usually we have them transported by patrol to the  
2 CAC.

3           Q     So fair to say he likely did not drive himself there, he was likely  
4 already detained?

5           A     That's correct.

6           Q     And so you mentioned that your interview with the Defendant didn't  
7 really change anything in your opinion about the case? Is that fair?

8           A     He didn't provide any – he didn't confess to the allegations, but he  
9 didn't provide anything really that was – to explain, you know, why these  
10 allegations would have been made. For instance, I think I asked him several  
11 times in the interview, you know, why would somebody, you know, make these  
12 allegations against you, if he had any problems, and he didn't come up with  
13 anything.

14          Q     Okay. Are those questions that you would ask in cases like this  
15 because fair to say sometimes there's motives for kids to lie?

16          A     Yeah. I mean in some cases. Depending on the cases, but, yes.

17          Q     Okay. And so you – in addition to asking questions trying to get him  
18 to admit to the crime you also gave him an opportunity to explain any motives or  
19 misunderstandings? Is that fair?

20          A     That's correct.

21               MS. CLEMONS: Nothing further.

22               THE COURT: Anything else?

23               MR. SPEED: No, Your Honor.

24               THE COURT: Thank you, ma'am.

25                       May this witness be excused?

1 MR. SPEED: Yes, Your Honor.

2 MS. CLEMONS: Yes.

3 THE COURT: Thank you. You may be excused.

4 MR. SPEED: Your Honor, we'd call Detective Samples to the stand,  
5 please.

6 THE COURT: All right.

7 LAWRENCE SAMPLES,  
8 having been called as a witness, was duly sworn and testified as follows:

9 THE CLERK: Please be seated. Please state your name and spell  
10 it for the record.

11 THE WITNESS: It's Lawrence, L-a-w-r-e-n-c-e, Samples, S-a-m-p-l-  
12 e-s.

13 THE COURT: You may proceed.

14 DIRECT EXAMINATION

15 BY MR. SPEED:

16 Q Detective Samples, good afternoon. Do you recognize Mr. Gunera-  
17 Pastrana seated to my left?

18 A I do.

19 Q And in July of last year did you conduct an interview at the Children's  
20 Assessment Center with him?

21 A I did.

22 Q Were you a witness or did you have the opportunity to observe Mr.  
23 Gunera-Pastrana being interviewed by Detective Huth before your interview  
24 commenced?

25 A A portion of it.

1 Q And where did you observe Mr. Gunera-Pastrana's interview with  
2 Detective Huth?

3 A I was in my office observing it on my desktop.

4 Q And when you say observed on your desktop, was there a closed  
5 circuit camera or some sort of video recording device that was installed in the  
6 interview room that allowed you to see the interview at your office or at your work  
7 station?

8 A Yes.

9 Q And you were able to observe the interview in real-time?

10 A Yes.

11 Q Was there audio with that video recording?

12 A There was.

13 Q You could hear also?

14 A Yes.

15 Q Now, on the evening of – the afternoon of your interview were you  
16 wearing plain clothes or were you in a police uniform?

17 A Plain clothes.

18 Q And were you armed at the time?

19 A I was armed but it was covered.

20 Q Do you carry your service weapon in a hip holster or shoulder  
21 holster?

22 A Hip.

23 Q Do you have a backup weapon that you wear inside your cuff or on  
24 your ankle?

25 A I do not.

1 Q Did you wear one that evening, a backup weapon?  
2 A No.  
3 Q And you said that your weapon was covered by a jacket or a shirt or  
4 which?  
5 A A shirt.  
6 Q This interview took place in July; yes?  
7 A Yes.  
8 Q That would have been a short sleeve shirt?  
9 A I don't remember.  
10 Q Is there a video recording that's burned to a CD-ROM or – I'm dating  
11 myself a little bit here – a VHS tape that's available for viewing later on?  
12 A Should – to my belief there should be a DVD.  
13 Q A DVD. So the interviews are audio recorded and video recorded;  
14 yes?  
15 A Yes.  
16 Q And that would be a DVD of both Detective Huth's interview as well  
17 as yours?  
18 A Detective Huth could answer it better, but I believe so, yes.  
19 Q Have you had an opportunity to review any DVD that was recorded  
20 from your portion of the interview?  
21 A No.  
22 Q And you had a Spanish Interpreter present with you when you were  
23 speaking with Gustavo; yes?  
24 A Yes.  
25 Q Ms. Jimenez, if you remember her name?

1           A     Yes.

2           Q     And was she present with you the entire time?

3           A     She was.

4           Q     Are interpreters or translators armed when they are participating in  
5 these interviews with suspects typically in your experience?

6           A     Typically in my experience, no.

7           Q     Was Ms. Jimenez armed?

8           A     From what I could see, no.

9           Q     Now, you did not advise Mr. Gunera-Pastrana of his rights under  
10 *Miranda*, did you?

11          A     I did not.

12          Q     Do you have a card present with you or did you have a card present  
13 with you, a *Miranda* card present with you on the afternoon that you interviewed  
14 Gustavo?

15          A     I don't know if I had one in the room with me or not. I don't  
16 remember.

17          Q     But in any event you didn't advise him of his rights when you began  
18 speaking with him?

19          A     I did not.

20          Q     And in the course of your interview –

21               MR. SPEED: For the record, Your Honor, Detective Samples is a  
22 male.

23          Q     (By Mr. Speed) During the course of your interview you had  
24 occasion to touch Mr. Gunera-Pastrana, didn't you?

25               MS. CLEMONS: I'm going to object to leading.

1 Q (By Mr. Speed) Did you touch him during your interview or not,  
2 Detective?

3 A I do not remember without viewing the video to be honest.

4 Q And, Detective Samples, how tall are you?

5 A Approximately 5-10.

6 Q About 5-10. And are you from the Las Vegas area?

7 A I am not.

8 Q Where are you from originally?

9 A New Jersey.

10 Q From New Jersey. Did you participate in sports as a high school  
11 student?

12 A I did.

13 Q What sports did you play?

14 A Baseball.

15 THE COURT: What position?

16 THE WITNESS: I was a pitcher.

17 Q (By Mr. Speed) Any other sports?

18 A No, sir.

19 Q Did you play any college baseball?

20 A I did.

21 Q Where?

22 A Rider University.

23 Q Rider you said?

24 A R-i-d-e-r. I also played at Middlesex Community College and a short  
25 period at Richard Stockton College.

1 Q And is Rider University a Division I NCAA school?

2 A At the time it is. At that time it was.

3 Q And if I remember correctly, Division I baseball players – or Division I  
4 baseball at NCAA schools it's an equivalency sport, so baseball players don't  
5 necessarily have full scholarships. Did you have a full scholarship?

6 A I had a partial scholarship.

7 Q A scholarship athlete.

8 THE COURT: I'm just dying to know what the relevance of that is.

9 Q (By Mr. Speed) And when you started your interview with Mr.  
10 Gunera-Pastrana did you have an opportunity to review an arrest report?

11 A No.

12 Q Had an arrest report been completed at that time?

13 A No.

14 Q Do you remember whether Mr. Gunera-Pastrana was handcuffed to  
15 one of the security bars present inside the interview room?

16 A I don't remember without viewing the video.

17 Q Do you remember if he was in handcuffs at all on his hands or his  
18 ankles?

19 A I don't remember without looking at the video.

20 Q Did Mr. Gunera-Pastrana ever stand up during the interview?

21 A I don't believe so.

22 Q It was very clear during your conduct of the interview that you are, in  
23 fact, a larger man than Mr. Gunera-Pastrana; yes?

24 A We were both seated at the time.

25 Q You never stood up during your interview?



1           A     Coming in and out of the room, I believe.

2           Q     Coming in and out of the room you were able to observe that you're  
3 a clearly larger man than Mr. Gunera-Pastrana; yes?

4           A     I can't say yes or no.

5           Q     But you were armed; yes?

6           A     Yes.

7           Q     And you've just testified that you have experience as a Division I  
8 scholarship athlete; yes?

9           A     Yes.

10          Q     Consider yourself an athletic person?

11          A     Yes.

12          Q     And you did not advise Mr. Gunera-Pastrana of his right to remain  
13 silent or his right to consult with an attorney before you began questioning him?

14          A     I did not.

15          Q     You think it's fair to say that your presence was intimidating to Mr.  
16 Gunera-Pastrana?

17          A     No.

18          Q     You don't think that's fair?

19          A     I'm not an intimidating person. I didn't go in there as if I was being  
20 intimidating to him.

21          Q     You had a gun on you, didn't you?

22          A     That was not visible.

23          Q     To whom?

24          A     To whom? The people in the room.

25          Q     Did you ask Mr. Gunera-Pastrana if he could see your gun?

1           A     Not that I know of.

2           Q     You didn't do that, did you? Is that a no?

3           A     No.

4           Q     And how long have you been employed with the Metropolitan Police  
5 Department, Detective?

6           A     Ten and a half years.

7                 MR. SPEED: Court's indulgence, Your Honor.

8           Q     (By Mr. Speed) Detective, where is the microphone that records the  
9 audio portion of these interviews? Where is the microphone positioned?

10          A     I know there's a recorder on the desk and I don't know where the  
11 other audio system is installed in that room.

12          Q     So there is a microphone or a recorder on the desk where the  
13 interview was being conducted or where Mr. Gunera-Pastrana was seated; yes?

14          A     Yes.

15          Q     And if you could estimate for the Court about how large is the room?  
16 How many feet by how many feet?

17          A     I can't even estimate.

18          Q     Sure you can, Detective. The pitcher's mound is 60 feet, 6 inches  
19 from home plate. How big was the room that you had the interview in?

20          A     I wouldn't say it was that big --

21          Q     Right.

22          A     -- but I can't give you exact measurements.

23          Q     Estimate. You don't have to be exact.

24          A     I mean you have an open area with a small desk, table with chairs,  
25 and then it actually extends out past the camera view you can't see where it's

1 actually a larger walkway portion to walk outside of the room, so I wouldn't  
2 consider it a very small room.

3 Q And when you were questioning Mr. Gunera-Pastrana didn't you jab  
4 him on his thigh in order to elicit answers from him, responses from him?

5 MR. SPEED: And for the record, Your Honor, I used my middle  
6 finger to jab the table that I'm sitting at.

7 THE WITNESS: I don't – I don't make it a practice of jabbing people  
8 in the leg.

9 Q (By Mr. Speed) What would you call that?

10 A If – if I did touch him, which I don't remember without looking at the  
11 video, it wouldn't have been a jab, but, again, without looking at that video I can't  
12 testify if I touched him or not.

13 Q So you don't make it a practice to jab with a closed fist but there  
14 could have been some touching that took place; yes?

15 A In my past experiences sometimes I've touched people. I do not jab  
16 them. I place my hand on them.

17 Q And you placed your hand on Mr. Gunera-Pastrana?

18 A Again, without looking at the video I can't say if I did or didn't.

19 Q What about rubbing Gustavo on his thigh in a circular motion? Do  
20 you remember doing that?

21 A Again, without looking at the video I can't tell you exactly what I did  
22 or did not do.

23 Q So you could have, you just don't remember if you did without  
24 looking at the video?

25 A I can't even say I could have.

1 Q Do you remember asking him if he liked to rub his wife on the thigh in  
2 a circular motion like that?

3 A I don't remember asking that.

4 Q You said you've been with Metro ten and a half years. How long  
5 have you been a detective, Detective Samples?

6 A I've been assigned to the Juvenile Sexual Abuse section for two  
7 years and – next week will be two years and six months, and prior to that I did  
8 three years of investigative experience in our Problem Solving unit, so  
9 investigations for five years.

10 Q And in that time do you receive any sort of training or specialized  
11 training that helps you in your interviewing of suspects or teaches you how to  
12 interview suspects?

13 A I have.

14 Q Certain techniques to use; yes?

15 A Yes.

16 Q And isn't it true that part of that training one or several of the courses  
17 instructs a detective to build a rapport with the interviewee; yes?

18 A Yes.

19 Q And could you explain to the Court what building rapport means?

20 A Establishing an open line of dialogue between the interviewer and  
21 the person being spoken with.

22 Q And the primary objective of building that rapport is to make the  
23 suspect comfortable providing answers to your questions; right?

24 A It depends on the technique you follow but essentially if you want to  
25 say that.

1 Q So there are different techniques to building rapport or different  
2 techniques to interviewing suspects?

3 A Different techniques to interviewing people.

4 Q Do you have some names of those different techniques that you  
5 could share with the Court?

6 A There's a lot. There's a lot of different companies and techniques  
7 that teach – that they teach, so –

8 Q Which technique did you employ when interviewing Gustavo?

9 A The class that I have attended was the Carl Stincelli Class of  
10 Interview Interrogation.

11 Q Spell that for me, Detective.

12 A C-a-r-l, S-t-i-n-c-e-l, (sic) I want to say.

13 THE COURT: And that was Carlton – what was the rest of it?

14 THE WITNESS: It was Carl Stincelli. I can say it but I can't – the  
15 spelling is a little difficult.

16 THE COURT: Okay.

17 Q (By Mr. Speed) Is that two words? Is that like two names, Carlston  
18 and Celli?

19 A His name is Carl Stincelli.

20 Q Carl Stincelli. One person?

21 A Yes, sir.

22 Q And is he the instructor or is he the person who developed the  
23 technique?

24 A Developed the technique and I don't remember if he was my  
25 instructor.

1 Q To your knowledge is Mr. – is Carl Stincelli still alive? Do you know  
2 that?

3 A I couldn't even tell you.

4 Q You don't know that. And is another feature of this – the Carl  
5 Stincelli class or the Carl Stincelli technique to use physical features that you  
6 have to your advantage in trying to elicit responses from the interview subject?

7 A I don't understand your question.

8 Q If you're bigger than the person you're interviewing, isn't one of the  
9 features of the technique that you were taught and that you employed in  
10 interviewing Gustavo to hover over him?

11 A I don't remember that. I can't testify to that.

12 Q Do you provide choices to the interview subject?

13 A Again, I don't understand what --

14 Q Meaning if you tell me what I want to hear right now maybe I can  
15 help you out down the road.

16 A As in – I'm sorry, can you ask it again? I don't quite understand what  
17 you're saying.

18 Q Provide choices to the interview subject. If you tell me what I want to  
19 hear, if you answer my questions I'll help you out in whatever way I can down the  
20 road.

21 A I make no promises during the interviews.

22 Q But that's a technique that's taught to you in employing the Carl  
23 Stincelli technique; yes?

24 A Yeah. I don't recall that. I can't testify exactly what that technique is  
25 or –

1 Q It's the one that you used when you interviewed Gustavo; yes?

2 A Yes. But to that part I don't remember that specific part of it.

3 Q What about making the comparison between the interview subject  
4 and a monster?

5 A In what – are you talking about the technique or are you talking  
6 about –

7 Q Yeah. When you interviewed Gustavo do you remember making a  
8 comparison between Gustavo and a monster?

9 A I said there are two types of people that I interview, people who  
10 make mistakes and people that are monsters.

11 Q So you did make that comparison?

12 A I didn't make a comparison. I made that statement about the people  
13 that I interview, yes.

14 Q Do you remember telling Gustavo, I don't think you want to be a  
15 monster?

16 A Yes.

17 Q Do you remember telling him, I don't think you want to be known as a  
18 monster?

19 A Yes.

20 Q Do you remember asking Mr. Gunera-Pastrana questions about his  
21 children?

22 A I remember discussing his children.

23 Q And do you remember asking him something along the lines of what  
24 kind of an example you think you're setting for your children by lying to the  
25 police?

1           A     Yes.

2           Q     At that time you didn't know whether Gustavo was lying to the police

3 or not; right?

4           A     I don't know what he was thinking.

5           Q     You didn't know he was lying, right, that was your first time talking to

6 him?

7           A     Yes.

8           Q     And your questions that focus on a person's reputation with his

9 friends or his family members after lying to the police is part of your Carl Stincelli

10 technique; right?

11          A     No.

12          Q     It's not?

13          A     That was a conversation between myself and Gustavo.

14          Q     A conversation that was meant to elicit responses; yes?

15          A     Yes.

16          Q     You wanted to have Gustavo confess to something; yes?

17          A     I wanted Gustavo, if he committed a crime, to tell me he committed

18 that crime.

19          Q     And you used profanity with him; yes?

20          A     Yes, I believe so.

21          Q     Do you remember what words you used?

22          A     I don't.

23          Q     This is a bad one, Detective. This is the F word. Do you remember

24 telling Gustavo, and tell people like me to go F myself?

25          A     Yes.



1 Q So the use of hostile and aggressive language, is that also part of  
2 the techniques that you used or the techniques that you were taught?

3 A No. That was telling him what people told me in the past.

4 Q So that wasn't part of the technique, that was just you winging it;  
5 right?

6 A That was me conducting an interview with Gustavo.

7 Q Using profane and aggressive language?

8 A Repeating what people have said to me in the past, yes.

9 MR. SPEED: That's all I have, Your Honor.

10 MS. CLEMONS: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. CLEMONS:

13 Q Did you have an opportunity to review the transcript of your interview  
14 prior to court?

15 A Yes.

16 Q So while you didn't review the video you did get to review the  
17 transcript? Is that fair?

18 A Yes.

19 Q Was that a – the transcript, was it a fair and accurate depiction of  
20 that interview from your memory?

21 A Yes, it was.

22 Q You observed Detective Huth's interview; is that correct?

23 A I observed a portion of it.

24 Q And you said, I think, that was from your desktop monitor or  
25 something?

1 A Yes.

2 Q Did you observe the portion where she read him his *Miranda* rights?

3 A I don't remember.

4 Q What was your decision as to why you didn't read the Defendant

5 *Miranda*?

6 A Just on custody. There was no break in custody at the time.

7 Q What do you mean by that, there's no break in custody?

8 A There was – he wasn't released, he was still in the same room he

9 was in, the interview was still ongoing, Detective Huth came out and I entered to

10 continue the ongoing interview.

11 Q What was your role in this case, in the investigation?

12 A I just aided in the interview.

13 Q So other than speaking to the Defendant did you conduct any other

14 investigation in this case?

15 A No.

16 Q So it's fair to say Detective Huth is primary on this?

17 A Yes.

18 Q Do you recall the victim asking you – I'm sorry, the Defendant asking

19 you during this interview if he confessed would you let him go?

20 A Yes.

21 Q And what was your response to that?

22 A No.

23 Q You mentioned that in your past experiences that you would

24 occasionally use your hand to touch suspects.

25 A Yes.

1 Q Can you just describe in your past interviews what types of conduct  
2 that would be that you would do?

3 A The touching?

4 Q Yes.

5 A It would generally be placing my hand on their – just above the knee,  
6 thigh area or on the shoulder or on their heart.

7 Q And is that –

8 MR. SPEED: I'm sorry, Your Honor. I didn't hear the – did you say  
9 on their heart?

10 THE WITNESS: Yes. The chest area where their heart is.

11 Q (By Ms. Clemons) What is the purpose of doing that?

12 A It gets them comfortable – it gets the person I'm speaking with  
13 comfortable and to have a connection between myself and the person I'm  
14 speaking with.

15 Q Okay. So is it like a rapport type thing?

16 A Yes.

17 Q Did you ever threaten the Defendant during the interview?

18 A No.

19 Q Did you use any physical force on him like violent force or hitting?

20 A No.

21 Q Did he appear that he was injured in any way?

22 A No.

23 Q Did he appear that he was suffering from some type of like mental  
24 disability or just didn't know what was going on or where he was?

25 A No.

1 Q Did he appear to be under the influence of anything?

2 A No.

3 Q Did you make any promises to him about what would happen in this  
4 case?

5 A No.

6 Q And did you offer him water during the interview?

7 A I believe at the end of the interview. I'd have to check the transcript.

8 Q If the transcript indicated you offered him water then that would be  
9 accurate?

10 A Yes.

11 MS. CLEMONS: Nothing further.

12 THE COURT: Anything further?

13 REDIRECT EXAMINATION

14 BY MR. SPEED:

15 Q You don't know how long he had been detained before Detective  
16 Huth started speaking with him, do you?

17 A No.

18 MR. SPEED: That's all, Your Honor.

19 THE COURT: Did you have any understanding of approximately  
20 when he might have been arrested?

21 THE WITNESS: I did not. I was conducting – I had my own case  
22 going on and I was just asked to aid when this came up.

23 THE COURT: I see. Would you tell me again where are these  
24 places where you would touch somebody? The heart and what else?

25

1 THE WITNESS: Right here just where their heart is and the  
2 shoulders, the shoulder, whatever shoulder is on my side and then kind of just  
3 above the knee.

4 THE COURT: Above the knee?

5 THE WITNESS: Thigh area.

6 THE COURT: On the thigh? And that – that is supposed to  
7 establish some rapport with him?

8 THE WITNESS: Yes.

9 THE COURT: I must confess I've never heard of this – is it Carlton  
10 Celli?

11 THE WITNESS: Carl, C-a-r-l, and Stincelli.

12 THE COURT: Stincelli?

13 THE WITNESS: Stincelli.

14 THE COURT: Stincelli.

15 THE WITNESS: It's Interview and Interrogation Institute I want to  
16 say it's called, is the name of the company.

17 THE COURT: So is that someone that Metro sends you to a  
18 seminar to –

19 THE WITNESS: Yes. He travels all over the country and –

20 THE COURT: Oh, he comes to you?

21 THE WITNESS: -- one of his places is coming to Metro and  
22 teaching a class there.

23 THE COURT: Okay. Your report, the copy I have anyway, the  
24 transcript doesn't actually have a beginning time and ending time. Do you know  
25 beginning and ending?

1 THE WITNESS: I don't.

2 THE COURT: Would that – this is the only – there is no other report  
3 or anything by you, then?

4 THE WITNESS: By me?

5 THE COURT: Yeah. Just this voluntary statement transcript?

6 THE WITNESS: Yes, sir, just that.

7 THE COURT: That's the only one?

8 THE WITNESS: Yes.

9 THE COURT: All right. Thank you. Any other questions?

10 FURTHER REDIRECT EXAMINATION

11 BY MR. SPEED:

12 Q When you say you touch, Detective, is that open hand?

13 Let me back up a little bit. When I said jab earlier you said you  
14 don't jab.

15 A Yes.

16 Q I'm assuming here, and I could be wrong, that your understanding  
17 when I said jab was with a closed fist like a prize fighter might jab an opponent.  
18 You don't do that certainly; right?

19 A No.

20 Q But you just testified with the Court that you have in your experience  
21 touched interview subjects; yes?

22 A Yes.

23 Q On their shoulder, in the area above their knee and on their heart;  
24 yes?

25 A Yes.

1           Q     And you can't remember without consulting or reviewing the video of  
2 your interview with Gustavo, but it is possible that you could have touched him in  
3 one of those areas during your interview; yes?

4           A     Yes.

5           Q     Do you remember how you touched him? With an open hand? With  
6 a pointed finger? With your thumb? How did you touch? The butt of your palm?  
7 How did you touch?

8           A     I can't tell you exactly without watching the video on Gustavo.

9           Q     But it had to have been one of those ways, right, because you only  
10 touch with your hands?

11          A     Yes.

12          Q     So some way you touch with your hands?

13          A     Again, I can't tell you if or how I touched Gustavo.

14          Q     And I'm not asking specifically how. You've already testified that you  
15 can't remember that, but you did use your hands to make contact or build rapport  
16 as you described it with Gustavo; yes?

17          A     Again, as I said, I can't tell you if I did or did not without watching the  
18 video.

19          Q     But typically you do in your experience?

20          A     Typically I have.

21               MR. SPEED: That's all, Your Honor.

22               THE COURT: Anything else, Ms. Clemons?

23               MS. CLEMONS: Nothing.

24               THE COURT: Thank you.

25               THE WITNESS: Thank you.

1 THE COURT: You may – is this Officer excused, then?

2 MR. SPEED: Yes, Your Honor.

3 THE COURT: You're excused. Thank you.

4 THE WITNESS: Thank you.

5 THE COURT: Comments?

6 MR. SPEED: Your Honor, I believe that's everybody. Court's  
7 indulgence.

8 THE COURT: Okay.

9 MR. SPEED: Your Honor, as we laid out in our motion, I think it's  
10 very clear here -- and we've learned some things have been made even more  
11 clear after hearing the testimony of our three witnesses this afternoon -- that my  
12 client's will was completely overborne if not most apparently during the interview  
13 with the female detective, Detective Huth, then most certainly it was with the  
14 male detective, we'll call it the bad cop part of the team here.

15 Detective Samples testified that he is a former Division I  
16 scholarship athlete. He was the pitcher on his baseball team in college and in  
17 high school. In my experience the pitcher is probably the best athlete on the  
18 team. He used that experience, his athletic build, the Court was able to see him,  
19 and the presence of his service weapon on his hip, I believe that he carries a  
20 Glock 19 pistol, to interview and try to elicit responses to questions from my  
21 client, Gustavo Gunera-Pastrana.

22 THE COURT: He was the bad cop?

23 MR. SPEED: I think he was. He's the bigger one, he's the one who  
24 admitted that he couldn't remember necessarily using his hands or using any  
25 kind of physical force to build rapport, and I'll put that in air quotes, with Gustavo,



1 but typically in his experience that is one of the techniques that he uses in order  
2 to get interview subjects to confess to crimes which was borrowed directly from  
3 his testimony a few minutes ago. We also learned that Detective Samples  
4 neglected to advise Mr. Gunera-Pastrana of his constitutional rights under  
5 *Miranda*. We know that he did not see the entire interview that had taken place  
6 between my client and Detective Huth, the good cop, so he doesn't know and he  
7 couldn't testify with any certainty whether he remembers the interview subject  
8 being advised of his right to remain silent, his right to consult with an attorney  
9 before questioning or whether Mr. Gunera-Pastrana acknowledged that he  
10 understood those rights if they were read to him by Detective Huth or not.

11                   Only – the only thing that we heard this afternoon from  
12 Detective Samples, the larger more athletic more intimidating physical presence  
13 when compared to Detective Huth, who, again, was a female detective who was  
14 rather soft spoken in her testimony this afternoon, and I wouldn't imagine that her  
15 demeanor, her attitude, her – the tenor of her interview would have been too  
16 much different on the afternoon that she interviewed my client, we do hear that –  
17 or we did hear this afternoon that Detective Samples did not advise my client of  
18 his constitutional rights.

19                   That goes directly to the point that we raised in our motion in  
20 that his will was overborne. Any statements that were made certainly to Detective  
21 Samples must be suppressed because there's no way for us to know whether  
22 Gustavo understood that he had the right to remain silent before Detective  
23 Samples came into the room and started questioning him using this Carl Stincelli  
24 technique.

1 THE COURT: When – at what point would you say your client's will  
2 was completely overborne?

3 MR. SPEED: That's difficult to say because we didn't hear any  
4 testimony about how long Gustavo had been in custody. I have it on information  
5 and belief that he was arrested the mid-day or the afternoon prior to July 12<sup>th</sup>, so  
6 sometime on July 11<sup>th</sup>. Detective Huth testified that she remembers asking if he  
7 had had anything – if Gustavo had had anything to eat. Detective Samples, if I  
8 remember correctly, testified that he asked if Gustavo wanted something to drink,  
9 but neither Detective could give the Court any clear testimony about whether he  
10 had had any sleep, about whether he was employed, if he had had a long day at  
11 work the day before he was questioned by two English speaking police officers  
12 about an issue as serious as this and having been advised, at least in Detective  
13 Huth's memory, of his *Miranda* rights and whether he acknowledged an  
14 understanding of those or if he acknowledged – or if he understood them in any  
15 event.

16 So I think it's important here for the purposes of our motion for  
17 the Court to keep in mind that we don't know, we can't necessarily say at what  
18 point his will was overborne. My argument is that his will was overborne the  
19 minute he was taken to the Children's Advocacy Center or the Children's  
20 Assessment Center and interviewed by two detectives who had their service  
21 weapons with them, who were asking him questions about whether he sexually  
22 molested a step-child of his without giving any consideration to how long he'd  
23 been awake the night before, his level of education, if he'd had anything to eat  
24 necessarily or anything to drink. It seemed that those questions pertaining to  
25

1 those subjects particularly, whether he had had something to eat or something to  
2 drink, were perfunctory questions at best.

3 THE COURT: Maybe – maybe I’m missing something, but is there  
4 at any point in either of these transcripts that because – you could say that  
5 because your client’s will was overborne that he said something incriminating?

6 MR. SPEED: That’s going to be tough for me to say too, Your  
7 Honor. I don’t know how the State will excise pieces from these two transcripts  
8 and say, see here, ladies and gentlemen, this is where he clearly shows that he  
9 is conscious of his guilt or Detective Samples, in his experience, his ten and a  
10 half years as a problem solving and children’s sex detective with the Metropolitan  
11 Police Department can say that he recalls observing my client’s demeanor and it  
12 was at this point or this point or after I asked this particular question where I  
13 observed someone who was conscious of the fact that he had done something  
14 wrong and wanted to confess it to me.

15 So I can’t give the Court that kind of information without  
16 knowing – without being clairvoyant and knowing how the State intends on using  
17 these transcripts that we’re seeking to suppress.

18 THE COURT: Okay. Ms. Clemons?

19 MS. CLEMONS: Thank you, Your Honor. I’ll just be brief. I mean  
20 basically the test is the totality of circumstances test. These interviews were  
21 conducted one officer at a time. They both weren’t in the room at the same time.  
22 The first interview we have times on it. It’s one hour in length. While we don’t  
23 have a time on the second interview I believe it’s about the same – a little bit  
24 longer length in transcription pages, so it’s probably under two hours, you know,  
25 roughly around the same time. We’re not talking about a six hour interview.

1                   The Defendant was offered water with both interviews. Neither  
2 of the officers physically threatened him, used physical – violent physical force.  
3 The Defendant wasn't under the influence of anything. He was able to follow  
4 what was going on. He wasn't promised anything, and, in fact, Detective  
5 Samples told him the opposite. I mean at one point the Defendant says, well, if I  
6 just basically -- says, if I just confess to this can I go. And Detective Samples  
7 says no. He doesn't try to say, well, maybe, we'll see, you know. No. You're not  
8 – even if you tell me what I want to hear in theory you're not leaving.

9                   THE COURT: Do you have any indication of whether the Defendant  
10 was arrested that day on the 12<sup>th</sup> or the previous day?

11                  MS. CLEMONS: From the police report I have reason to believe  
12 that he was arrested on July 12<sup>th</sup> because the mother of the victim didn't call the  
13 police until July 12<sup>th</sup> after he had left for work, so I can't tell you how long he had  
14 been in custody, it might have been a couple hours, I don't know for sure, but  
15 because the event number is generated on July 12<sup>th</sup> and the police report is  
16 indicating the mom contacted the police on July 12<sup>th</sup> it would be virtually  
17 impossible for him to be arrested on the 11<sup>th</sup>.

18                  In terms of Detective Samples not reading him his *Miranda*  
19 rights, there isn't a requirement that says each officer has to individually read him  
20 his rights. The fact is he was read his rights. He did indicate he wanted to  
21 speak. Now, whether or not that was smart of Officer Samples to do an interview  
22 without guaranteeing he knew his rights is a different question. He kind of  
23 proceeds at his own peril at that point, but –

24                  THE COURT: So are you saying that that's what baseball players  
25 do?

1 MS. CLEMONS: I don't know anything about baseball players,  
2 though, but, you know, he wasn't required to re-read him his rights, and Detective  
3 Samples testified he was doing a second – kind of the second half of an  
4 interview. I'm sure he assumed the rights were read, not – again, not smart, but  
5 he proceeds at his own peril. That doesn't make what the Defendant said not  
6 admissible because of that fact. And regardless of all these techniques or  
7 whatever the defense is trying to say Detective Samples used, the Defendant  
8 was pretty adamant the entire time, I didn't do this, I didn't do this, nothing  
9 overbore his will because he didn't say anything incriminating.

10 We just want to reserve the option of if in trial it becomes  
11 necessary to use portions of the Defendant's statement because of however  
12 testimony comes out or if the Defendant takes the stand, that this Court finds a  
13 ruling that his statements were voluntary.

14 THE COURT: Okay. Mr. Speed, you're going tell me what position  
15 you played?

16 MR. SPEED: My eyesight isn't very good, Your Honor, so I only  
17 saw colors. As a Mike linebacker I only hit what was in front of me. That was the  
18 easiest way to instruct me as a teenager. We do have – in all seriousness,  
19 though, we do have a copy of an arrest report, and if I may approach. This is not  
20 part of the record, I did not attach it to my motion but I have a copy of an arrest  
21 report –

22 THE COURT: Show it to Ms. Clemons there too, will you?

23 MR. SPEED: We do have a copy of a police report that shows the  
24 occurred date or the date that's in a field marked occurred is July 11<sup>th</sup>.  
25

1 MS. CLEMONS: Well, and that would be the date the last time the  
2 victim stated she was molested because she indicated that the last incident was  
3 the day before.

4 THE COURT: And there's nothing else on here that gives us any  
5 further clue?

6 MS. CLEMONS: If you look on Page 6 on the bottom it says, on  
7 July 12<sup>th</sup>, approximately 900 hours, Gustavo left for work. Meili, which is the  
8 mother, contacted law enforcement.

9 THE COURT: I've got June 12<sup>th</sup>.

10 MR. SPEED: And these J months, days –

11 MS. CLEMONS: Yeah, give everybody trouble.

12 MR. SPEED: -- gave the Detectives a lot of trouble. And, again,  
13 Your Honor, I believe I mentioned this earlier. I have it on information and belief  
14 that my client was arrested, detained, held in custody for a number of hours. I  
15 can't say with any certainty here. I certainly can't make any representations as to  
16 a definite amount of time that he was detained, but I can say that when Detective  
17 Huth commenced her interview at approximately 3:05 in the afternoon of July 12<sup>th</sup>  
18 my client had been in custody for at least 12 hours before that time.

19 THE COURT: All right. Here's what I think that brings me to, then.  
20 As we know the State does bear the burden by a preponderance to establish -- I  
21 think both as to the *Miranda* and as to the voluntariness test it's difficult for me to  
22 do that and weigh all the factors. If there's one of the many factors you could  
23 consider which is unknown and if it were, shall we say, at its worst it would mean  
24 you have to account for not being deprived of food and water, et cetera, et  
25

1 cetera, so is it possible for the State to delve into that even if we had to  
2 reconvene?

3 MS. CLEMONS: About when he was taken into custody?

4 THE COURT: Yes.

5 MS. CLEMONS: I've actually just located the CAD report, so if I  
6 could just review that real quick and see –

7 MR. SPEED: And if this has some bearing, some impact on the  
8 Court's decision my suggestion would be for the Court to compartmentalize and  
9 view these two interviews with the detectives separately. We do know that  
10 Detective Huth did at least read from her *Miranda* – her department issued  
11 *Miranda* card but we do not have that and we did not have any testimony about  
12 Detective Samples.

13 THE COURT: Well, if it was back-to-back then absent any authority  
14 that says contrary I wouldn't – I wouldn't find that to be deficient, but you're  
15 correct, we really don't know when Samples' was done.

16 MR. SPEED: And we certainly can't tell whether it was back-to-back  
17 either, Your Honor, because Detective Samples didn't know how long his  
18 interview was. I know that very often when there is a break in the interview the  
19 transcription will not show – or the Court won't have an accurate idea of how long  
20 an interview actually was from looking at the page length of the transcription  
21 because when there's a break for however long the interview picks back up and  
22 the translation or the transcription picks back up on the same page.

23 So we could have a four hour interview that only takes up 60 or  
24 70 pages of text whereas we have a one hour interview that takes up the same  
25 amount of space, and Detective Samples testified that he was working on his

1 own case. We didn't hear any testimony about whether that was this case or  
2 whether that was an unrelated matter during the time Detective Huth was  
3 speaking with my client.

4 THE COURT: Well, I really still don't have a big problem supposing  
5 that there was some break in the middle of Samples' interview that means that  
6 hours went by, but I still think that it would make a difference to me if, in fact, the  
7 Defendant was arrested, for example, on the 11<sup>th</sup> and then held, as Mr. Speed  
8 would say, chained to a – some sort of a device. Let's do this. Let's go off the  
9 record for just a minute. You look at yours and see if you find anything.

10 MS. CLEMONS: I have the CAD and the date and time.

11 THE COURT: Okay. We'll come back on the record shortly. We're  
12 off the record.

13 (Whereupon, a brief recess was had from 3:13 p.m. to 3:17 p.m.)

14 THE COURT: All right. We're on the record. Ms. Clemons, did you  
15 find something there?

16 MS. CLEMONS: I did find the CAD report and I gave a copy to – or  
17 let Mr. Speed look at it because I don't think he had a copy of it, so this would be  
18 the report that was generated when the call came in. The date on it is 7-12-  
19 2016, they identify to coming in contact with the Defendant and they take him into  
20 custody at 11:13:34, so 11:13 a.m.

21 THE COURT: Okay. All right. Any reason we need to make that  
22 part of the record? I mean it frankly satisfies me that we don't have a factor that  
23 if it were otherwise might have some real impact on my decision, but –

24 MS. CLEMONS: It's up to the defense. If he'd like us to make a  
25 copy and admit it as an exhibit or –



1 MR. SPEED: My only concern here, Your Honor, is, again, I have it  
2 on information and belief that my client was arrested on the 11<sup>th</sup> of July and was  
3 held in custody for well over 12 hours by 3:00 o'clock. If the interview with  
4 Detective Huth, the initial interview where he was, in fact, advised of his rights  
5 correctly, at least from the testimony that we've received today occurred at 3:00  
6 o'clock in the afternoon, we know that he was in custody for well over 12 hours if  
7 my information is correct.

8 I have seen and reviewed the CAD log from the District  
9 Attorney that is in their file, included in their file right now. If the Court is satisfied  
10 with the representations that are contained in that document I will be to but I just  
11 want it to be clear, and I think it is at this point, that we believe that he was in  
12 custody for a much longer time than what appears to be indicated in the evidence  
13 that we've seen so far.

14 THE COURT: Here's my thinking. It would make a big difference to  
15 me -- I'm not saying that I would rule a particular way, but it would be something I  
16 would need to really take into account as I'm required to in doing a totality of the  
17 circumstances test, and the State bears the burden here. Perhaps we could do  
18 this. I will tell you what my ruling would be unless it turned out that you were  
19 correct, that he was in custody some 12 hours or any appreciable period during  
20 which the State could not show that he was fed, and, you know, allowed  
21 bathroom privileges or --

22 MR. SPEED: Deprived of sleep, et cetera.

23 THE COURT: Anything short of that -- or in other words, if that were  
24 -- if what the State has represented in what documents we have so far is correct  
25 then I would find from a totality of the circumstances that it was a voluntary

1 statement. That is particularly so – or maybe not particularly but it is – that  
2 conclusion is buttressed by the fact that when we make the argument that his will  
3 was overborne I see no evidence that his will was overborne. As far as I can tell  
4 he didn't really make any incriminating statement, he maintained his innocence  
5 throughout, so it's hard for me to see that there is some point at which -- really  
6 regardless of when he was taken into custody there was some point at which his  
7 will was entirely overborne and he began to make incriminating statements.

8 I understand it is true that any statement could under the right  
9 circumstances turn out to be incriminating, but I can only make these decisions  
10 based on the factors that we know, the factors at hand, the evidence that we  
11 know and the considerations that we know, so what I'm saying is that this is the  
12 conclusion I would come to if the State – so long as the State can show that he  
13 was not arrested some many hours before this interview took place. I think it  
14 does fall to the State, however, to put enough evidence in the record so that that  
15 – that's not – we're not guessing around at that.

16 MS. CLEMONS: Right. Other than the CAD report. I mean this is  
17 when the event number is generated. This is when he's taken into custody in this  
18 case. I can't go find something that doesn't exist. Obviously Mr. Speed has  
19 some information that he feels like this exists, so to put the burden on me to find  
20 something I don't even know what he's talking about and there's nothing in the  
21 record or my reports to indicate that --

22 THE COURT: The only reason I say the burden is on you is I think  
23 that under the totality of circumstances test it is for the State to show by a  
24 preponderance of the evidence, is it not?  
25

1 MS. CLEMONS: Right. And I have a CAD report saying when he  
2 was taken into custody on this case, so that is the only evidence that I can  
3 present because in all –

4 THE COURT: There's no other evidence anywhere?

5 MS. CLEMONS: -- honestly that is my – that is the only evidence  
6 that exists.

7 MR. SPEED: Might there be – and I would pose this question to the  
8 Court in hopes that Your Honor would pose it to the State. Might there be a  
9 video recording? These events were said to have taken place in the summer of  
10 last year. We understand that the Metropolitan Police Department has begun to  
11 use body cameras, video cameras that record the actions of their officers when  
12 they are making arrests or effectuating arrests. Might there be video footage of  
13 the actual time that Gustavo was arrested that would correspond to the times that  
14 are represented in the CAD logs that neither of us have been able to obtain at  
15 this point?

16 MS. CLEMONS: I mean I can certainly inquire as to whether there's  
17 body cam available, but just so everyone is clear that's going to be under this  
18 event number which was generated on July 12<sup>th</sup>, so it's not going to show  
19 anything that happens on July 11<sup>th</sup> because if this incident began on July 11<sup>th</sup> the  
20 event number would be July 11<sup>th</sup>. But I have no problem contacting our body  
21 cam people to see if there is body cam available, but my inclination is that it's  
22 going to support what the CAD already says. It's a certified copy.

23 MR. SPEED: Then would the Court withhold its ruling until we can  
24 have – and give us one week to research that particular issue, exactly when my  
25

1 client was arrested, taken into custody and detained and place that evidence in a  
2 – confirmatory evidence into the record in this hearing?

3 THE COURT: Yeah. Let's do that, then, I really say out of an  
4 abundance of caution.

5 MS. CLEMONS: That's fine.

6 THE COURT: With the report you have there and the event number  
7 that's given that probably satisfies preponderance of the evidence, but these  
8 things are – this is an important consideration. If you don't mind I would have  
9 you look around and see what else you can get to establish –

10 MS. CLEMONS: My understanding about body cam footage is that  
11 we can – if it exists I can provide the Defendant with – or the defense attorney  
12 with a link to view it, and I believe if you order it I can give you a hard copy in  
13 camera but we are not permitted to give hard copies to the defense attorneys for  
14 – that's the policy as I understand it right now.

15 MR. SPEED: We'd move for an order directing the Metropolitan  
16 Police Department to turn over any body cam footage from this arrest, and I  
17 won't confine that to this particular event number but from this arrest to the Court.

18 THE COURT: Why would it not serve the purpose for me to make  
19 that order but have it in chambers as opposed to turning it over to the defense?

20 MR. SPEED: That's fine. That will do for us.

21 MS. CLEMONS: Yeah. I don't think that's a problem. I just wanted  
22 to make it clear that everybody knows I can't give a hard copy to the Defendant –  
23 defense at this point. He can get a link to view it himself but I can give a hard  
24 copy to you just for in camera review.

1 THE COURT: Okay. And I think with that surely those – whatever  
2 they have the body cams must have a date and time on them showing –

3 MS. CLEMONS: We'll see if it exists. I don't know if it does or not.

4 MR. SPEED: I'll prepare that order, Your Honor.

5 THE COURT: All right. Now, rather than have us reconvene and  
6 commence anew it seems to me if I get – if I get – once I see that body cam one  
7 way or the other I should be in a position to make a ruling on whether the – by  
8 the preponderance of the evidence. I really don't see any need to reconvene.  
9 Do you, Mr. Speed? Do you want the Court to –

10 MR. SPEED: We've got – I know that our calendar call is coming  
11 close and I've received a memorandum, I believe – or an email from chambers  
12 saying that we've moved the date up on that calendar call. I think we were  
13 originally scheduled for March 3<sup>rd</sup> and now we're –

14 THE COURT: March 13th, I think, or for the trial I mean.

15 MR. SPEED: March 1<sup>st</sup>.

16 THE CLERK: We had to move the calendar call because of the  
17 dark week.

18 THE COURT: Yeah. Yeah. The week before our trial we'll be dark,  
19 so that's why we moved the calendar call forward but the trial still isn't until the  
20 13<sup>th</sup>, right? Yeah.

21 MR. SPEED: Calendar call, March 1<sup>st</sup>. I will have an order in the  
22 Court's chambers by Wednesday of next week. What date is that?

23 THE CLERK: That's March 1<sup>st</sup>.  
24  
25

1 MR. SPEED: Wednesday is March 1<sup>st</sup>. I'll have an order in the  
2 Court's chambers by Monday of next week so that when we appear at calendar  
3 call I'll be able to make some representations about my readiness at that point.

4 THE COURT: All right.

5 MR. SPEED: Is that acceptable?

6 MS. CLEMONS: That's fine.

7 THE COURT: Works for me.

8 MR. SPEED: And an order for the transcript of today's proceedings,  
9 Your Honor, how quickly can we have that produced? How about the JAVS  
10 recording? That will do.

11 THE COURT: Yeah. Okay.

12 MR. SPEED: An order for the JAVS, I can provide the Court with a  
13 CD or the Court's staff with a CD or can you make one for us? I'll pick that up  
14 tomorrow afternoon.

15 THE COURT: All right. Anything else?

16 MS. CLEMONS: I don't think so.

17 MR. SPEED: That is all, Your Honor. Thank you very much.

18 (Whereupon, the proceedings concluded.)

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

 —  
LISA A. LIZOTTE  
Court Recorder



1 **RTRAN**

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4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

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7 THE STATE OF NEVADA, )  
8 )  
9 Plaintiff, ) CASE NO. C318461-1  
10 vs. ) DEPT. NO. 1  
11 )  
12 GUSTAVO GUNERA-PASTRANA, )  
Defendant. )

13  
14 **BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE**  
15 **WEDNESDAY, MARCH 1, 2017 AT 9:51 A.M.**

16 **RECORDER'S CERTIFIED TRANSCRIPT RE:**  
17 **CALENDAR CALL**

18 **APPEARANCES:**

19 **FOR THE STATE:** AMY L. FERREIRA  
20 Chief Deputy District Attorney  
21 **FOR THE DEFENDANT:** KEVIN C. SPEED  
22 Deputy Public Defender  
23 **ALSO PRESENT:** RICARDO PICO  
24 Spanish Interpreter

25 Recorded by: LISA A. LIZOTTE, COURT RECORDER



1 (WEDNESDAY, MARCH 1, 2017 AT 9:51 A.M.)

2 THE CLERK: Page 9, the State of Nevada versus Gustavo Gunera-  
3 Pastrana, Case Number C318461.

4 THE COURT: Good morning.

5 MR. SPEED: Kevin Speed for Mr. Gunera-Pastrana who is present  
6 in custody, and he is appearing with the assistance of the Spanish Interpreter. If  
7 the Court could trail our calendar call for a few minutes, Mr. Gunera-Pastrana  
8 does need the Spanish Interpreter's assistance and there has been a final offer  
9 of negotiation conveyed by the State. I need to communicate that with him.

10 MS. FERREIRA: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MS. FERREIRA: Amy Ferreira on behalf of the State. That's all  
13 correct, Your Honor.

14 THE COURT: Okay. We'll recall it.

15 MS. FERREIRA: Thank you, Your Honor.

16 (Whereupon, the matter was trailed and then recalled at 10:11 a.m.)

17 THE CLERK: Recalling Page 9, the State of Nevada versus  
18 Gustavo Gunera-Pastrana, Case Number C318461.

19 THE COURT: All right.

20 MR. SPEED: Turning to the record in this case, Your Honor, Kevin  
21 Speed for Mr. Gunera-Pastrana who is present in custody. I did have a chance  
22 to convey the offer to him and Mr. Gunera-Pastrana is rejecting that, however, at  
23 this time I hesitate to announce ready. The Court is aware that we still have a  
24 number of issues, housekeeping issues still pending before Your Honor. We  
25 have the *Jackson v Denno* hearing and the motion for the discovery of the body

1 warn camera footage by the Metropolitan Police Officers. Now, I have had a  
2 chance to review the footage that was obtained by the DA's office from Metro,  
3 and I don't know if the Court has seen that footage or not or if a copy was given  
4 to Your Honor in chambers but that body cam footage also does not have a date  
5 stamp, so we're still in, I guess, the same situation that we were in last week.

6 Also I submitted an order for discovery from our January  
7 motion for a discovery hearing where the Court issued rulings on a number of the  
8 items that we were asking for and I don't know if the Court received those yet or  
9 not either.

10 (Court conferring with Law Clerk.)

11 THE COURT: It's possible, always possible that we have it but we  
12 don't think we do, so if you wouldn't mind submit another one and we'll --

13 MR. SPEED: I'll submit those again.

14 THE COURT: And have you -- there's no problem with the wording  
15 of the order? The State is okay with it?

16 MR. SPEED: With the order for the body cam footage there was no  
17 problem with that. With the order for discovery I did have to recall what the  
18 Court's rulings were on each of the items that we asked for and I did submit  
19 those in the motion. The DA's office indicated that it could not give us approval  
20 on those because there were no minutes in the Odyssey system that would  
21 reflect what the Court's rulings actually were. As an Officer of the Court, I'll  
22 represent here that I wrote down everything that Your Honor announced when  
23 we were asking for the different items and I tried to memorialize that in my  
24 proposed order as directly as I could, but --  
25

1 THE COURT: All right. If you'll get us the order, we'll get on it and  
2 review the record to see that it is accurate –

3 MR. SPEED: Certainly.

4 THE COURT: -- in accordance with what was actually said, so am I  
5 getting the correct message that you want to continue the trial?

6 MR. SPEED: I know that my client does not want to but we're  
7 probably left with little choice at this point, Your Honor, and there also – Mr.  
8 Gunera-Pastrana has also represented to me that there have been a number of  
9 statements -- contradictions in statements from the complaining witness made in  
10 Family Court, so we'll have to obtain the transcripts from any Family Court  
11 hearings where the complainant has changed her testimony or altered her story  
12 in some way.

13 THE COURT: So we're now looking at more like six week? Two  
14 months? Three months? Something like that?

15 MR. SPEED: Perhaps.

16 THE COURT: Any preference for you?

17 MS. FERREIRA: I do not have a preference. Defense counsel's  
18 pleasure.

19 THE COURT: How far out do you want to go?

20 MR. SPEED: I just heard that the next stack, the ordinary course  
21 stack is July 26<sup>th</sup> with trial beginning July 31<sup>st</sup>, and I have a firm setting with Mr.  
22 Hamner in another department on that date.

23 THE COURT: If you have to get a transcript – well, no. You might  
24 be able to get it done by then.

1 MR. SPEED: How long is that end of July stack? Is it a full week  
2 stack?

3 THE COURT: It should be five unless we've got – unless we're dark  
4 for some reason during that. I don't think we are.

5 THE CLERK: Well, that's the middle of the stack. The stack started  
6 May 22<sup>nd</sup> but I have a firm trial setting, so you have three weeks from June 5<sup>th</sup> in  
7 that stack.

8 MR. SPEED: Court's indulgence.

9 THE COURT: Too many decisions.

10 MR. SPEED: So that my client doesn't languish in jail any longer  
11 than necessary, give us the June date or the June setting and we'll try to get  
12 something done.

13 THE COURT: Trial time estimate within a week?

14 MR. SPEED: Not with –

15 MS. FERREIRA: No.

16 MR. SPEED: -- three days for trial or starting court at 1:30. This  
17 one will probably take two weeks, very similar to Mr. Maningo and Mr. Slife's trial  
18 last week.

19 THE COURT: All right.

20 MS. FERREIRA: And, Your Honor, I do have several trials set at  
21 the beginning of June, but we can go ahead and set this one and we'll try to work  
22 around whatever scheduling issues we have.

23 THE COURT: All right. Okay.

24 THE CLERK: Calendar call is May 31<sup>st</sup> at 9:00 a.m. Trial stack is  
25 June 5<sup>th</sup> at 1:30 p.m.

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MS. FERREIRA: Thank you, Your Honor.

THE COURT: All right. Thank you.

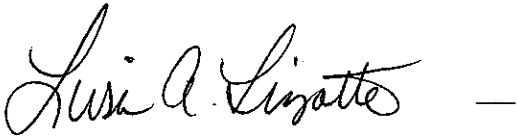
MR. SPEED: And I'll resubmit those – I'll bring the two orders to the  
Department 1 drop off box.

THE COURT: Okay. Excellent. Thank you.

(Whereupon, the proceedings concluded.)

\* \* \* \* \*

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



LISA A. LIZOTTE  
Court Recorder



1 **RTRAN**

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4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

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7 THE STATE OF NEVADA, )  
8 )  
9 Plaintiff, ) CASE NO. C318461-1  
10 vs. ) DEPT. NO. 1  
11 )  
12 GUSTAVO GUNERA-PASTRANA, )  
Defendant. )

13  
14 **BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE**  
15 **WEDNESDAY, MAY 31, 2017 AT 9:45 A.M.**

16 **RECORDER'S CERTIFIED TRANSCRIPT RE:**  
17 **CALENDAR CALL**

18 **APPEARANCES:**

19 **FOR THE STATE:** MICHELLE Y. JOBE  
20 Chief Deputy District Attorney  
21 **FOR THE DEFENDANT:** KEVIN C. SPEED  
22 Deputy Public Defender  
23 **ALSO PRESENT:** CARLOS CALVO  
24 Spanish Interpreter

25 Recorded by: LISA A. LIZOTTE, COURT RECORDER

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(WEDNESDAY, MAY 31, 2017 AT 9:45 A.M.)

THE CLERK: Page 5, the State of Nevada versus Gustavo Gunera-Pastrana, Case Number C318461.

THE COURT: We have our Spanish Interpreter. Thank you.

MR. SPEED: Good morning, Your Honor. Kevin Speed for Mr. Gunera-Pastrana who is present in custody.

THE COURT: Good morning.

MS. JOBE: Good morning, Your Honor. Michelle Jobe standing in for Amy Ferreira for the DA's office.

THE COURT: Good morning.

MR. SPEED: This was the time set for our calendar call, Your Honor. I was not prepared to announce ready. We're still waiting for the delivery of some outstanding discovery. We're also waiting for the Court to execute an order to the Department of Family Services, CPS, for their notes in relation to the case, but before we drill down into all of that I believe Mr. Gunera-Pastrana has some representations that he wants to make with the Court.

THE COURT: Mr. Gunera-Pastrana, is there something that you want to address with the Court?

THE DEFENDANT: Of course. This counsel told me last time that I was not going to go to trial. What is – what is the issue? He – he – he stated that he talked to the District Attorney and there was a misdemeanor case.

MR. SPEED: Let me say for the record, Your Honor, before he continues I've never received a misdemeanor offer in this case. The Court is familiar with what kind of cases I represent clients on and a misdemeanor offer was not forthcoming.

1 THE COURT: Mr. Gunera – hold on one second. Mr. Gunera, you'll  
2 need to discuss whatever it is you want with your attorney first, then if you need –  
3 if you need any matter for us to hear here he can put it on calendar with a  
4 motion.

5 THE DEFENDANT: I understand that. I understand. The issue is  
6 that he does not visit me. I've been here for a year.

7 THE COURT: Well, Mr. Speed, do you care to respond to that or  
8 no?

9 MR. SPEED: No, Your Honor.

10 THE COURT: All right.

11 MS. JOBE: Your Honor –

12 THE COURT: Yes, go ahead.

13 MS. JOBE: -- about the CPS records, Your Honor. The State sent  
14 the order to the Court and so as soon as we get it back we'll send it to CPS to get  
15 the records.

16 THE COURT: All right.

17 (Court conferring with the Law Clerk.)

18 THE COURT: All right. I guess we just received it. All right. We'll  
19 get that out to you today.

20 MS. JOBE: Thank you, Your Honor.

21 THE COURT: And so does that mean we can reset in normal  
22 course or –

23 MR. SPEED: I heard the Court give a January date to another  
24 party. I understand a party is in another trial. Ms. Ferreira did indicate that she  
25



1 would be out of the jurisdiction the end of October beginning of November, so  
2 that January date would probably work best for both of us.

3 MS. JOBE: And that's correct, and just for a complete record, Your  
4 Honor, the State has no objection to the continuance but would have been ready  
5 if we were going to trial.

6 THE COURT: All right.

7 THE CLERK: How many days for trial?

8 MR. SPEED: Probably five days.

9 MS. JOBE: Ms. Ferreira estimates one to one and a half weeks.

10 THE COURT: Is this – when you say five days you mean five full  
11 days?

12 MR. SPEED: Monday through Friday, yes.

13 THE COURT: Well, are you taking into account the hearings, the  
14 morning calendars or are you saying five full days?

15 MR. SPEED: Well, that's – well, five full days, Your Honor. Then  
16 two judicial weeks.

17 THE COURT: All right. We'll jot that down.

18 THE CLERK: So the calendar call will be January 17<sup>th</sup>, 9:00 a.m.  
19 Jury trial January 22<sup>nd</sup>, 1:30 p.m.

20 MS. JOBE: Thank you.

21 MR. SPEED: Thank you.

22 THE COURT: All right.

23 THE DEFENDANT: Excuse me, Your Honor.

24 THE COURT: Yes.

25 THE DEFENDANT: I have one question.

1 THE COURT: You need to communicate through your Interpreter.  
2 THE DEFENDANT: I would like to know if – I don't know if the video  
3 – if the video from the Detective was seen or not and I would like to know that.  
4 THE COURT: Was seen by whom?  
5 THE DEFENDANT: By you, by the Judge.  
6 THE COURT: By me? No. That would be at trial.  
7 THE DEFENDANT: Oh, okay.  
8 THE COURT: He'll speak to you about it.  
9 THE DEFENDANT: Could I discuss that with my attorney, then,  
10 please?  
11 THE COURT: Yes, certainly. You may discuss it with your attorney.  
12 If he feels the need to put anything back on calendar he can.  
13 MR. SPEED: Thank you, Your Honor.  
14 MS. JOBE: Thank you, Your Honor.  
15 (Whereupon, the proceedings concluded.)

16 \* \* \* \* \*  
17 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
18 audio/visual proceedings in the above-entitled case to the best of my  
19 ability.

20  —  
21 LISA A. LIZOTTE  
22 Court Recorder  
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1 **RTRAN**

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4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**  
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7 THE STATE OF NEVADA, )  
8 )  
9 Plaintiff, ) **CASE NO. C318461-1**  
10 vs. ) **DEPT. NO. 1**  
11 )  
12 GUSTAVO GUNERA-PASTRANA, )  
13 )  
14 Defendant. )

15 **BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE**  
16 **MONDAY, JANUARY 8, 2018 AT 9:25 A.M.**

17 **RECORDER'S CERTIFIED TRANSCRIPT RE:**  
18 **DEFENDANT'S MOTION IN LIMINE FOR AN ORDER EXCLUDING**  
19 **IMPERMISSIBLE EVIDENCE**

20 **APPEARANCES:**

21 **FOR THE STATE:** **AMY L. FERREIRA**  
22 **Chief Deputy District Attorney**  
23 **FOR THE DEFENDANT:** **KEVIN C. SPEED**  
24 **Deputy Public Defender**  
25 **ALSO PRESENT:** **MARIA GOMEZ**  
**Spanish Interpreter**

Recorded by: LISA A. LIZOTTE, COURT RECORDER

1 (MONDAY, JANUARY 8, 2018 AT 9:25 A.M.)

2 THE CLERK: Page 22, the State of Nevada versus Gustavo  
3 Gunera-Pastrana, Case Number C318461.

4 MS. FERREIRA: Good morning, Your Honor. Amy Ferreira on  
5 behalf of the State.

6 THE COURT: Good morning.

7 MR. SPEED: Good morning, Your Honor. Kevin Speed for Mr.  
8 Gunera-Pastrana who is present in custody.

9 THE COURT: Good morning. I don't have an opposition.

10 MS. FERREIRA: That's correct, Your Honor. I don't have an  
11 opposition to Mr. Speed's motion because certainly that's what the law requires,  
12 that I file a motion if I want to get into a bad act. The only thing I would say about  
13 that is certainly if Mr. –

14 THE INTERPRETER: I'm sorry. I'm sorry, Your Honor. The  
15 Interpreter is unable to hear.

16 THE COURT: Okay. All right. We'll clear out everybody in between  
17 and then you can hear better. Go ahead.

18 MS. FERREIRA: The State does not have an opposition. I believe  
19 that Mr. Speed's motion comports with the state of the law. The only thing that I  
20 would say is if for some reason Mr. Speed were to open the door to any of those  
21 factors that I would, of course, want to bring them in, so the State is not offering  
22 them in its Case in Chief. The State has no intention of presenting that to the  
23 jury. I would just caution obviously defense counsel who knows better than  
24 anyone that if he were to open the door to it then I'd be able to get into it.

25 THE COURT: Correct statement, Mr. Speed?

1 MR. SPEED: That is correct, Your Honor, and we understand that  
2 by – or my understanding of opening the door would be if Mr. Gunera-Pastrana  
3 were to take the witness stand and testify in his own defense and bring up issues  
4 of prior domestic violence or anything that we consider to be a bad act that we  
5 address in our motion.

6 My only concern with that, however, is we understand that the  
7 complaining witness in this case, her mother is also an undocumented resident of  
8 the United States and that is an important part – I won't say critical at this point  
9 but an important part of our defense. We believe that her status as a resident, an  
10 illegal resident is part of the basis of her motivation to coach her daughter to  
11 fabricate the allegations against my client.

12 THE COURT: So I assume that you would be – what you're saying  
13 is you want to be able to get into that with the mother?

14 MR. SPEED: That's right.

15 THE COURT: I don't think that –

16 MS. FERREIRA: I think he's entitled to get into her immigration  
17 status inasmuch as it could be fabrication to motivate, however, I think that  
18 there's, you know, so far you can go without crossing the line into what would  
19 open the door.

20 THE COURT: It is possible to cross the line and open the door.  
21 That's something we'll just have to resolve at trial, I think.

22 MR. SPEED: Also, Your Honor, we've seen that back in May of  
23 2017, last year, that the Court signed off on an ex-parte order for the release of  
24 Department of Family Services and Child Protective Services records. Has the  
25

1 Court received those at this point? We're getting close to calendar call and I  
2 need to have seen everything that the Court has seen.

3 THE COURT: I do not know the answer to that question as we sit  
4 here. Those records were coming to us? We'll have to check.

5 We can check that today and let him know.

6 We'll let you know today if we have received anything.

7 MR. SPEED: And after that, Your Honor, I understand after  
8 speaking with my client that there are records in the custody of the Family Court  
9 that we will need to see. The Court will have to sign an order directing the – I  
10 guess the custodian of records or the Clerk of the Family Court, if that's the  
11 County Clerk, to release those records to us.

12 THE COURT: Has your client waived the 60 days?

13 MR. SPEED: Yes. He's been in custody for almost 18 months, so,  
14 yes.

15 THE COURT: All right. Well, then the effect is we're going to wind  
16 up continuing this trial, then, and I would prefer to do it today if you're prepared to  
17 set a new trial date rather than wait for the calendar call to do it because I can  
18 cycle you back in quicker that way.

19 MR. SPEED: Right.

20 THE COURT: So those things considered we'll vacate the trial date,  
21 and how soon do you think you could be ready to go?

22 MR. SPEED: All of that depends on when we are able to obtain the  
23 records that we need that we're seeking with our motions.

1 THE COURT: Then perhaps what we should do is set a status  
2 check out 30 days or something, see if you've got the stuff you need and at that  
3 point we can set the trial.

4 MR. SPEED: Instead of setting two dates, Your Honor, might I  
5 suggest that we set the status check for the calendar call date already  
6 scheduled, the 17<sup>th</sup>, that's two weeks from now or –

7 THE COURT: Yeah. That doesn't give a lot of time if you're talking  
8 about getting further records from Family Court.

9 MR. SPEED: Well, this is the only matter that's on my calendar for  
10 the month of January, so this has been where all of my efforts have been  
11 focused. So I'll do everything that I can in the next few days.

12 THE COURT: All right. So on the 17<sup>th</sup> we'll do a status check and  
13 probably reset the trial on that day.

14 MR. SPEED: All right.

15 MS. FERREIRA: Just for clarification, Your Honor, are you vacating  
16 the trial date today?

17 THE COURT: Yes. Yes.

18 MS. FERREIRA: Okay. Thank you.

19 THE COURT: Trial is vacated. We'll reset on the 17<sup>th</sup> presumably.

20 MS. FERREIRA: Thank you.

21 MR. SPEED: And I'll present to the Court an order granting our  
22 motion in limine.

23 THE COURT: And we'll let you know, as I said, whether we've  
24 received anything from CPS you said?

25

1 MR. SPEED: CPS and the Department of Family Services. This is  
2 in response to an order filed on May 31<sup>st</sup> of 2017.

3 THE COURT: All right. We'll check that and let you know.  
4 Anything else?

5 MR. SPEED: That is all, Your Honor. Thank you.

6 THE COURT: Thank you.

7 THE DEFENDANT: May I speak, Your Honor?

8 THE COURT: I think you should talk to your attorney first.

9 THE DEFENDANT: I have some papers in my hand that come  
10 directly from the Judge that I had before Your Honor.

11 THE COURT: Mr. Speed, do you know what he's talking about?

12 MR. SPEED: We did discuss some paperwork that my client says  
13 that he obtained from the Family Court. That's what I'm seeking with this recent  
14 motion, this most recent motion for discovery, so if this is the same thing then  
15 we've achieved a little bit more than I thought we would by today's date.

16 THE COURT: Okay. All right. You need to – you need to – you  
17 need to just give those to your attorney so he can use them in your defense.

18 THE DEFENDANT: I'm sorry, Your Honor, but my previous Judge  
19 told me that I didn't have to give these papers to my attorney but to the Judge  
20 directly.

21 THE COURT: I am unaware –

22 THE DEFENDANT: I would like Your Honor to see them.

23 MS. FERREIRA: And, Your Honor, I would obviously object to any  
24 ex-parte review of documents I haven't seen.

25 THE COURT: Mr. Gunera – is it Gunera?



1 THE DEFENDANT: Yes.

2 THE COURT: I would advise you that you share those with your  
3 attorney who will know what to do with them. It does you no good to show them  
4 to me. The State has objected and I think they're correct. I'm not supposed to  
5 review any papers like that at this point in the case. Okay?

6 THE DEFENDANT: I'm having a lot of issues with my attorney.

7 THE COURT: That's interesting. You happen to have a very fine  
8 attorney helping you, so I'm having a lot of trouble thinking that your attorney is  
9 not doing what he's supposed to do. In any event you need to cooperate with  
10 your attorney and do what you can through him. If you're not happy with him you  
11 can talk to him and he'll know what to do about it.

12 THE DEFENDANT: I'm the one who has to do something about it. I  
13 already expressed one time that I have issues with him.

14 THE COURT: Mr. Speed, do you know – are you aware of what  
15 he's talking about?

16 MR. SPEED: I am, Your Honor, and my client has also advised that  
17 he attended the university in Honduras, so he is capable of representing himself  
18 if it comes down to that. I would prefer that it did not because of issues that I  
19 won't delve into right now but he has expressed that he has problems with me  
20 personally.

21 THE COURT: And I assume that if he talks to you and says the  
22 things that you deem appropriate you would file a motion to deal with that  
23 situation.

24 MR. SPEED: That is correct.  
25

1 THE COURT: All right. Mr. Gunera, you're going to need to talk to  
2 your attorney including about whatever problems you have with him, and he will  
3 know what to do, then, to deal with that problem.

4 THE DEFENDANT: Okay.

5 THE COURT: All right.

6 MS. FERREIRA: Thank you, Your Honor.

7 THE COURT: Thank you. So just for the record, you're not going to  
8 give those papers to your attorney?

9 THE DEFENDANT: No.

10 THE COURT: Even though it hurts you in your defense?

11 THE DEFENDANT: It's not going to hurt me. They're signed.

12 THE INTERPRETER: Your Honor, for the Interpreter what was the  
13 date, please?

14 THE COURT: On the 17<sup>th</sup> we will – that's our calendar call date but  
15 on that date we will – it's vacated as a calendar call. It's a date for a status check  
16 regarding whether Mr. Speed has obtained those other documents that he spoke  
17 of, and at that time we'll reset the trial as well.

18 MR. SPEED: And, again, those are records from the Family Court.  
19 I have had my investigator subpoena those. I anticipate that either the Clerk or  
20 the Chief Judge of the Family Court will reply to our subpoena with a letter saying  
21 to obtain a Court order from Your Honor, and we'll be here later this week trying  
22 to secure that.

23 THE COURT: We'll be happy to sign the order.

24 MR. SPEED: Thank you.

25 THE COURT: All right. Thank you.

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(Whereupon, the proceedings concluded.)

\* \* \* \* \*

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

 —  
LISA A. LIZOTTE  
Court Recorder



1 **RTRAN**

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4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

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7 THE STATE OF NEVADA, )  
8 )  
9 Plaintiff, ) CASE NO. C318461-1  
10 vs. ) DEPT. NO. 1  
11 )  
12 GUSTAVO GUNERA-PASTRANA, )  
Defendant. )

13  
14 **BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE**  
15 **WEDNESDAY, JANUARY 17, 2018 AT 9:55 A.M.**

16 **RECORDER'S CERTIFIED TRANSCRIPT RE:**  
17 **STATUS CHECK: RESET TRIAL DATE**

18 **APPEARANCES:**

19 **FOR THE STATE:** AMY L. FERREIRA  
Chief Deputy District Attorney  
20  
21 **FOR THE DEFENDANT:** KEVIN C. SPEED  
Deputy Public Defender  
22  
23 **ALSO PRESENT:** MARIO TORRES  
Spanish Interpreter  
24

25 Recorded by: LISA A. LIZOTTE, COURT RECORDER

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(WEDNESDAY, JANUARY 17, 2018 AT 9:55 A.M.)

THE CLERK: Page 3, the State of Nevada versus Gustavo Gunera-Pastrana, Case Number C318461.

MS. FERREIRA: Good morning, Your Honor. Amy Ferreira on behalf of the State.

THE COURT: Good morning.

MR. SPEED: Good morning, Your Honor. Kevin Speed for Mr. Gunera-Pastrana. He is present in custody.

THE COURT: Good morning. And do we need the name of our Interpreter?

THE INTERPRETER: Mario Torres, Your Honor, also on file.

THE COURT: Reset trial date. What do you think? Has your client waived?

MR. SPEED: He has waived, Your Honor. The spring and the summer are pretty full for me, and I heard the Court say with Mr. Kocka its trial calendar for the next few months. We won't be able to – I won't be able to follow Mr. Kocka's trial in July. I'm thinking September perhaps.

THE CLERK: You're going to go into next year. You're going to end up there anyways.

MR. SPEED: In that case, then, I'll have to set it for July, but I –

THE COURT: Well, I don't know if that's an availability now, is it?

MR. SPEED: -- don't want my client to languish any longer, but I'll have to set it and we'll –

THE CLERK: We don't have anything.

1 THE COURT: We don't have any more July settings. That was the  
2 last one we gave up.

3 MR. SPEED: What about August?

4 THE CLERK: August we already have firm trial settings --

5 MR. SPEED: June?

6 THE CLERK: -- that are like three weeks at a time.

7 MR. SPEED: Can we go earlier in the summer, perhaps June?

8 THE CLERK: We have a firm trial setting already.

9 THE COURT: We're just absolutely slammed for trials. That's the  
10 best we can do.

11 MR. SPEED: Give me the earliest setting and we'll do what we can.

12 THE CLERK: Calendar call --

13 MR. SPEED: I'll do what I can.

14 THE CLERK: Calendar call will be December 12<sup>th</sup> at 8:45 and the  
15 trial is set for January 7<sup>th</sup> at 1:30.

16 MS. FERREIRA: Thank you.

17 MR. SPEED: We were also waiting, Your Honor, on the Court to  
18 inform us what hay it's made with the records from the Department of Family  
19 Services and Child Protective Services.

20 THE COURT: Was I supposed to do something?

21 MR. SPEED: Yes. The Court was going to let us know if it had  
22 received those records and reviewed them. There was an ex-parte motion and  
23 order signed by the Court in May of last year, and when we last appeared Your  
24 Honor was going to inform us whether it had received those records or not.  
25

1 THE COURT: Well, while we don't think we have received them we  
2 will make research – we'll search again and see. If we have them we'll deal with  
3 it.

4 MR. SPEED: Can we return for a status check, then, on the 22<sup>nd</sup>,  
5 the day that our trial was set to begin because we have to find out what's going  
6 on with that? We've got the Department of Motor Vehicles and the Clark County  
7 School District under subpoena.

8 THE COURT: All right. Come back the 22<sup>nd</sup>, we'll deal with that.

9 THE CLERK: Mr. Speed?

10 MR. SPEED: Yes.

11 THE CLERK: You're requesting this month, January?

12 MR. SPEED: Yes.

13 THE CLERK: Okay. January 22<sup>nd</sup> for a status check, 9:00 a.m.

14 MS. FERREIRA: Thank you.

15 THE CLERK: How long is this trial for?

16 MR. SPEED: Five days.

17 THE COURT: Is that five full trial days? Is that what you're saying?

18 MR. SPEED: Yes.

19 THE COURT: All right. So that translates into two weeks for us.

20 MS. FERREIRA: Yeah. I think with jury selection –

21 MR. SPEED: Two weeks?

22 MS. FERREIRA: Yeah, I think.

23 MR. SPEED: Also, Your Honor, there was the issue that my client  
24 raised the last time we appeared about some records that he had in his  
25 possession that he wanted the Court to review that Mr. Gunera-Pastrana refused

1 to turn over to me. I don't know if today is a good day for him to share those  
2 things or not.

3 MS. FERREIRA: And, Your Honor, I would object as I did at the last  
4 court hearing. That's not the appropriate process. He's supposed to give it to his  
5 attorney. I haven't had the opportunity to review it. It would be completely  
6 inappropriate for the Court to review information provided by the Defendant.

7 MR. SPEED: The problem that we have with that, Your Honor, is  
8 when we were last here in court Your Honor asked Mr. Gunera-Pastrana to share  
9 that information with me and he flat out refused to do that. Now we're in a  
10 situation where his trial date has moved into the next year, and it's difficult for me  
11 to prepare for his trial without my client sharing that information with me, he says  
12 information that could prove exculpatory.

13 THE COURT: Mr. Gunera, do you go by Gunera or Gunera-  
14 Pastrana?

15 THE DEFENDANT: Gunera.

16 THE COURT: Mr. Gunera, is it still your desire to turn over some  
17 records to the Court?

18 THE DEFENDANT: No. I'm given trial, either be tomorrow or the  
19 day after. Yeah. What I want is trial a month – within a month, two months. It's  
20 the same to me. I've been in custody for 18 months.

21 THE COURT: I'm speaking of the papers now. Are there papers  
22 that you had a desire –

23 THE DEFENDANT: That's his job. I understand, I do, but that's his  
24 job.



1 THE COURT: You know what, I can't – I can't – I can't make it out.  
2 You're going to have to – you speak a little softer, Mr. Gunera, and let the  
3 translator speak a little louder and let's see if we can get it.

4 THE DEFENDANT: Perfect. The issue is that I don't have an  
5 understanding with him. Let's say he makes his own decisions. He doesn't talk  
6 to me regarding the trial.

7 THE COURT: All right. So you don't have some documents that  
8 you want to turn over to the Court, is that correct?

9 THE DEFENDANT: Of course I do.

10 THE COURT: You do?

11 THE DEFENDANT: Not now.

12 THE COURT: All right. Well, here's what you need to understand.  
13 I cannot accept documents from you that are not shared with both of the  
14 attorneys. That would be an ex-parte communication since I'm the trial Judge. I  
15 cannot take it. You're supposed to give anything you have that will help in your  
16 defense to your attorney.

17 THE DEFENDANT: The issue is that he's against me, he did so --  
18 and if he tries to beat me up again I'm not going to raise my hands.

19 THE COURT: Wait, wait, wait, wait, wait. I'm not sure I'm  
20 understanding this. Are you saying that your attorney is going to beat you up? Is  
21 that what you're saying?

22 THE DEFENDANT: Exactly. He hit the table. He almost hit me. I  
23 told him I wanted the minutes from the Court and I have the documents from the  
24 Family Court, so I wonder what's the problem. I just need him to be switched  
25

1 because if he does something against me I will respond to that. I've been very  
2 patient.

3 THE COURT: Any suggestions?

4 MR. SPEED: The State could offer a misdemeanor.

5 THE COURT: Other than that.

6 Mr. Gunera, you need to – you need to learn to deal with your  
7 attorney.

8 THE DEFENDANT: I mean do I have to learn to let him beat me as  
9 well?

10 THE COURT: You know, I don't even know whether to – whether to  
11 attempt to deal with that. Mr. Speed, safe to say you've never tried to hit your  
12 client?

13 MR. SPEED: No. Certainly not in the detention center.

14 THE COURT: Are you even having contact visits?

15 MR. SPEED: Yes. Yes. We did have a visit on January 5<sup>th</sup>. That is  
16 the visit that he's referring to.

17 THE COURT: Here's your problem, Mr. Gunera. Let me just tell  
18 you what your problem is trying to – trying to walk down this road. Mr. Speed  
19 happens to be an excellent attorney. I have no question that he can adequately,  
20 competently and with excellence represent your interests in this case.

21 THE DEFENDANT: I do understand but he didn't help me well  
22 throughout the Preliminary Hearing. I have the minutes of that proceeding. If  
23 Your Honor wants I can send that to immigration. I have no problem with it.

24 THE COURT: If Your Honor wants I can what?  
25

1 THE DEFENDANT: I can send all of the minutes to immigration just  
2 like he said back from the 8<sup>th</sup> of January --

3 THE COURT: You know, I'm sorry. I just --

4 THE DEFENDANT: -- asking me if I have some immigration issues.

5 THE COURT: This is not working. With both of you speaking I'm  
6 winding up not getting the message in English.

7 THE DEFENDANT: What I want is to avoid him getting ahead with  
8 the process of my proceedings.

9 THE COURT: Avoid what?

10 THE DEFENDANT: I understand that he has a good record with  
11 you, but what I don't want is for me to keep him in these proceedings.

12 THE COURT: You don't want him?

13 THE DEFENDANT: No.

14 THE COURT: Mr. Speed, I don't know if you want to --

15 THE DEFENDANT: I just want a speedy trial.

16 THE COURT: -- file a motion or not. I'm not going to respond to  
17 these kind of allegations from him but if you feel it requires filing a motion I'll  
18 certainly entertain it.

19 If you decide that you have something to present to the Court  
20 please do it through your attorney, otherwise I cannot view it, I cannot read it, I  
21 cannot listen to it.

22 THE DEFENDANT: I just want a different lawyer.

23 THE COURT: You're not getting it today.

24 All right. Anything else, Mr. Speed?

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MR. SPEED: I believe that is all, Your Honor. I'll see you on the 22<sup>nd</sup>.

THE COURT: All right. I'll see you on the 22<sup>nd</sup>.

MS. FERREIRA: Thank you, Your Honor.  
(Whereupon, the proceedings concluded.)

\* \* \* \* \*

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

 —  
LISA A. LIZOTTE  
Court Recorder



1 **RTRAN**

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4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

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7 THE STATE OF NEVADA, )  
8 )  
9 Plaintiff, ) **CASE NO. C318461-1**  
10 ) **DEPT. NO. 1**  
11 vs. )  
12 )  
13 GUSTAVO GUNERA-PASTRANA, )  
14 )  
15 Defendant. )

16 **BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE**  
17 **MONDAY, JANUARY 22, 2018 AT 9:27 A.M.**

18 **RECORDER'S CERTIFIED TRANSCRIPT RE:**  
19 **STATUS CHECK: RECORDS**

20 **APPEARANCES:**

21 **FOR THE STATE:** **BRYAN S. SCHWARTZ**  
22 **Deputy District Attorney**

23 **FOR THE DEFENDANT:** **KEVIN C. SPEED**  
24 **Deputy Public Defender**

25 **ALSO PRESENT:** **XIMENA FIENE**  
**Spanish Interpreter**

**Recorded by: LISA A. LIZOTTE, COURT RECORDER**

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(MONDAY, JANUARY 22, 2018 AT 9:27 A.M.)

THE CLERK: Page 4, the State of Nevada versus Gustavo Gunera-Pastrana, Case Number C318461.

MS. FERREIRA: Good morning, Your Honor. Amy Ferreira on behalf of the State.

MR. SPEED: Good morning, Your Honor. Kevin Speed for Mr. Gunera-Pastrana. He will need the assistance of an Interpreter.

THE COURT: Do we have an Interpreter present?  
(Judge speaking Spanish to the Defendant.)

THE COURT: We're going to wait for the Interpreter.

MR. SPEED: Thank you, Your Honor.

THE COURT: We'll recall it.

(Whereupon, the matter was trailed and then recalled at 9:56 a.m.)

THE CLERK: Page 4, the State of Nevada versus Gustavo Gunera-Pastrana, Case Number C318461.

THE COURT: Okay.

MR. SCHWARTZ: Your Honor, I'm going to go see if Ms. Ferreira is out here.

THE COURT: Yes. And, for the record, the name of our Interpreter is –

THE INTERPRETER: Ximena Fiene, Certified Court Interpreter, Spanish.

THE COURT: Thank you.

MR. SCHWARTZ: Your Honor, Ms. Ferreira must have stepped out if I could text her real quickly.

1 MR. SPEED: This was on for a status check, Your Honor, for the  
2 Court to let us know the status of its CPS and Family Services records review.

3 THE COURT: Yeah. It's not – I don't think that's a matter of  
4 argument today.

5 MR. SPEED: Right.

6 THE COURT: So if you're okay to proceed we will, otherwise we'll  
7 wait.

8 MR. SCHWARTZ: I'm okay to proceed. I just don't know if Ms.  
9 Ferreira wanted to be here for any particular reason.

10 THE COURT: All right. Well –

11 MR. SCHWARTZ: I just texted her. Maybe if we could just trail it for  
12 one or two cases and then –

13 THE COURT: We'll trail it for a few minutes.

14 MR. SCHWARTZ: Thank you, Your Honor. I appreciate that.

15 THE COURT: Let us know when it's ready to go.

16 (Whereupon, the matter was trailed and then recalled at 10:10 a.m.)

17 THE CLERK: Recalling Page 4, the State of Nevada versus  
18 Gustavo Gunera-Pastrana, Case Number C318461.

19 THE COURT: State ready to proceed?

20 MR. SCHWARTZ: And, Your Honor, I did tell the defense I haven't  
21 heard from Ms. Ferreira, so if there's nothing you believe we need her for I'll  
22 stand in and then we can recall it if she had something else she wanted to add.

23 THE COURT: There was – there was previously argument on the  
24 motion and the Court granted the motion to the extent that any of these  
25 documents from Family Court would be found to be material taking into account

1 also that the material includes whether they may be useful as impeachment  
2 evidence. The Court – now, we need to clear up our record here. Previously the  
3 Court had ordered it back in June. It appears that the record that's been – now  
4 been presented to the Court shows that that was complied with and that, in fact,  
5 the documents were -- apparently they may have been delivered to my court.

6 I am somewhat guessing here at what happened, but the date  
7 that it shows that that came in would have coincided with the changing of the  
8 guards, so to speak, with my Law Clerks. What I believe happened, though I  
9 can't confirm it, is my previous Law Clerk received it and it was not handed off to  
10 the new Law Clerk so that we didn't know that we had it. In any event the Court  
11 has received a complete copy. It's over a hundred pages long. I have gone  
12 through the pages. I can show you – if Ms. Ferreira was here I would have  
13 shown her everything that has a paperclip or a yellow Post-it is a page that I  
14 would – that I found to be material.

15 It turns out that most of the remaining pages are simply – they  
16 don't communicate anything, they're kind of filler, so I am going to turn over a  
17 copy of the entire file. Some of the pages are material because they simply  
18 provide evidence that might be – might be useful on impeachment. There are  
19 other pages that are clearly material because of the – they discuss directly the  
20 events that we are dealing with, therefore, I am going to turn over a copy of the  
21 entire file that I've received that does also include a CD of some of these  
22 hearings. I will make those available. I will make a copy each for the State and  
23 for the defense and I should have those ready by tomorrow.

24 MR. SPEED: Outstanding. Thank you, Your Honor.  
25



1 THE COURT: And that – as far as I know that’s all we’re doing here  
2 today, is that correct?

3 MR. SPEED: That is all.

4 MR. SCHWARTZ: Thank you.


5 THE COURT: All right. That will be the order.

6 MR. SPEED: Thank you.

7 (Whereupon, the proceedings concluded.)

8 \* \* \* \* \*

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

12  —

13 LISA A. LIZOTTE  
14 Court Recorder  
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1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

CASE#: C-16-318461-1

9 Plaintiff,

DEPT. XXVIII

10 vs.

11 GUSTAVO ADONAY  
12 GUNERA-PASTRANA,

13 Defendant.

14 BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE  
15 WEDNESDAY, JANUARY 2, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING**  
17 **CALENDAR CALL**

18  
19 APPEARANCES:

20 For the State:

SANDRA K. DIGIACOMO, ESQ.  
Chief Deputy District Attorney

21  
22 For the Defendant:

KEVIN C. SPEED, ESQ.  
Deputy Public Defender

23 Also Present:

RICARDO PICO  
Spanish Interpreter

24  
25 RECORDED BY: JUDY CHAPPELL, COURT RECORDER

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Las Vegas, Nevada, Wednesday, January 2, 2019

[Case called at 9:21 a.m.]

THE COURT: I have that we need an interpreter.

THE CLERK: He's present.

MR. SPEED: We do, Your Honor. Good morning.

Kevin Speed for the defendant, Gustavo Gunera-Pastrana, who is present, in custody.

THE COURT: All right.

MS. DIGIACOMO: Sandra DiGiacomo on behalf of the State.

THE COURT: 318461.

THE CLERK: And the agent.

THE COURT: What's that?

Sir, what's your name?

THE DEFENDANT: Gunera.

THE COURT: No, the interpreter.

THE INTERPRETER: Ricardo Pico, Spanish interpreter.

THE COURT: Okay. Thank you.

This is on for the calendar call.

MR. SPEED: It is, Your Honor. Again, Kevin Speed for Mr. Gunera-Pastrana, who is present, in custody. This was the time set for calendar call. I was preparing to announce ready this morning, but was surprised in returning from the holiday vacation with a motion to squash a subpoena duces tecum that was issued by our office by, I

1 guess it was about to be a party in the case now, the Immigrant Home  
2 Foundation. We were asking Immigrant Home for information pertaining  
3 to efforts to remain in the United States by the complaining witness's  
4 family in this case. I understand that the hearing on their motion is set for  
5 January 23<sup>rd</sup>. Because it appears that they have information that will be  
6 crucial to our defense, I cannot announce ready this morning. And – and  
7 the fact that they're undertaking to keep that information secret from us.

8 THE COURT: State.

9 MS. DIGIACOMO: Well State's ready to go, again, this  
10 morning. And there is information in the reports about the mom. I  
11 believe the kids are citizens, but I'm not positive. But the mom's trying to  
12 get a U-Visa to be able to stay here. So I presume that's what  
13 Mr. Speed is looking for.

14 THE COURT: And the mom is a witness?

15 MS. DIGIACOMO: That is correct.

16 MR. SPEED: That is correct.

17 MS. DIGIACOMO: Mom of the victim. The defendant's  
18 former partner.

19 THE COURT: And so you want to ask her if she's seeking  
20 whatever the –

21 MS. DIGIACOMO: The U-Visa? Yes, I had intended to ask  
22 her that.

23 MR. SPEED: And because she is not in the best position to  
24 cooperate with us, she's accusing my client of abusing the child –

25 THE COURT: I get that.

1 MR. SPEED: -- that she does not share with him. They have  
2 other children in common. She's not --

3 THE COURT: Well if you're asking that -- to divulge to use his  
4 impeachment that she's seeking a, this UV, and she's going to tell, she's  
5 going to, she's willing to admit that, what else --

6 MR. SPEED: We don't know what she's willing to admit, Your  
7 Honor. I haven't questioned her about it and she hasn't been friendly  
8 with us or cooperative with us thus far. That's why we subpoenaed the  
9 Immigrant Home Foundation in the first place. Because we haven't been  
10 able to get the information that we're looking for --

11 THE COURT: What would the Immi --

12 MR. SPEED: -- out of the mother of the victim.

13 THE COURT: What would the Immigrant Home Foundation,  
14 what evidence would they have other than maybe they helped her with  
15 processing this.

16 MR. SPEED: It's a basis for --

17 THE COURT: Which is hearsay.

18 MR. SPEED: It describes her motivation to make the  
19 allegation, her motive to fabricate the allegation against my client.

20 THE COURT: All right. Is she going to admit that she --

21 MS. DIGIACOMO: Your Honor, I have her coming in  
22 tomorrow, to meet with her. I've never spoken to her because I picked  
23 up this case from another deputy. But it's in the reports that she was  
24 seeking it and so it's my information and belief that, yeah, she's going to  
25 say that she is trying to get this Visa status.

1 MR. SPEED: But there's no way for us to know that for sure,  
2 Your Honor. We don't know what she's going to admit to. Especially if  
3 making a claim of sexual abuse against my client is being used as a  
4 reason to remain in the United States particularly –

5 THE COURT: And what is – I'm --

6 MR. SPEED: -- in this political climate.

7 THE COURT: -- still not understanding. What is it you could  
8 get out the Immigrant Home Foundation?

9 MR. SPEED: Her information. Her information.

10 THE COURT: They're not the federal government, are they?  
11 So if she applied, how would this Immigrant Home Foundation, which I  
12 assume allows, I guess, I have no idea, but your – is that where she's  
13 staying?

14 MR. SPEED: There could – well I don't know that either.  
15 There could very well be documents that we can use as impeachment  
16 evidence, as extrinsic evidence of her statements, her efforts to remain in  
17 the United States. If we call her to the witness stand or within the State's  
18 pretrial interview with this witness, she says, no, I haven't done anything  
19 with the Immigrant Home Foundation, then we're stuck with that unless  
20 we have documents that can impeach that testimony.

21 MS. DIGIACOMO: And, Your Honor, just – I've never seen  
22 what his subpoena was requesting so I'm not even sure what he's  
23 requesting, but it sounds to me that there could be attorney-client  
24 privilege as well with the home found – Immigration [sic] Home  
25 Foundation. If –

1 MR. SPEED: That seems to be –  
2 MS. DIGIACOMO: -- they're the ones –  
3 THE COURT: All right. You're talking to her tomorrow –  
4 MS. DIGIACOMO: Correct.  
5 THE COURT: -- and you're going to inquire if she's seeking  
6 the – is it U2? Whatever –  
7 MS. DIGIACOMO: U-Visa, yes.  
8 MR. SPEED: U-Visa.  
9 THE COURT: -- the immigr – the Visa. And if she's going to  
10 testify that she is, that's what you want to inquire in, I don't see any  
11 reason for a delay. I'm not sure what – well, without even going into this  
12 and we could hear this on Wednesday, the motion to quash, but what  
13 information they may or may not have, if they're not – they're not a  
14 government entity, correct?  
15 MR. SPEED: They work very closely with a government  
16 entity, Your Honor, and the argument would be analogous to the State.  
17 And I realize that the District Attorney's office is a government entity. But  
18 it would be analogous to this body having possession, custody and  
19 control of documents that are prepared by, submitted to the federal  
20 government for these kinds of immigrants to obtain the Visa that they're  
21 seeking.  
22 MS. DIGIACOMO: But it seems to me –  
23 THE COURT: All right.  
24 MS. DIGIACOMO: -- they're like a Legal Aid office. They're –  
25 THE COURT: Yeah, exactly.

1 MS. DIGIACOMO: -- an attorney's office.  
2 THE COURT: All right. I'm --  
3 MR. SPEED: But that would be --  
4 THE COURT: -- much more --  
5 MR. SPEED: -- the argument for --  
6 THE COURT: -- skeptical.  
7 MR. SPEED: -- the Immigrant Home Foundation to make.  
8 THE COURT: All right. I'm -- is this going to take a week?  
9 MS. DIGIACOMO: It's going probably go over a week.  
10 MR. SPEED: I'm certain that it will, Your Honor.  
11 THE COURT: All right. Well, then, we're going to have a  
12 status check on Wednesday. Right now, we're going to, it's going to  
13 be -- I have one that's invoked.  
14 THE CLERK: Yeah, well, Wednesday would be after this --  
15 THE COURT: We'll find out what --  
16 MS. DIGIACOMO: Yeah, today is Wednesday, Your Honor.  
17 THE COURT: Oh, right, because of the --  
18 MR. SPEED: Right.  
19 MS. DIGIACOMO: The holiday.  
20 MR. SPEED: And, also, Your Honor, I understand that this  
21 motion to squash has been filed and we haven't heard from counsel from  
22 the Immigrant Home Foundation. So I don't want to make any  
23 representations that we are arguing on their behalf or allow another party  
24 in the case to say what should or should not occur when this intervening  
25 party has filed a motion.



1 THE COURT: Well, they're not a party to the case.  
2 MR. SPEED: I understand.  
3 THE COURT: But – and I certainly understand that. All right.  
4 So the –  
5 MR. SPEED: Again, this is set for the 23<sup>rd</sup>.  
6 THE COURT: -- the one – oh, it's, oh I thought it was next  
7 week. Wait – oh, --  
8 MS. DIGIACOMO: No, no, the trial's next week.  
9 THE COURT: -- the motion is set for the 23<sup>rd</sup>.  
10 MR. SPEED: Right.  
11 MS. DIGIACOMO: Correct.  
12 MR. SPEED: Our trial –  
13 THE COURT: The trial is still --  
14 MR. SPEED: -- is set to begin Monday.  
15 THE COURT: -- set.  
16 MR. SPEED: That's why I'm having a difficult time  
17 announcing ready, Your Honor.  
18 THE COURT: I understand all of that. Again, tell me why, if  
19 the witness is going to testify that she is seeking this Visa, what other  
20 information you could possibly either acquire or that would be admissible  
21 from the Immigrant Home Foundation?  
22 MR. SPEED: Respectfully, Your Honor, the Court is  
23 assuming that this witness is going to testify the way that –  
24 THE COURT: If –  
25 MR. SPEED: -- Your Honor imagines.

1 THE COURT: -- they represent that she is and somehow she  
2 testifies otherwise, then it would probably be a mistrial. And so, although  
3 we would be wasting some time, it's not likely that she's going to, if she  
4 represents to the State one thing that she changes her mind before she  
5 takes the stand. Correct?

6 MR. SPEED: Again, Your Honor, respectfully, I do not want to  
7 overstep my paygrade here and say that the Court is operating under the  
8 assumption that witnesses in these kinds of trials will always testify the  
9 way that they represent with the State in their pretrial meetings. And if  
10 the Court is saying that if she does happen to do that, which I've seen  
11 many, many times in my career that the Court will automatically grant a  
12 mistrial, then I believe Ms. DiGiacomo will have something to say about  
13 that.

14 THE COURT: I think -- all right, this certainly seems like  
15 unnecessary spinning our wheels, but because I do --

16 We do have that one that's invoked, right?

17 THE CLERK: Yes, we do, uh-huh. That's page 12.

18 THE COURT: So we --

19 MS. DIGIACOMO: Do you want us --

20 THE COURT: -- and I don't know --

21 MS. DIGIACOMO: -- do you want us to just trail?

22 THE COURT: -- what's doing on that. But we'll have to,  
23 obviously that takes priority. I will bump this to the next stack and we'll  
24 deal with the motion on the 23<sup>rd</sup>.

25 THE CLERK: Well -- oh you want the next stack?

1 THE COURT: Next stack, yeah.

2 THE CLERK: Okay. So the next stack would be, trial would  
3 be March 18<sup>th</sup>, 10:30, with calendar call March 11<sup>th</sup> at 9.

4 MS. DIGIACOMO: Court's indulgence.

5 THE COURT: All right. And this is a 2016 so it's going to go.  
6 I don't think you've been present when I told you, my mandate in taking  
7 over criminal was a year to trial. And this is way past that. So unless  
8 barring something certainly unforeseen, we're going to go.

9 Did you have a conflict or something?

10 MS. DIGIACOMO: That's what I was trying to check, but I –

11 THE COURT: Go ahead and check because I just got  
12 through saying barring –

13 MS. DIGIACOMO: Right.

14 THE COURT: -- any.

15 MS. DIGIACOMO: And actually that week I'm fine.

16 THE CLERK: Okay. You need dates again?

17 THE COURT: Is that okay with you? You checked your –

18 MR. SPEED: Your Honor, if the Court has a mandate we will  
19 get this done as –

20 THE COURT: Well, but I'm --

21 MR. SPEED: -- as quickly as we can.

22 THE COURT: -- saying if you check your calendar, if you  
23 have something that's already, I don't, you know, I – I certainly and we  
24 can give you another date on that stack. But once we do that, it's going  
25 to go.

1                   Isn't it great everybody can just check their phones now to.

2                   MR. SPEED: It appears that I'll be going back-to-back, I have  
3 a trial set to begin on 4 March, but we'll do what we have to do. So that  
4 date seems fine.

5                   THE CLERK: Okay. March 18<sup>th</sup>, 10:30, is trial.

6                   THE COURT: Okay.

7                   MS. DIGIACOMO: 10:30?

8                   THE CLERK: Yes.

9                   MS. DIGIACOMO: Thank you. Trial date vacated?

10                  THE CLERK: Yes.

11                  THE COURT: Yes, in the – yeah.

12                  MR. SPEED: Now because we're in –

13                  Hold on, Sandy, before you leave.

14                  Because we're in an odd position with intervenors in this case,  
15 Your Honor, does the Court expect for defense counsel to respond to  
16 Immigrant Home Foundation's motion to quash?

17                  THE COURT: In this case, yes, because – well, first of all,  
18 they're not, I haven't seen anything that they're intervening.

19                  MR. SPEED: Right.

20                  THE COURT: They filed a motion to quash the subpoena,  
21 which they can do as a third party, and you're the one that is saying you  
22 want the subpoena. You issued the subpoena.

23                  MR. SPEED: Right.

24                  ...

25                  ...

1 THE COURT: So, yes, you need to oppose it. The same as  
2 in a civil case.

3 [Hearing concluded at 9:34 a.m.]

4 \* \* \* \* \*

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

22   
23 \_\_\_\_\_  
24 Judy Chappell  
25 Court Recorder/Transcriber



1 RTRAN

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 GUSTAVO GUNERA-PASTRANA,

10 Defendant.

CASE NO. C-16-318461-1

DEPT. XXVIII

11  
12 BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE

13 WEDNESDAY, JANUARY 23, 2019

14 **RECORDER'S TRANSCRIPT OF HEARING:**

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

16  
17 APPEARANCES:

18 For the State:

GENEVIEVE CRAGGS, ESQ.  
Deputy District Attorney

19  
20 For the Defendant:

KEVIN C. SPEED, ESQ.  
Deputy Public Defender

21  
22 Also present:

Kathia I. Pereira, Esq.  
Immigration Home Foundation

23 Jeff Hanks

24 Certified Spanish Interpreter

25 RECORDED BY: JUDY CHAPPELL, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, January 23, 2019

2 [Hearing began at 10:13 a.m.]

3  
4 THE COURT: C318461. The PD is representing him it says.

5 MS. CRAGGS: Yes, Your Honor. And Genevieve Craggs for  
6 the State, Your Honor. The State's just an interested party in this action,  
7 but I believe Ms. Pereira from the Immigration Home Foundation is here.

8 THE COURT: Oh.

9 MS. CRAGGS: She filed the oppositions.

10 MS. PEREIRA: Your Honor, Kathia Pereira for the Immigrant  
11 Home Foundation.

12 THE COURT: All right. And let's get your name again for the  
13 record.

14 THE INTERPRETER: Jeff Hanks.

15 THE COURT: Thank you. Spanish Interpreter.

16 This is --

17 MR. SPEED: And good morning, Your Honor, I'm sorry, Kevin  
18 Speed for the Public Defender's Office. We represented Mr. Gunera-  
19 Pastrana.

20 THE COURT: Thank you.

21 And this is on for a motion to quash the subpoena. Do you  
22 have anything else to add? Sorry. I didn't -- it's your motion. Oh, that's  
23 right.

24 MS. PEREIRA: It's my motion.

25 THE COURT: It's your motion. You have anything else to

1 add? I've read this.

2 MS. PEREIRA: No, Your Honor. I actually want to ask that  
3 you take the amended -- the amended motion that I filed as my reply  
4 'cause it should have been a reply. And just ask this Court to please  
5 allow me not to turn the file to the -- to the -- to the other party because  
6 I'm trying to protect the rights of my client. I am bound to keep this  
7 information confidential.

8 But most importantly as a victim, I ask that you please look  
9 into the amendment of the Nevada Constitution that specifically bolster  
10 the rights of victims to prevent the Defendant from having any  
11 information about the whereabouts of my client.

12 THE COURT: This is your file?

13 MS. PEREIRA: Well, the Immigrant Home Foundation is a  
14 non-profit that I -- for which I work pro bono for the past ten years. And  
15 so it's an accredited organization that has the same duties of  
16 confidentiality to their clients. They are recognized with the Board of  
17 Immigration Appeals to represent clients in immigration court and the  
18 immigration office.

19 THE COURT: All right. Thank you. Defendant -- defense  
20 counsel.

21 MR. SPEED: Well, Your Honor, our position on this  
22 intervening third party's motion or I guess it's kind to call it a motion, but  
23 their request to have our valid subpoena quashed I believe it should fail  
24 on four key colors.

25 First, in the original filing by Ms. Pereira and her office, there



1 was not a single citation to any applicable law, statute or case law that  
2 would compel or convince the Court that it's appropriate in this case to  
3 quash our valid subpoena.

4 Second, turning to or relying on the law that has already been  
5 made in the case, Judge Cory granted our motion for discovery where  
6 we specifically asked for the U visa information that is in the custody and  
7 control of the Immigrant Home Foundation which by their own admission  
8 makes them a state actor. And if they are a state actor or a government  
9 agent, then the DA's office is deemed to have constructive possession of  
10 all the --

11 THE COURT: How are they a state actor?

12 MR. SPEED: They admitted in the new filing that they are  
13 accredited by the Immigration and Customs Enforcement Office, the  
14 Department of Homeland Security and the -- I believe it's the Bureau of  
15 Immigration, the agencies or another government organization.

16 THE COURT: Well, they said that they were accredited to  
17 practice in front of those agencies. That doesn't mean they're -- and I  
18 think they would strongly disagree that somehow, you know, they --  
19 they're the Public Defender of -- of individuals applying for immigration  
20 status. In other words --

21 MR. SPEED: And the Court would agree then --

22 THE COURT: -- they're on the other side.

23 MR. SPEED: -- the Court would agree then that the Public  
24 Defender's Office is a government agency. We are an agency under the  
25 auspices of Clark County. If the Court views the Immigrant Home

1 Foundation as an organization akin to the Public Defender's Office, then  
2 our argument exceeds on that point. They are a state actor, a  
3 government agency. And even if they aren't, the point of our discovery  
4 motion -- our motion for discovery, our request to see what information is  
5 going to be used against Mr. Gunera-Pastrana is to point out to the  
6 Court that the District Attorney's Office and the Immigrant Home  
7 Foundation pointed this out in their motion as well, the District Attorney's  
8 Office is the opposing party in this case. And it is their obligation to  
9 make sure that all material evidence is disclosed to us under *Brady*.

10 The third key point is that the DA's Office, again, must comply  
11 with their obligations under *Brady*.

12 And the final is that discoverability and admissibility are two  
13 different things. It appears that the Court may harbor some concerns  
14 about confidential information being disclosed or shared with the  
15 Defendant in this case. The Immigrant Home Foundation has raised  
16 several times that they're interested in protecting their client's or their  
17 service seekers identity, their location to prevent harassment or  
18 intimidation on the part of our client.

19 However, the District Attorney's Office, the Courts have a  
20 responsibility to a criminal Defendant to ensure that he receives a fair  
21 trial. And discovery in a criminal proceeding is a key host of that. We're  
22 asking the Court at minimum to order the Immigrant Home Foundation to  
23 turn over their file to the Court for an in-camera review so that the  
24 interested parties in the case can determine whether we will be allowed  
25 to use them in trial.

1 But again, discoverability and admissibility are two different  
2 things. The Immigrant Home Foundation shouldn't be allowed to  
3 withhold that information from the Court in a criminal proceeding of  
4 which they are not a principle party.

5 THE COURT: Anything else?

6 MS. PEREIRA: Your Honor, we are not a state party in any  
7 way, shape or form. We have not had -- and my client who is not a party  
8 to this action has not had any kind of contact in regards to the U visa  
9 with the District Attorney's Office. So the District Attorney's Office has  
10 no information about my file. They have never seen my file. And I will  
11 never provide them my file.

12 And so I understand the opposing party is trying to do the best  
13 to get information, but if they really want information, they can ask for it  
14 to the Office of Immigration -- through Department of Homeland  
15 Security. They are a government agency. They will probably give it to  
16 them. And if they -- if not, during -- during discovery, they can -- they  
17 can subpoena my client and they can ask her whatever questions they  
18 want. But that has nothing to do with my duty to protect the information  
19 of my client.

20 MS. CRAGGS: Your Honor, if I could briefly respond as well.  
21 Thank you.

22 THE COURT: You filed a more or less a joinder. Go on.

23 MS. CRAGGS: Thank you, Your Honor. I was essentially  
24 going to say what Ms. Pereira already said.

25 MR. SPEED: I'm sorry, Your Honor. There has been a

1 joinder filed by the State of Nevada.

2 MS. CRAGGS: I don't think we were a part of the filing, Your  
3 Honor. I just took this case over, but that was my understanding.

4 THE COURT: I thought there -- and I saw something.

5 MR. SPEED: My understanding from the prior Chief Deputy  
6 who was prosecuting the case was that the State was willing to comply  
7 with the law of the case. And that was what I pointed to Your Honor as  
8 my second point in opposition to the Immigrant Home Foundation's  
9 motion to quash.

10 Judge Cory has already --

11 THE COURT: All right. So --

12 MR. SPEED: -- granted our discovery request on this  
13 particular point and the DA's Office has indicated that it's willing to  
14 comply with those orders from the Court.

15 MS. CRAGGS: And, Your Honor, the only thing I wanted to  
16 say was just that yes, we don't have any information about this  
17 individual's U visa in our files. And I believe we would potentially run  
18 into the same issues trying to subpoena those -- that information as well  
19 from the Immigrant Home Foundation 'cause our understanding --

20 THE COURT: Yeah.

21 MS. CRAGGS: -- is they're not a state actor.

22 THE COURT: Sorry. The State didn't file anything. I was  
23 looking at the --

24 MR. SPEED: Right.

25 THE COURT: -- amended motion.

1 MS. CRAGGS: For the record, I just wanted to make sure that  
2 was clear, that we don't have anything in our files currently.

3 THE COURT: All right. Thank you.

4 MR. SPEED: And the State is -- in response to that, Your  
5 Honor, the State --

6 THE COURT: Right.

7 MR. SPEED: -- is also aware that it's their obligation under  
8 *Brady and Kyle's* to seek out material discoverable information and  
9 provide it to the defense.

10 THE COURT: All right.

11 MR. SPEED: So if they don't have it in their file, that's not an  
12 excuse for not providing it to us under the rules that have been given to  
13 us by the Supreme Court in generations of case law.

14 THE COURT: Well -- okay. I disagree with your  
15 characterization that the Immigrant Home Foundation is in any way a  
16 state agency. And I certainly don't see how a *Brady* motion would in any  
17 way cover or require or allow for that matter the District Attorney to  
18 obtain this information any other than the way you are trying to obtaining  
19 it through a subpoena.

20 And as we discussed in the last hearing, it's my understanding  
21 you want to use the fact that the individual may have applied for a U  
22 visa, I think that's what it is, to impeach her testimony and you haven't at  
23 this point even asked her if she's applied for a U visa. And I know it's  
24 rare, but I don't see why it's allowed for you to take the deposition and  
25 ask her that question. And if she says yes, then all of this is candidly a

1 waste of time because now then she would have said exactly what you  
2 were afraid she wouldn't admit to if, in fact, that was your I guess  
3 purpose.

4 So at this point, I think it's premature to even do an in-camera  
5 inspection which would be by the Court and not by the parties as you  
6 indicated. But again take her deposition and ask her that question. And  
7 if, in fact, somehow she, you know, we can go after that. But for --

8 MR. SPEED: Your Honor --

9 THE COURT: -- the record -- I'm not done -- for the record,  
10 Judge Cory's order which allows for discovery as appropriate by *Brady*  
11 certainly in my mind doesn't include that -- include this an extend to the  
12 Immigrant -- Immigrant Home Foundation.

13 So I'm denying the motion at this time based on all of that.  
14 And you need to prepare an order commensurate with all of that and  
15 pass it by the Defendant so assuming he wants to file something he can.

16 MR. SPEED: Your Honor, there is -- and I apologize for  
17 interrupting the Court earlier, but there is going to be some confusion  
18 now. Is the Court saying that it is allowing us permission, this is a  
19 criminal case I would point out respectfully, the Court is allowing the  
20 Defendant to depose the complaining witness' mother in this case with  
21 the understanding now that there is an attorney appearing saying --

22 THE COURT: The complaining witness --

23 MR. SPEED: -- that they represent that person?

24 THE COURT: -- the complaining witness' mother is the one  
25 who's asking for a U visa?

1 MR. SPEED: Yes.

2 MS. PEREIRA: Now, Your Honor, the complaining -- this  
3 person, my client --

4 THE COURT: I thought it was the victim. It's not --

5 MR. SPEED: The victim --

6 THE COURT: -- the victim?

7 MR. SPEED: -- is a minor --

8 MS. CRAGGS: It's a child.

9 MR. SPEED: -- Your Honor. She has to be represented by  
10 her parent in this process.

11 THE COURT: Oh.

12 MR. SPEED: And the Court has just been made aware that  
13 the person that Your Honor is ordering us to depose or recommending  
14 that we depose is -- is responded -- is represented by counsel. I can't  
15 contact her now without running a file of --

16 THE COURT: Right. But you can still as far as I know there's  
17 no provision to prevent you from taking her deposition.

18 MR. SPEED: In criminal cases, Your Honor, there is. The  
19 Court has to give us expressed permission to do that.

20 MS. CRAGGS: Your Honor, my understanding is that a  
21 motion has to be filed. I'm not sure the specifics of what needs to  
22 happen before a criminal deposition is taken, but it's not -- there's  
23 certainly hoops that have to be jumped through that are different than a  
24 civil deposition.

25 MR. SPEED: Right.

1 THE COURT: I understand. But still as a -- so this is the  
2 mother. You want to ask if the mother on behalf of the child is  
3 requesting a U visa?

4 MR. SPEED: Your Honor, this U visa information is important  
5 because -- because it could provide a trove of impeachment evidence.  
6 We don't know what Ms. -- the complainant's mother has told her  
7 counsel or the federal government agency --

8 THE COURT: Well, your --

9 MR. SPEED: -- responsible for the issuance of these U visas.

10 THE COURT: Okay.

11 MR. SPEED: But if that information is different somehow from  
12 the information that she provided to the police in the investigation of the  
13 charges against my client, we're entitled to know those things.

14 THE COURT: All right.

15 MR. SPEED: And that's the point of our motion.

16 MS. CRAGGS: Your Honor --

17 THE COURT: I understand that. And there's no way you're  
18 going to get attorney-client privilege, so you just said what she told her  
19 counsel and you've got nothing to waive the attorney-client privilege on  
20 that.

21 MR. SPEED: In addition to those other agencies, Your Honor.

22 MS. PEREIRA: Your Honor --

23 THE COURT: If you're asking regarding what she has filed  
24 with the Immigration and Naturalization, I think that could be appropriate.  
25 But again, not attorney-client privilege.



1 MR. SPEED: And we understand that. But Ms. Pereira has  
2 represented that now that she represents the complainant's mother. So  
3 any effort on our part to depose this person, I'm sure would be met with  
4 opposition from her office.

5 MS. PEREIRA: Your Honor --

6 THE COURT: Well --

7 MR. SPEED: And she's nodding in agreement with that.

8 MS. PEREIRA: -- Your Honor, if you don't mind. I'm not a  
9 criminal lawyer. I'm an --

10 THE COURT: Yeah.

11 MS. PEREIRA: -- immigration lawyer. So can I explain to you  
12 how these U visa process works?

13 THE COURT: Go ahead 'cause I have no idea how --

14 MS. PEREIRA: Okay.

15 THE COURT: -- U visa works.

16 MS. PEREIRA: So the U visa, it's a visa for victims of crimes.

17 THE COURT: I get that.

18 MS. PEREIRA: And these victims could be direct or indirect  
19 victim. A direct victim is somebody who takes the -- the attack and an  
20 indirect victim could be a father or a mother or a sibling who is subjected  
21 to these psychological or physical abuse because it's related to the  
22 direct victim, okay?

23 THE COURT: Okay.

24 MS. PEREIRA: My client has -- you can file for a U visa when  
25 you are an indirect or direct victim of sexual assault, rape. Domestic

1 violence is one of those. Felonious assault, kidnapping. There is a list  
2 of crimes.

3 So when you are a direct or indirect victim, you have to first  
4 obtain certification from that police department. The police department  
5 has to, based on their records, not based on what any client may say,  
6 the police department based on their records has to sign certified that  
7 this person has been a victim and that this person has cooperated with  
8 the authorities.

9 And then with that certification that the applicant for the U visa  
10 has to establish that they were a victim, direct or indirect, that they  
11 cooperated with authorities and that they have suffered a substantial  
12 physical or psychological abuse or injury. You file this application with  
13 the Department -- with the USCIS which is the Department of Homeland  
14 Security, the Office of Immigration. It takes four to five years for this  
15 victim to find out if their case will be approved or not.

16 In the process, we -- there is no -- if the person who's been  
17 the abuser or the attacker has a Court proceeding, that we have  
18 absolutely nothing to do, neither the Office of Immigration nor my agency  
19 has nothing to do with those Court proceedings. The only -- what they  
20 are -- the U visa was created to promote the victims would come out of  
21 the shadows and -- and help authorities so we could stop, you know,  
22 crimes in -- in our cities. So that's how the U visa process works.

23 Now my client in this specific case could apply for a U visa as  
24 a victim of domestic violence because she has her own case of domestic  
25 violence or as the mother of the child in this case. She has her -- her

1 opportunity to do it on her own or as an indirect victim. Now all of these  
2 has nothing to do with this case.

3 MR. SPEED: Well it does, Your Honor, if she's applying and  
4 we don't know how she's applied because the Immigrant Home  
5 Foundation has refused to turn over its file even to the Court for an in-  
6 camera review. I heard a couple of words that made my ears rise if you  
7 will, certification by the police department is one, these people are  
8 applying an applicant for a visa that is issued by a government agency,  
9 that's two.

10 Now I think it's impossible for Ms. Pereira to argue then that  
11 there is no connection, there is no nexus between the services that her  
12 office provides and a law enforcement function carried out by the Las  
13 Vegas Metropolitan Police Department. She just stated that one of the  
14 things than an applicant has to receive is certification from the police  
15 department showing that the person is a victim of crime either direct or  
16 indirect. And as indirect victim it sounds as if their client will be relying  
17 on the allegations made by her daughter against my client in this  
18 criminal case. Obviously he's not guilty of those because he hasn't been  
19 to trial.

20 So for the Immigrant Home Foundation and whatever Federal  
21 Government agency they argue their case or plead their case in front of  
22 to say that this person applying for the U visa is a victim based on the  
23 proceedings in the Court below here in the State of Nevada would be  
24 unreliable first and flying against everything that we hold dear in criminal  
25 proceedings in this jurisdiction.

1           Second, they have to show that this person has cooperated  
2 with the police to, in Ms. Pereira's word, keep crime off of our streets.

3           And three, they have to show that they are a substantial victim  
4 or they sustained a substantial injury or been the recipient of significant  
5 abuse.

6           All three of those things combined show a compelling need for  
7 us, defense counsel and Mr. Gunera-Pastrana the Defendant in this  
8 case, to be apprised of whatever information the Immigrant Home  
9 Foundation through their client is providing to these law enforcement  
10 agencies. It's the --

11           MS. PEREIRA: You need to go ask the law enforcement --

12           MR. SPEED: -- it's the --

13           THE COURT: Wait. Wait.

14           MR. SPEED: I'm sorry, Ms. Pereira. It's the District Attorney's  
15 -- it's the District Attorney's Office's job then to provide that information  
16 to us under the auspices of *Brady* and *Kyle* and the discovery case law.

17           THE COURT: All right. I already addressed that.

18           MR. SPEED: That's understood then. The point where I'm  
19 confused then is, Your Honor, is that the Court denied a motion and then  
20 ordered the Defendant to depose certain witnesses.

21           THE COURT: If she says that their applying for a U visa,  
22 that's it. That's all you're going to get, okay?

23           MR. SPEED: After this --

24           THE COURT: Because you can impeach him or impeach the  
25 mother or the child that they're applying for a U visa and that's why they

1 did it. But that's the only information I'm going to allow.

2 MR. SPEED: So that I'm clear then, Your Honor, the Court is  
3 permitting the Defendant to depose the complaining witness and her  
4 mother in this case?

5 MS. CRAGGS: And, Your Honor, there is a statute on point  
6 that talks about the specific things that have to happen in order for a  
7 witness to be deposed.

8 THE COURT: Okay. What's the statute?

9 MS. CRAGGS: It's 174.175, Your Honor. And it's my  
10 understanding that it has to be an [indiscernible] or an older person or a  
11 vulnerable person who isn't able or potentially isn't going to be able to  
12 attend the trial itself.

13 THE COURT: So that's unavailable, but --

14 MR. SPEED: But the Court can issue orders that it deems  
15 appropriate in this kind of a situation and it appeared as if the Court was  
16 in the process of granting --

17 THE COURT: To --

18 MR. SPEED: -- the Defendant permission to depose these  
19 witnesses in this case, these key witnesses in a criminal prosecution.

20 THE COURT: On that one issue regarding whether or not  
21 they're applying, it's really -- and I -- I'm under the impression they're  
22 willing to admit that they applied for a U visa. And in the last hearing,  
23 you said and certainly I said that that's it. If that's what you get, you're  
24 done.

25 MR. SPEED: And does the Court understand how accusing

1 someone in my client's position of very serious criminal acts, criminal  
2 offenses, puts the Immigrant Home Foundation's client in the position of  
3 receiving a very substantial, very significant benefit from the government

4 --

5 THE COURT: And you can make that argument.

6 MR. SPEED: -- in exchange for their cooperation to the law.

7 THE COURT: That's the argument you'll make at time of trial.  
8 But the only thing you need is did she apply. And if they're willing to say  
9 they applied for a U, we're done. And you said last time they weren't  
10 willing at that point to admit because they could come to trial and get on  
11 the stand and say no I haven't. But if they're going to do that and admit  
12 that they applied for a U visa, then we're done with all of this.

13 MR. SPEED: Just so --

14 THE COURT: Are you willing to somehow get a affidavit that  
15 they've applied for a U visa?

16 MR. SPEED: Well no I'm --

17 THE COURT: I'm asking Ms. -- and I forgot your name --

18 MS. PEREIRA: Pereira.

19 THE COURT: -- whether or not your client's willing to provide  
20 an affidavit that they've applied for a U visa?

21 MS. PEREIRA: Yes. I can provide them an affidavit saying  
22 the truth that we applied for a U visa, but I will not give a specifics about.

23 THE COURT: I get that. And that's what we talked about last  
24 time.

25 MR. SPEED: And that's why I'm looking forward to deposing

1 the Immigrant Home Foundation client --

2 THE COURT: She's willing to give you an affidavit, we're  
3 done, saying that they've applied for a U visa. And you can impeach  
4 them on basis and make the argument, oh their -- the whole reason  
5 behind this is they're applying for U visa sobeit.

6 MR. SPEED: So now the Court --

7 THE COURT: As far as the technicalities of what they put on  
8 their request, all of that is irrelevant.

9 MR. SPEED: It's not irrelevant, Your Honor.

10 THE COURT: It's irrelevant. We're done. We're done.  
11 They're getting you an affidavit. You made your record.

12 MR. SPEED: I have not made the record, Your Honor.

13 THE COURT: What else?

14 MR. SPEED: So the Court is now withdrawing it's --

15 THE COURT: Yes.

16 MR. SPEED: -- permission for --

17 THE COURT: Yes.

18 MR. SPEED: -- Defendant to depose --

19 THE COURT: They're going to provide you --

20 MR. SPEED: -- the key witness?

21 THE COURT: -- they're going to provide you with an affidavit.  
22 How long will it take you to do that?

23 MS. PEREIRA: A couple of days.

24 THE COURT: So within two weeks an affidavit that they have  
25 applied for a U visa.

1 MR. SPEED: That we will be allowed to use at trial.

2 THE COURT: To impeach her if she says no. I assume she's  
3 going to say yes. And we said that last time. But you said well what if  
4 she says no, then I've got nothing to impeach her with. Now you do.

5 MR. SPEED: And any inconsistencies in the representations  
6 that she's made to these various Federal agencies from whom she's  
7 applying for this U visa, the Court is not allowing us to reach and cross  
8 examination?

9 THE COURT: No. I think that's totally irrelevant to the  
10 proceedings that we have here. And so you've got your impeachment  
11 information that's all you asked for originally. And so that's what they're  
12 going to provide you. And I'm sure the record is because I remember  
13 specifically you wanted to be able to say no, you applied for a U visa.  
14 And we had nothing to give you to show that. Now we do.

15 MR. SPEED: Well the record today is that the Court has  
16 denied the Immigrant Home Foundation's motion to quash?

17 THE COURT: Correct. That's correct. On the condition they  
18 provide an affidavit that you have applied that.

19 MR. SPEED: Understood.

20 THE COURT: Okay.

21 MR. SPEED: And one final thing, Your Honor, we before  
22 finish. Would the Court enter an order providing the transcript of this  
23 morning's hearing to the Public Defender's Office?

24 THE COURT: Absolutely.

25 MR. SPEED: Thank you.



1 MS. CRAGGS: Your Honor, just to be clear. You're granting  
2 the motion to quash the subpoena --

3 THE COURT: Yes.

4 MS. CRAGGS: -- as long as they provide the affidavit?

5 THE COURT: Yes.

6 MS. CRAGGS: Okay.

7 THE COURT: As long as they provide the affidavit verifying  
8 that both of them have applied for a U visa.

9 MS. CRAGGS: And you would like the order prepared by the  
10 Immigrant Home Foundation?

11 THE COURT: Yes.

12 MS. CRAGGS: Okay. Thank you.

13 THE COURT: And pass it. Make sure it's correct. Pass it by  
14 the defense counsel and I'll review it also.

15 MS. PEREIRA: Thank you, Your Honor.

16 THE COURT: All right. Thank you.

17 MS. CRAGGS: Thank you.

18 [Hearing concluded at 10:40 a.m.]

19 \* \* \* \* \*

20  
21 ATTEST: I do hereby certify that I have truly and correctly transcribed  
22 the audio/video proceedings in the above-entitled case to the best of my  
23 ability.

24   
25 Michelle Ramsey  
Court Transcriber



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 STATE OF NEVADA,

CASE#: C-16-318461-1

9 Plaintiff,

DEPT. XXVIII

10 vs.

11 GUSTAVO ADONAY  
12 GUNERA-PASTRANA,

13 Defendant.

14 BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE  
15 MONDAY, MARCH 11, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING**  
17 **CALENDAR CALL**

18  
19 APPEARANCES:

20 For the State:

GENEVIEVE CRAGGS, ESQ.  
Deputy District Attorney

21  
22 For the Defendant:

KEVIN C. SPEED, ESQ.  
Deputy Public Defender

23 Also Present:

IRMA SANCHEZ-GASTON  
Spanish Interpreter

24  
25 RECORDED BY: JUDY CHAPPELL, COURT RECORDER

1 Las Vegas, Nevada, Monday, March 11, 2019

2  
3 [Case called at 9:57 a.m.]

4  
5 THE COURT: Gunera-Pastrana, 318461.

6 MR. SPEED: Good morning, Your Honor. Kevin Speed for  
7 Mr. Gunera-Pastrana, who is present, in custody.

8 MS. CRAGGS: Genevieve Craggs for the State, Your Honor.

9 MR. SPEED: This was the time set for calendar call in this  
10 case, Your Honor. But unfortunately I cannot announce ready. This  
11 morning I learned this past Friday that we've experienced a death in our  
12 family and I'll be traveling to Atlanta on Thursday night. And I'm not sure  
13 when we'll be returning. The trial was set to begin on the 18<sup>th</sup> of this  
14 month and I will be out of the jurisdiction then for sure.

15 MS. CRAGGS: The State doesn't have an objection, Your  
16 Honor.

17 THE COURT: All right. You have my condolences. This is a  
18 really – does he have, it says here he needs an interpreter.

19 MR. SPEED: I just saw Mr. Hanks. I just saw Jeff.

20 THE MARSHAL: You have an interpreter right here, Your  
21 Honor.

22 MR. SPEED: I just saw Jeff.

23 THE COURT: Okay.

24 All right. This is on for the calendar call. I guess we need  
25 your name too.

1 THE INTERPRETER: Irma Sanchez-Gaston, court certified  
2 interpreter in Spanish.

3 THE COURT: Thank you.

4 So your Counsel has advised that he has a death in his family  
5 so he will not be able to make this trial date.

6 This is two years old so we're going to give you the next stack.  
7 And how long do you – a week for trial?

8 MR. SPEED: Probably. It depends on how the Court  
9 schedules its trial days. If the Court has a morning calendar, for  
10 example, and then we –

11 THE COURT: Well we --

12 MR. SPEED: -- might lead into a second week.

13 THE COURT: All right. We'll see. So we'll – June. When?

14 THE CLERK: June 3<sup>rd</sup> and that's at 10:30 with the calendar  
15 call May 29<sup>th</sup> and that's at 9 a.m.

16 THE COURT: All right. Other than that, are you ready to go?

17 MR. SPEED: We'll be ready by then.

18 THE COURT: Okay.

19 MR. SPEED: We'll announce ready by then.

20 THE COURT: All right. Because it's, like I said, it'll be, whoa,  
21 close to three years. I don't know why. But it will be going. Okay.

22 MR. SPEED: Thank you, Your Honor.

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THE COURT: Thank you.

MS. CRAGGS: Thank you.

[Hearing concluded at 10:00 a.m.]

\* \* \* \* \*

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

  
\_\_\_\_\_  
Judy Chappell  
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

CASE#: C-16-318461-1

9 Plaintiff,

DEPT. XXVIII

10 vs.

11 GUSTAVO ADONAY  
12 GUNERA-PASTRANA,

13 Defendant.

14 BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE  
15 WEDNESDAY, MAY 29, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING**  
17 **DEFENDANT'S MOTION IN LIMINE TO EXCLUDE**  
18 **IMPERMISSIBLE EVIDENCE OF PRIOR INCIDENTS**  
19 **WHERE THE DEFENDANT PLEADED NOLO CONTENDERE**

20 **CALENDAR CALL**

21 APPEARANCES (See Page 2):

22  
23  
24 RECORDED BY: TRISHA GARCIA, COURT RECORDER  
25 TRANSCRIBED BY: JUDY CHAPPELL, COURT RECORDER

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APPEARANCES:

For the State:	SANDRA K. DIGIACOMO, ESQ. Chief Deputy District Attorney
For the Defendant:	KEVIN C. SPEED, ESQ. Deputy Public Defender
Also Present:	SOLEDAD GARCIA Spanish Interpreter

1 Las Vegas, Nevada, Wednesday, May 29, 2019  
2 [Case called at 9:27 a.m.]  
3 MS. DIGIACOMO: Good morning, Your Honor.  
4 THE CLERK: And this another PD case. Oh, okay. This is  
5 first up for the –  
6 THE COURT: 318461.  
7 THE CLERK: -- calendar call.  
8 THE COURT: Are you stepping in for the PD?  
9 THE CLERK: He is the PD.  
10 MS. DIGIACOMO: He is the PD, Your Honor.  
11 THE COURT: Oh, –  
12 MR. SPEED: Good morning, Your Honor, Kevin Speed --  
13 THE COURT: -- I didn't know he was the –  
14 MR. SPEED: -- for Mr. Gunera-Pastrana, who is present, in  
15 custody.  
16 THE CLERK: He's not on our track.  
17 THE COURT: He's only been here a couple of times and I  
18 thought you were private. Oh, okay.  
19 There's an interpreter on this?  
20 THE INTERPRETER: Yes, Your Honor.  
21 MR. SPEED: There is.  
22 THE COURT: Your name for the record.  
23 THE INTERPRETER: Soledad Garcia  
24 THE COURT: Thank you.  
25 Okay, this is on for a motion in limine and calendar call.



1 MS. DIGIACOMO: Correct, Your Honor.

2 THE COURT: We have – I have this one as the oldest and  
3 certainly there's been seven different trial dates. You ready to go next  
4 week?

5 MR. SPEED: We are ready to proceed, Your Honor. I  
6 understand that we are first on the Court's stack.

7 THE COURT: Yes.

8 MR. SPEED: But we do have some housekeeping matters,  
9 particularly with the Motion in Limine that we need to have resolved and  
10 a clear understanding before we tread forward.

11 THE COURT: Right. We're going to get to that in a second. I  
12 don't recall, is this over a week or?

13 MS. DIGIACOMO: Yes, Your Honor.

14 MR. SPEED: Should be.

15 MS. DIGIACOMO: Yes.

16 THE COURT: Okay.

17 MS. DIGIACOMO: The State has between 10 and 18  
18 witnesses, 4 of them are out of state. So I would estimate a good 6 to 7  
19 days.

20 THE COURT: Okay. Motion in Limine. Defense.

21 MR. SPEED: Your Honor, this motion comes on the heels of  
22 another motion that we filed, a Motion in Limine to exclude any testimony  
23 by the State or any evidence by the State pertaining to domestic violence  
24 allegations or convictions, adjudications in Justice Court against our  
25 client. We did not receive an opposition to that motion and back in, I

1 believe it was January of last year, the District Attorney's office said that  
2 they would not introduce any evidence pertaining to the domestic  
3 violence if we did not open the door. I received the State's opposition to  
4 the instant Motion in Limine and essentially their opposition was the  
5 same as it was back when we filed that original motion that they would  
6 not introduce any evidence pertaining to the 16M domestic violence  
7 conviction where my client pleaded no contest if we don't open the door.  
8 The problem that both Ms. DiGiacomo and I anticipate occurring in our  
9 trial is that we are asserting –

10 THE COURT: The U – the U status.

11 MS. DIGIACOMO: Correct.

12 MR. SPEED: I'm sorry.

13 MS. DIGIACOMO: Correct.

14 THE COURT: The U-Visa status.

15 MR. SPEED: Right. Right. And --

16 THE COURT: Is it U? U.

17 MR. SPEED: -- the issue pertaining with – to the U-Visa is  
18 that, and the Court heard testimony from Ms. Pereira, who both of us  
19 have as witnesses in our cases in chief. The Court heard that a person  
20 can apply for and obtain the U-Visa by being a direct or indirect victim of  
21 crime. Our theory of defense is that the mother, the daughter, a  
22 combination of the two, concocted these allegations against  
23 Mr. Gunera-Pastrana in order to obtain the U-Visa and allow to remain in  
24 the United States. The State believes that we can't ask her questions  
25 about that or cross-examine Ms. Casillas-Ortiz about her obtaining the

1 U-Visa without opening the door to the prior domestic violence  
2 allegations. And that goes to the point that we're raising in our motion in  
3 limine here that those convictions, they were convictions in Justice Court  
4 but they were convictions that were brought about because of a no  
5 contest plea. Either way, the State shouldn't be allowed to delve into that  
6 information.

7 THE COURT: Okay. I should have prefaced by I read this.  
8 The question that they bring up, basically, we're not going to bring in the  
9 conviction, but if you ask about the U-Visa and the witness then I guess  
10 we may have to have an evidentiary hearing. The witness may say the  
11 basis of the U-Visa is the prior in addition to the current. So how do you  
12 get around that?

13 MR. SPEED: That was the State's point. I believe that we are  
14 able to ask her questions about her obtaining the U-Visa as it relates to  
15 Meily, the alleged victim being a victim of sexual abuse by our client  
16 without the State being freely allowed to delve into the other portion or  
17 the other facet of obtaining a U-Visa or a way that a person can obtain a  
18 U-Visa by being a victim of domestic violence. I believe we have case  
19 law that says the State is not allowed to delve into prior bad acts when  
20 the circumstances pertaining to the offenses are able to be described  
21 with one being deleted from the other, or being separated from the other.

22 THE COURT: Okay. My question is how are you going to do  
23 that? Assuming, and I don't know, but assuming that on her application, I  
24 wouldn't doubt that it says, you know, what are you alleging and she  
25 alleges all – all prior and current acts. So –

1 MR. SPEED: We asked for the –

2 THE COURT: -- how do you keep –

3 MR. SPEED: We asked for that information and the Court  
4 made very clear rulings that we weren't allowed to –

5 THE COURT: Well --

6 MR. SPEED: -- explore that. We weren't allowed to broach  
7 that subject. Ms. Casillas-Ortiz has provided the Court and defense  
8 counsel with an affidavit that just says very basically that they have  
9 applied for the U-Visa. Now –

10 THE COURT: All right. I do remember that because it was a  
11 first impression, if you will, the –

12 MR. SPEED: I think a lot of the Court's questions could have  
13 been answered then –

14 THE COURT: -- the fact –

15 MR. SPEED: -- but now we're at this point where –

16 THE COURT: Well that was attorney-client privilege. That's  
17 different than asking her how or what she put on the application. And  
18 we'll have to do that outside the presence.

19 MR. SPEED: That's fine with us –

20 THE COURT: But –

21 MR. SPEED: -- because we are certain that she has applied  
22 for the U-Visa as an indirect victim of crime naming her daughter as the  
23 alleged victim of abuse by our client.

24 THE COURT: All right. Let's – go ahead.

25 MS. DIGIACOMO: Well, Your Honor, I did speak with

1 Ms. Casillas when I met with her last Friday, and I asked her if she  
2 applied for the U-Visa. She stated she did. And I asked well, on what  
3 basis? And the basis was the domestic violence against her and the  
4 secondary was the abuse against her daughter. Now the U-Visa has  
5 been pending for a couple of years, since she's completed it. And I don't  
6 see how you can't make the domestic violence relevant because that is  
7 her primary basis for applying for the U-Visa and he has already been  
8 convicted of that. So that's stronger, you know, than here we are three  
9 years later and her daughter still is a, you know, a victim of crime but  
10 there's been no adjudication or conviction. So it's the State's position, he  
11 can't pick and choose to go after her and say she's making something up  
12 and us not explaining the entire picture.

13 THE COURT: Yeah, I – I got --

14 MR. SPEED: She has a much larger --

15 THE COURT: -- that.

16 MR. SPEED: Oh, I'm sorry.

17 THE COURT: How -- how do you propose to, if in fact, and  
18 especially, I didn't know and assume you didn't know, that the U-Visa's  
19 been pending for several years. How do you -- how do you get around  
20 the fact that it clearly was done on the basis of the prior? And I assume,  
21 basically you want to just keep all that out but how --

22 MR. SPEED: Because --

23 THE COURT: -- and why?

24 MR. SPEED: -- because the first time that the U-Visa was  
25 mentioned by a state agency or a government agency was in conjunction

1 with Meily, the alleged victim, being visited by a specialist with the  
2 Department of Family Services or CPS. In order to have her rent paid, in  
3 order to have school supplies and school clothes given to her children by  
4 various charitable institutions that are run by government agencies, the  
5 topic of the U-Visa was brought up by one of the specialists. So for the  
6 Court to, I guess, assume and believe at this point that the U-Visa has  
7 been pending for years before the sexual abuse allegations arose, that's  
8 incorrect. And I have to disabuse Your Honor of that. The –

9 MS. DIGIACOMO: And –

10 THE COURT: Well –

11 MR. SPEED: -- U-Visa only came up after the disclosure of  
12 sexual abuse was made by our complaining witness.

13 MS. DIGIACOMO: No, that is –

14 THE COURT: All right. Now we –

15 MS. DIGIACOMO: -- correct. I was just saying it's been – this  
16 case is three years old. It's been pending –

17 MR. SPEED: Oh, right, well --

18 MS. DIGIACOMO: -- a couple of years –

19 MR. SPEED: Right.

20 THE COURT: All right.

21 MS. DIGIACOMO: -- since this case.

22 MR. SPEED: Right.

23 THE COURT: So we can have a hearing with her outside the  
24 presence but I don't see if – if her basis for applying for the U-Visa is both  
25 I'm not going to basically have her or somehow I don't believe in and I

1 know the Supreme Court doesn't – we're not going to, if you will, lie to  
2 the jury that, oh, this is the only basis.

3 MR. SPEED: We're not –

4 THE COURT: And I don't know how you're going –

5 MR. SPEED: -- Your Honor, I wouldn't be lying to the jury.

6 THE COURT: -- to keep that out. That's what –

7 MR. SPEED: My argument in defense –

8 THE COURT: -- I'm saying.

9 MR. SPEED: -- wouldn't be that disingenuous. We wouldn't  
10 suggest that this is the only basis. We heard from one of the attorneys at  
11 the Immigrant Home Foundation that this was but one way.

12 Ms. Casillas-Ortiz chose both. And that's her right to do. She's allowed  
13 to do that. We're saying in defending Mr. Gunera-Pastrana, we should  
14 be allowed to ask her. It goes to our theory of defense that she –

15 THE COURT: You're trying to --

16 MR. SPEED: -- had her daughter concoct the --

17 THE COURT: -- impeach her.

18 MR. SPEED: -- allegations in order to remain in the United  
19 States. One of the ways that she could do that was by obtaining the  
20 U-Visa. And to obtain the U-Visa, she had to show that she was a victim  
21 of a very serious crime.

22 THE COURT: All right. I am going to, we're going to do an  
23 evidentiary hearing outside the presence. But preliminarily, I don't see  
24 excluding her from explaining. I mean, you're going to try to impeach  
25 her. I get that and you're certainly entitled. But she's entitled, I think

1 certainly to explain her actions, not be accused of concocting something.  
2 Because that can be used later on in her application or her decision, or  
3 that is the federal government's decision –

4 MR. SPEED: Right.

5 THE COURT: -- to give her a U-Visa. Oh, well you –

6 MR. SPEED: And certainly –

7 THE COURT: -- testified under oath that this was the only  
8 reason. I think that –

9 MR. SPEED: But that issue isn't right for us, Your Honor, and  
10 certainly –

11 THE COURT: Well –

12 MR. SPEED: -- I wouldn't – I wouldn't –

13 THE COURT: -- all right, I'm not –

14 MR. SPEED: -- presume to tell --

15 THE COURT: -- at this point, not –

16 MR. SPEED: -- the federal government how to try their  
17 immigration cases.

18 THE COURT: I understand but at this point I'm not granting  
19 the Motion in Limine. Pending the questioning and how it's done, it  
20 certainly sounds like it is going to open the door, not for the conviction,  
21 but for her basis for applying for the U-Visa. And that could be, again,  
22 pending her testimony, --

23 MR. SPEED: Your Honor –

24 THE COURT: -- these prior acts.

25 MR. SPEED: Your Honor, respectfully, the problem that –



1 THE COURT: That's my decision, Counsel. I'm done.

2 MR. SPEED: I understand that, Your Honor, --

3 THE COURT: Okay.

4 MR. SPEED: -- but the problem that we run into there is that  
5 then if she's allowed to explain the facts and circumstances, tangential  
6 facts and circumstances, surrounding her obtaining the U-Visa, that  
7 concern, domestic violence or allegations of domestic violence against  
8 our client, then the jury sees him while we're defending him at trial as a  
9 bad man. That makes them more likely to convict him because they  
10 think he's a bad person and not because the State has proven their case  
11 beyond a reasonable doubt. That's the entire purpose for our Motion in  
12 Limine here. And I believe the *Bellen* case is very clear. The State does  
13 not have to describe these ancillary facts and circumstances in telling the  
14 jury what they call the complete story of crime. There is no complete  
15 story of crime doctrine after the *Bellen* decision.

16 So certainly we can ask her questions about obtaining the  
17 U-Visa that don't relate to anything having to do with domestic violence.  
18 Ms. Casillas-Ortiz isn't the primary victim in the case before Your Honor.  
19 It's the daughter.

20 THE COURT: Thank you. We're done. We've done it back  
21 and forth three times now.

22 MR. SPEED: So the Court's --

23 MS. DIGIACOMO: And, Your Honor, --

24 MR. SPEED: -- so the Court --

25 THE COURT: We're done, --

1 MR. SPEED: -- the Court's ruling is --

2 THE COURT: -- Counsel.

3 MR. SPEED: Your Honor, the Court's ruling is the Motion in  
4 Limine, the ruling or the decision on the Motion in Limine is being held in  
5 abeyance until after we have this evidentiary hearing?

6 THE COURT: Yes.

7 MR. SPEED: That's what I'm asking.

8 THE COURT: And that I'm inclined to deny it because I don't  
9 see how you're going to be able to ask the questions. We're going to  
10 give it a go, but without opening the door. And I was worried about this  
11 before. We've gone through this several times regarding the  
12 attorney-client privilege. We'll have the hearing and see what happens.

13 MR. SPEED: So there is no ruling. The Court's inclination is  
14 to deny --

15 THE COURT: Yes.

16 MR. SPEED: -- but all rulings are held in abeyance --

17 THE COURT: Yes.

18 MR. SPEED: -- until after our hearing.

19 THE COURT: Yes, Counsel.

20 MR. SPEED: I will prepare the order if that's okay with  
21 Your Honor.

22 THE COURT: Sure. Pass it by --

23 THE CLERK: And when do you want the hearing?

24 THE COURT: It'll be before the trial. So --

25 MS. DIGIACOMO: Your Honor --

1 THE COURT: Yeah.

2 MS. DIGIACOMO: -- if I may address that. The victim and  
3 her mom live out of state now so I would ask that we do it right before --

4 THE COURT: Yeah.

5 MS. DIGIACOMO: -- she testifies.

6 THE COURT: That's not a problem.

7 MS. DIGIACOMO: And also, Your Honor, the State would be  
8 requesting a Tuesday start instead of a Monday start. And if you'd like  
9 me to approach, I can explain why.

10 THE COURT: Do you have any problem with that? It would  
11 be --

12 MR. SPEED: No. No problem with that --

13 THE COURT: -- it would be Monday --

14 MR. SPEED: -- at all, Your Honor. That gives us --

15 THE COURT: -- it would be --

16 MR. SPEED: -- a little bit more time. Is she going to be the  
17 first witness in the State's case-in-chief?

18 MS. DIGIACOMO: I don't know. It depends how long  
19 it -- well, it depends when we start and how long --

20 THE COURT: All right. Approach.

21 MS. DIGIACOMO: Okay.

22 THE CLERK: Tuesday we could start at 10:30.

23 [Bench conference begins at 9:42 a.m.]

24 MS. DIGIACOMO: My daughter is graduating from 8<sup>th</sup> grade  
25 on Monday afternoon.

1 THE COURT: I don't have a problem. We don't start until  
2 1:30 picking a jury anyway because we have morning criminal.

3 MS. DIGIACOMO: Okay.

4 THE COURT: And –

5 MS. DIGIACOMO: So on – on Tuesday, we'd start at 10:30?

6 THE COURT: Yeah.

7 MS. DIGIACOMO: And then Wednesday?

8 THE COURT: Wednesday's another criminal day.

9 MS. DIGIACOMO: So –

10 THE COURT: Hopefully 11.

11 MS. DIGIACOMO: Okay.

12 THE COURT: And Thursday and Friday are full days.

13 MS. DIGIACOMO: So like 9?

14 THE COURT: Yeah.

15 MS. DIGIACOMO: Okay. Okay.

16 [Colloquy between the Judge and the Court Clerk]

17 MS. DIGIACOMO: Okay. So I appreciate the accommodation.

18 MR. SPEED: That's fine. And we don't have any objection to  
19 that.

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

21 MS. DIGIACOMO: Thank you, Your Honor.

22 [Bench conference ends at 9:43 a.m.]

23 THE CLERK: Okay. So trial is June 4<sup>th</sup>, 10:30.

24 THE COURT: Okay.

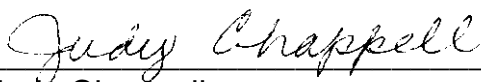
25 MS. DIGIACOMO: And –

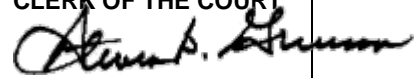
1 THE COURT: It'll be before the testimony.  
2 MS. DIGIACOMO: And, Your Honor, just one last –  
3 THE COURT: Yeah.  
4 MS. DIGIACOMO: -- housekeeping matter. The Dr. Cetl, who  
5 we need to testify, needs to do by way of video conference from Texas.  
6 And so we can –  
7 THE COURT: You need to --  
8 MS. DIGIACOMO: -- work that out with the Court.  
9 THE COURT: -- arrange that –  
10 MS. DIGIACOMO: Okay. It has to be after 3 p.m. our time  
11 probably Friday or the following Monday.  
12 THE COURT: I don't think it's a problem.  
13 MS. DIGIACOMO: Okay. Thank you, Your Honor.  
14 THE COURT: All right. Thank you.  
15 THE CLERK: Just call the IT Department.  
16 MS. DIGIACOMO: Call IT?  
17 THE CLERK: Yeah.  
18 MS. DIGIACOMO: Okay. Thank you.

19 [Hearing concluded at 9:44 a.m.]

20 \* \* \* \* \*

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

23   
24 Judy Chappell  
25 Court Recorder/Transcriber



1 RTRAN

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 STATE OF NEVADA,  
9 Plaintiff,

10 vs.

11 GUSTAVO ADONAY GUNERA-  
12 PASTRANA,  
Defendant.

)  
) CASE#: C-16-318461-1  
)  
) DEPT. XXVIII  
)  
)  
)  
)  
)  
)

13  
14 BEFORE THE HONORABLE RONALD J. ISRAEL  
DISTRICT COURT JUDGE  
15 TUESDAY, JUNE 4, 2019

16 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 1**

17 APPEARANCES:

18 For the Plaintiff:

SANDRA DIGIACOMO, ESQ.  
MICHELLE SUDANO, ESQ.

19  
20 For the Defendant:

KEVIN SPEED, ESQ.  
TEGAN MACHNICH, ESQ.

21  
22  
23  
24  
25 RECORDED BY: JUDY CHAPPELL, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, June 4, 2019

2

3 [Case called at 10:43 a.m.]

4 THE COURT: -- because I want to -- we probably should have  
5 told you we only have, what, an hour to start picking a jury. We should  
6 have made it at one and, Cathy, you're the one that said 10:30.

7 THE CLERK: I did.

8 THE COURT: No. 1:00.

9 THE CLERK: Okay.

10 THE COURT: It makes no sense to -- but there's stuff we can  
11 talk about before -- go ahead and call the case.

12 THE CLERK: Case number C-318461, State of Nevada v.  
13 Gustavo -- is it Gunera-Pastrana.

14 THE COURT: Okay. Counsel, state your -- yeah, bring him  
15 out.

16 MS. DIGIACOMO: Sandra DiGiacomo and Michelle Sudano  
17 for the State.

18 MR. SPEED: Kevin Speed with the Public Defender's Office  
19 for Mr. Gunera-Pastrana, who we believe is present in custody. We're  
20 waiting.

21 MS. MACHNICH: Yeah.

22 THE COURT: Okay.

23 MR. SPEED: All right.

24 MS. MACHNICH: And Tegan Machnich, Public Defender's  
25 Office, as well, for the Defense. We do have an interpreter present and

1 our client will be using the aide of an interpreter.

2 MR. SPEED: Yield your name for the record, please, sir.

3 MR. HAASMANN: My name is Yul Haasmann, court-certified  
4 interpreter.

5 THE COURT: Okay. Is the Defendant standing there?

6 MS. DIGIACOMO: He's coming out, Your Honor.

7 THE COURT: Okay. Thank you. Now, the Defendant is  
8 present.

9 So I should have said 1:00 because it makes no sense to  
10 spend 20 minutes getting a jury up here and asking them a few  
11 questions. They haven't been to lunch. They're entitled to go to lunch.  
12 Is there anything we can deal with now?

13 You want me to talk about -- and we can talk about how I do  
14 picking a jury.

15 MS. DIGIACOMO: Yes, Your Honor. And also, we should  
16 probably make a record about the fact there's no negotiations that have  
17 been pending for about a year, just so that the record is clear.

18 THE COURT: Go ahead.

19 MS. DIGIACOMO: The last offer -- and Mr. Speed can correct  
20 me if I have it correct -- the last offer that was pending before I took over  
21 the case in May of 2018, I believe was a child abuse with substantial  
22 bodily harm, which was an 8 to 20, but I think it was stip 3 to 9 years, or  
23 something to that effect, but that was rejected a long time ago. And  
24 since that time, there's really been no talk of negotiation between the  
25 parties because I deferred pretty far apart.



1 THE COURT: Is that correct?

2 MR. SPEED: The last offer that I received when Chief Deputy  
3 District Attorney Amy Ferreira was prosecuting the case, was Ms.  
4 DiGiacomo is correct for one count of child abuse. The stipulated term  
5 of years was two to five years.

6 There was a subsequent offer after that, if I may the Court's  
7 indulgence?

8 THE COURT: Go ahead.

9 [State and Defense confer]

10 MS. DIGIACOMO: Oh, yeah. I'm going to go with what Mr.  
11 Speed says, because I had totally forgotten about our text during, so --

12 MR. SPEED: There was a subsequent offer of two counts at  
13 attempt sexual assault with a child under 14. The State would retain the  
14 right to argue at sentencing.

15 My last in-depth conversation with Mr. Gunera-Pastrana  
16 were I conveyed those offers, he did reject both of those.

17 THE COURT: Okay.

18 MS. DIGIACOMO: And that last offer apparently was mine,  
19 Your Honor, and I did not recall it from December.

20 THE COURT: All right. And so at this point, we are going to  
21 trial. I assume all prior offers are no longer valid; is that --

22 MS. DIGIACOMO: That's correct, Your Honor.

23 THE COURT: You want to --

24 MR. SPEED: Just a moment, Your Honor.

25 THE COURT: Go ahead. And for the record -- wait, Mr.

1 Speed, before you --

2 MR. SPEED: Yeah.

3 I think we are clear, Your Honor.

4 THE COURT: Okay. And before we finish with that, I don't  
5 want to know your conversations, but you have had a chance to discuss  
6 with your client the potential sentences for the charges that are in place?

7 MR. SPEED: We have, Your Honor. And I need to probably  
8 make a record here. I've tried to contact the court interpreter's office for  
9 Clark County and have another visit -- another few visits with my client  
10 before today's trial date. We have not been able to visit with Mr.

11 Gunera-Pastrana recently because, according to the interpreter's office  
12 they do not have available interpreters to go with me to the North Valley  
13 Complex to visit with Mr. Gunera-Pastrana, but because his position on  
14 the prior plea bargain offers was very clear -- made crystal clear to me  
15 and to co-counsel, I didn't think there was a need to continue beating  
16 those kinds of forces and I had spent the time preparing for today's trial.

17 THE COURT: I understand. I just -- I think I need to clarify for  
18 the record, you certainly did explain the potential sentences if he is  
19 convicted?

20 MR. SPEED: Absolutely.

21 THE COURT: Okay. Are you saying you need to -- this would  
22 be a good chance to talk to your client. We will have some time after I  
23 finish now, so you can talk to your client with the interpreter present. Is  
24 that what you would like to do?

25 MR. SPEED: I think that would be helpful.

1 THE COURT: Okay.

2 MR. SPEED: I appreciate that, Your Honor.

3 THE COURT: We'll do that.

4 Let me go ahead with picking a jury real quick. I generally  
5 ask the minimal questions. If you want me to ask some specific  
6 questions regarding sexual assault case, history, et cetera, I'll do that, or  
7 that's up to you guys.

8 We will go through the entire -- and there's like, what, 85, are  
9 we, Steve, bringing up? Something like that?

10 THE MARSHAL: 82.

11 THE CLERK: 82.

12 THE COURT: Okay. I'll give them my speech why they  
13 should want to serve. Then I'll ask them if they can serve. This is eight  
14 days probably --

15 MR. SPEED: Perhaps.

16 THE COURT: -- Counsel?

17 MR. SPEED: Yes.

18 THE COURT: Well, so I'll tell them through Friday of next  
19 week, maybe a little bit shorter. Maybe.

20 They will give us all of the reasons that they don't want to  
21 serve.

22 Yeah, you can go ahead and sit down.

23 MS. DIGIACOMO: Thank you, Your Honor.

24 THE COURT: They'll give us all the reasons they don't. Right  
25 down what they say and then I'll bring you up and we'll go through all

1 the excusal requests and discuss them at the bench. Then I'll  
2 excuse -- and you know for two weeks and given this there's going to be  
3 a lot. And so then I'll excuse them.

4 Then we'll go ahead and fill in the box and you'll question  
5 the people in the box. There's -- how many preempts on this?

6 MS. DIGIACOMO: Nine.

7 THE CLERK: This one has eight, because it's a life --

8 MS. DIGIACOMO: Yeah, plus one alternate, so nine.

9 THE COURT: For the alternate.

10 THE CLERK: And yes. And you want two alternates on this?

11 MR. SPEED: We probably should --

12 MS. MACHNICH: Yes.

13 MS. DIGIACOMO: Yes.

14 MR. SPEED: -- because the trial is going to extend over two  
15 calendar weeks.

16 THE COURT: Yeah.

17 MR. SPEED: The possibility for something happening is  
18 much greater in that circumstance.

19 THE COURT: You want three?

20 THE CLERK: So but you only one pick for the two alternates?

21 MS. DIGIACOMO: That's correct. We get one peremptory.

22 THE COURT: Yeah. And do you want -- are you saying you  
23 want three? I mean, I would hope not, but given the graphic allegations,  
24 et cetera, the two weeks --

25 MR. SPEED: Right.

1 THE COURT: -- you could lose somebody over the weekend.  
2 MS. MACHNICH: Yeah.  
3 MR. SPEED: More is always better, Your Honor.  
4 THE COURT: I mean, I hate to, you know -- because they're  
5 going to have to sit through two weeks and then be told they're  
6 alternates, but you're right.  
7 What do you think?  
8 MS. DIGIACOMO: I would agree. I have gone  
9 through -- burned through our alternates.  
10 THE COURT: Oh, I've gone through where we've had to try a  
11 case --  
12 MR. SPEED: Right.  
13 THE COURT: -- with --  
14 MS. MACHNICH: Yep.  
15 THE COURT: -- on a civil case with seven instead of eight.  
16 All right. We'll do three alternates. Still --  
17 THE CLERK: You want three alternates, so do you get two  
18 picks on that?  
19 MS. DIGIACOMO: No, we only -- we still only get one --  
20 THE COURT: No, you still only get one on the alternate.  
21 THE CLERK: One for three.  
22 MS. DIGIACOMO: -- peremptory for the three.  
23 THE CLERK: Okay. So I need to add one more seat for the --  
24 THE COURT: Yeah.  
25 MS. DIGIACOMO: Yeah, so it should be 33.

1 THE CLERK: -- yes.

2 THE COURT: All right. Any --

3 MS. MACHNICH: Your Honor, would it be possible if we do  
4 all -- we just do -- instead of eight plus one, we do nine? Both parties are  
5 in agreement on this --

6 THE COURT: If you both agreement to that, yes.

7 MS. MACHNICH: Yes. And I think we are.

8 MS. DIGIACOMO: And the State is --

9 MR. SPEED: Yes.

10 MS. DIGIACOMO: -- fine with using the nine peremptories  
11 for seat.

12 THE COURT: For any seat. Okay. And that's clear. And  
13 Defense Counsel, that's clear?

14 MS. MACHNICH: Yes. Thank you.

15 THE COURT: Okay. So it won't be eight plus one. It'll be  
16 nine to be used however they see fit.

17 And again, although I haven't done it on a civil -- excuse me  
18 on a criminal, because the statute is pretty clear, the last two -- in this  
19 case, the last three will be alternates.

20 MS. MACHNICH: Okay.

21 THE COURT: Any questions?

22 MS. DIGIACOMO: No.

23 MS. SUDANO: I do have one, Your Honor.

24 THE COURT: You've done a trial with me.

25 MS. SUDANO: I know. And I just wanted to clarify for Ms.

1 DiGiacomo. When we're questioning, we can question the entire panel  
2 as a group?

3 THE COURT: Correct.

4 MS. DIGIACOMO: And then you're okay, in a case like this,  
5 there are certain questions we will want to ask each one, because  
6 otherwise they --

7 THE COURT: I understand.

8 MS. DIGIACOMO: Okay.

9 THE COURT: Yes. This is -- I've had several sexual assault  
10 cases. They're --

11 MS. DIGIACOMO: It's just people don't volunteer --

12 MR. SPEED: Right.

13 THE COURT: Right. I get that.

14 MS. DIGIACOMO: -- information.

15 THE COURT: What about as to questions -- some of the  
16 standard and criminal cases: Have you ever been the victim; do you  
17 want to ask those, or do you want --

18 MS. DIGIACOMO: No, I would appreciate if the Court did all  
19 the general served as a juror, victim --

20 THE COURT: Well --

21 MS. DIGIACOMO: -- law enforcement, those kind of things.

22 THE COURT: Okay. They're general to some people. I don't  
23 generally do it. I just --

24 MS. DIGIACOMO: Okay.

25 THE COURT: -- let you guys, but I will, if you guys want me

1 to ask. Okay. So what do you want me to ask? If they're law  
2 enforcement.

3 MS. DIGIACOMO: Or anyone close to them is law  
4 enforcement.

5 THE COURT: Right.

6 MR. SPEED: Served on a jury.

7 THE COURT: What's that?

8 MR. SPEED: Served on a jury.

9 THE COURT: Oh, that I always -- yeah.

10 MS. DIGIACOMO: Okay.

11 MS. MACHNICH: Okay. Victim of a crime.

12 THE COURT: Have you guys ever seen the actual book they  
13 give us?

14 MS. DIGIACOMO: No.

15 MS. MACHNICH: No.

16 THE COURT: Oh, I don't know why.

17 MS. DIGIACOMO: In 20 years, no.

18 MS. MACHNICH: No.

19 THE COURT: Well, okay. Well, that's one of the questions --

20 MS. DIGIACOMO: Okay.

21 THE COURT: -- but it basically in a criminal it leaves it to  
22 whatever.

23 Okay. So --

24 MS. MACHNICH: Victim of crime and anyone close to them  
25 been a victim of crime. And we would also request a specific sexual



1 assault, or sexual -- like, however Your Honor feels comfortable asking  
2 that question a victim of any kind of sexual encounter or offense, or  
3 anything -- anyone close to them as well. Just because of the nature of  
4 the case and we'd like to do that earlier, rather than later because we are  
5 likely to lose people with that question.

6 MS. DIGIACOMO: That's correct.

7 MS. MACHNICH: And it'd be easier to do that earlier than  
8 have less people drop out of the panel subsequently.

9 THE COURT: So you want victim, or familiar, or --

10 MS. MACHNICH: Direct victim or someone close to them.  
11 Same as victim of crime.

12 THE COURT: Right.

13 MS. MACHNICH: Just more specific.

14 MS. DIGIACOMO: Yeah, I would ask to spell it out, because  
15 you'd be surprised how many don't think of it when you ask about, you  
16 know, victim of a crime and they're thinking burglaries.

17 The State would also ask whether or not they've either,  
18 themselves, been arrested or convicted of a crime. And then also  
19 whether or not someone close to them has been arrested or convicted of  
20 a crime, or accused, you know. It's probably better to say accused. If  
21 they've ever been accused of a crime.

22 THE COURT: Okay.

23 MR. SPEED: And if the Court would, can we tighten that up a  
24 little bit? Accused I don't have too much of a problem with, but arrested  
25 I think --

1 MS. DIGIACOMO: That's fine. Accused.

2 THE COURT: So just accused.

3 MS. DIGIACOMO: Accused.

4 MR. SPEED: Accused is --

5 THE COURT: Okay.

6 MR. SPEED: -- probably safer for us.

7 THE COURT: Okay.

8 MS. DIGIACOMO: And, Your Honor, I would also ask if you  
9 could ask them -- it kind of cuts to the chase too regarding law  
10 enforcement background -- if any of them have served in the military  
11 since they do the military police thing.

12 MS. MACHNICH: Yeah.

13 THE COURT: Okay. Anything else?

14 All right. So anything we can do to speed this up, or resolve  
15 it, just tell me?

16 MS. MACHNICH: Your Honor, in the vein of speeding things  
17 up, our new marching orders are really to do an analysis of the venire  
18 prior to us beginning the questioning -- or prior to Your Honor beginning  
19 the questioning. I know that they prepare those packets for us that  
20 include the racial breakdown of the jury. Usually, we have those  
21 awkward few minutes of silence while we're doing our calculations and  
22 the jury is in the room. If we could potentially do that now and we'd be  
23 able to handle those matters and that argument prior, since we have a  
24 little extra time now, that would be extremely helpful.

25 THE COURT: If we -- I don't think -- you're talking about the

1 list of prospective jurors? We don't have it.

2 MS. MACHNICH: We usually get it about when they're  
3 brought up, but if the panel is already assembled, they'll have the packet  
4 that has the names and the basic --

5 THE COURT: I can send Steve down after we take a break to  
6 get it.

7 MR. SPEED: Perfect.

8 MS. MACHNICH: That would be great, because then we  
9 could do that ahead of time.

10 MR. SPEED: Yes. If we already are aware that there's 82  
11 people in this venire panel, then I believe the packets are already  
12 assembled. So they should be ready for dissemination to us.

13 THE COURT: That's correct.

14 MS. MACHNICH: And therefore, we wouldn't have to request  
15 that they be removed from the courtroom after entering in order to make  
16 our --

17 THE COURT: Right.

18 MS. MACHNICH: -- venire argument, if it's an issue.

19 THE COURT: All right. So anything else?

20 MS. MACHNICH: Is Your Honor all right with us splitting jury  
21 selection between the attorneys on both sides if that's what we intend to  
22 do, or is Your Honor not inclined to do that?

23 THE COURT: I'm not inclined to. I think that just takes longer  
24 and, you know --

25 MS. MACHNICH: Okay. I mean, we'll defer to what --

1 THE COURT: -- two shots --  
2 MS. MACHNICH: -- Your Honor wants.  
3 THE COURT: -- unless you guys both agree to that.  
4 MS. DIGIACOMO: The State only intended for one of us to --  
5 THE COURT: Yeah.  
6 MS. DIGIACOMO: -- question the panel as a whole.  
7 THE COURT: I am not -- it's -- go ahead and then you can ask  
8 if you need time to ask the other one of your co-counsel did I get  
9 everything. Okay. That's fine. But to just start again, no.  
10 MS. MACHNICH: Okay. We just wanted to be clear ahead of  
11 time --  
12 THE COURT: Okay.  
13 MS. MACHNICH: -- so we're prepared. Thank you.  
14 THE COURT: All right. Anything else?  
15 MS. DIGIACOMO: Just if we could just scheduling, since we  
16 need to line up our witnesses and --  
17 THE COURT: You're talking about the rest of the week?  
18 MS. DIGIACOMO: Yes.  
19 THE COURT: So --  
20 MS. DIGIACOMO: And what time you take your lunch break  
21 and how long?  
22 THE COURT: Generally, around noon.  
23 MS. DIGIACOMO: Okay.  
24 THE COURT: You know, if there's a witness on the stand,  
25 we're going to finish the witness, unless it's an expert that's going to

1 take all day, that's usually more civil than here. So tomorrow is  
2 criminal --

3 THE CLERK: I put it for 11. We have 8 sentencings, 2 revos,  
4 and 12 other sentence -- or criminal.

5 THE COURT: We can try for 11 tomorrow. Thursday and  
6 Friday --

7 THE CLERK: I put 9:30 Thursday. And you do have the  
8 discovery -- you do have motions in limine, but I don't know if you've  
9 moving them.

10 THE COURT: We're going to -- we'll have to move them. I  
11 want to get -- you know, hopefully --

12 THE CLERK: So I put it for 9:30 --

13 THE COURT: -- get this done.

14 THE CLERK: -- for the two discovery conferences are at 9.

15 MR. SPEED: If we could interrupt, Your Honor?

16 THE COURT: Sure.

17 MR. SPEED: Not so fast before the Court moves those  
18 motions on Thursday. We have -- both of us have two other matters in  
19 other district courts for Thursday morning. Mine is a probation  
20 revocation. I probably can get Judge Johnson to agree -- Judge  
21 Johnson to agree to continue that one for a few days if we let him know  
22 that we're in trial in this department.

23 And I believe Ms. Machnich has an issue also.

24 MS. MACHNICH: I also have a sentencing and I believe  
25 there's a victim speaker; however, if we can get the schedule nailed

1 down today, I'm happy to email the District Attorney and the Department  
2 and let them know we need to move it. Just if you're inclined to start us  
3 later on Thursday, that would be great. If you're not, just knowing that  
4 for sure so we can make correct representations.

5 THE COURT: Well, I forgot we're definitely going into  
6 majority of next week.

7 Are we going to be done in two weeks?

8 MS. DIGIACOMO: Yes.

9 MR. SPEED: Yes.

10 MS. MACHNICH: Yeah.

11 THE COURT: Okay. So Friday of next week is -- in other  
12 words, do we have the time to start late tomorrow -- or Thursday?

13 MS. DIGIACOMO: Thursday with witnesses?

14 THE COURT: Yeah.

15 MS. DIGIACOMO: Yes.

16 MR. SPEED: Sure.

17 MS. DIGIACOMO: We're having our out-of-state ones drive  
18 in Wednesday night, so --

19 THE COURT: Okay. All right, then, we'll leave --

20 MS. DIGIACOMO: Oh, yeah. And --

21 THE COURT: -- the Thursday the MILs I think would take  
22 hours. Is that the --

23 THE CLERK: That's not the Barajas [phonetic] one. That is a  
24 different.

25 THE COURT: Which --

1 THE CLERK: They're not set for trial until 2020.

2 THE COURT: Oh, well, then forget it. We'll move those  
3 anyway, but we'll start at -- we'll start at 10:00 on Thursday.

4 MS. DIGIACOMO: 10:00. So do your schedules.

5 THE CLERK: Thursday 10. And then Friday is all day.

6 MS. DIGIACOMO: And, Your Honor, on Friday the State  
7 would be requesting a 10:00 start, if that's possible.

8 THE COURT: That's fine with me.

9 THE CLERK: 10 a.m. You still have that motion pending for  
10 the witness. What day is that witness?

11 MS. DIGIACOMO: What we intend to -- we were thinking if  
12 we could put her on first thing Thursday morning, but it -- just to -- it has  
13 to be done outside the presence.

14 MR. SPEED: Right.

15 THE CLERK: Right.

16 MS. DIGIACOMO: Because I --

17 THE COURT: So we could --

18 THE CLERK: We could do her at 10.

19 THE COURT: -- either depending on the time.

20 THE CLERK: And then bring the jury in at 1.

21 THE COURT: All right. What else?

22 MS. DIGIACOMO: I have one last hiccup. If we're still in trial  
23 next Wednesday afternoon, I have a Nevada Supreme Court argument at  
24 2:00 that I'm going to have to break for and run over and do and come  
25 back.

1 THE COURT: Well, the other thing is -- let me look at  
2 the -- where are we.

3 THE CLERK: We're on the 12th, she's talking about.

4 MS. DIGIACOMO: Correct.

5 THE COURT: I have that I've waited -- oh, shoot, let me pull  
6 up my calendar. I think before that a doctor's slip. I've been waiting for  
7 so it's not that long, a couple of hours, but -- hold on.

8 THE MARSHAL: Judge --

9 THE COURT: Yeah.

10 THE MARSHAL: -- they don't have those packets ready until I  
11 go pick them up. They're not ready before.

12 THE COURT: I see. Go ask Sandy and call Myra and see  
13 what we can do.

14 All right. Anything else before I'll let you guys talk to your  
15 client and that's it?

16 MS. MACHNICH: Okay.

17 THE CLERK: Did you want the rest of the proposed  
18 schedule?

19 MR. SPEED: Yes.

20 MS. MACHNICH: Yes.

21 MS. DIGIACOMO: Yes, please.

22 MR. SPEED: Yes, the rundown.

23 THE COURT: You mean for next week -- the week after?

24 THE CLERK: Uh-huh.

25 MR. SPEED: While we're here -- and I'm writing everything



1 down right now -- so tomorrow 11:00, yes? 11 Wednesday?

2 THE COURT: Hopefully.

3 MR. SPEED: Okay.

4 THE CLERK: 11 Wednesday.

5 MR. SPEED: And then 10:30 Thursday.

6 MS. MACHNICH: 10.

7 MR. SPEED: 10 Thursday. Okay.

8 THE CLERK: 10 a.m. Thursday. And then Friday at 9.

9 MS. DIGIACOMO: Friday at 10, please.

10 THE CLERK: Friday at 10.

11 MR. SPEED: 10 Friday. All right.

12 THE CLERK: And then the following week Monday the 10th

13 at 1 p.m. Tuesday I have set at 10:30, because it's a civil 14 matters. I'm

14 guessing 10:30.

15 MS. MACHNICH: Okay.

16 THE CLERK: And then Wednesday we're looking at 1 p.m.,

17 but maybe -- I don't know depending on --

18 MS. DIGIACOMO: Well, yeah, and that would -- my

19 argument is at -- from 2 to 2:30.

20 THE CLERK: The morning is already booked, so --

21 THE COURT: And I believe that's the day -- give me another

22 minute --

23 THE CLERK: Okay.

24 THE COURT: -- to pull this up --

25 THE CLERK: Yeah. We might just have to be dark then.

1 MS. DIGIACOMO: Dark that day.

2 THE COURT: Yes.

3 THE CLERK: And then Thursday we can start at 9:30, that's  
4 the 13th. And then Friday, again, would be a 9 a.m. if you want that.  
5 That would be the 14th.

6 THE COURT: Jury instructions.

7 MS. DIGIACOMO: I have started them.

8 THE COURT: Good. I'd like to see both sets. When I say  
9 both sets, agreed upon and you're not agreed upon --

10 MS. DIGIACOMO: Okay. Yep.

11 THE COURT: -- sets. I think let's say Thursday.

12 This is taking forever. All right. Just hold on let me get my  
13 other computer.

14 [Pause]

15 THE COURT: Another 3 p.m. on the 7th, which means I have  
16 to leave here by 2:30. I've waited three weeks for this.

17 MS. DIGIACOMO: So the 7th is Friday.

18 THE COURT: It is.

19 MS. DIGIACOMO: Oh, okay. So we had our expert that was  
20 going to be teleconferenced Friday at 3:30, so we'll have to move that.  
21 Yeah. So we'll finish on Friday you said at 2:30, Your Honor?

22 THE COURT: Yeah.

23 MS. MACHNICH: Have the jury take an abbreviated lunch  
24 that day, or --

25 THE CLERK: That's the day you wanted to start at 10 a.m.

1 MS. DIGIACOMO: Yes.

2 MS. MACHNICH: Yes.

3 THE COURT: Let's just tell them to --

4 MR. SPEED: Have a big breakfast and we'll work straight  
5 through.

6 THE COURT: Yeah.

7 MR. SPEED: That's what we've done in the past.

8 THE COURT: Yeah. Except I don't want to tell you the story  
9 about we did something similar and they took one after picking a jury.  
10 They took one of the jurors away in an ambulance because he had  
11 some -- you know, he had to eat, and he didn't eat.

12 MS. MACHNICH: They can bring snacks.

13 MS. DIGIACOMO: And actually --

14 THE COURT: I get that. I'm just -- I think I --

15 MR. SPEED: I have a bag of apples that I bring with me.

16 MS. MACHNICH: Yeah, we'll bring some snacks.

17 THE COURT: -- I have an actual war story. You know, we  
18 said, oh, and we went through lunch to pick the jury. Got them all done.  
19 And they're going back. I don't remember what -- I think to eat.

20 THE CLERK: Delivery.

21 THE COURT: We had gotten them lunch or something.

22 THE CLERK: Yeah.

23 THE COURT: Anyway, we had held them too long, and he  
24 just had some sort of a medical, and they took him out of here in a --

25 MS. MACHNICH: I had one of those and it may have actually

1 been the same trial, where I had a juror fall out, but it was after -- it was  
2 during deliberation. They went back and immediately when they got to,  
3 like, the buffet table for lunch he fell out at the lunch.

4 THE COURT: Yeah.

5 MS. MACHNICH: So that might have been the same case.

6 THE COURT: All right. Let's hope -- yeah.

7 Okay. Anything else?

8 MS. DIGIACOMO: No. Just for next Wednesday, I guess,  
9 we'll see how we're going, but my argument is from 2 to 2:30, so to start  
10 at 1, I need to leave here by 1:30. It'd kind of be a waste.

11 THE COURT: Absolutely. I get all that. I mean, I'd rather tell  
12 them longer. Are we still going to be done by next Friday?

13 MS. DIGIACOMO: I think so, Your Honor.

14 MR. SPEED: I think so.

15 THE COURT: I certainly hope so. But I forgot to -- I knew I  
16 had that, and --

17 THE CLERK: Well, we could do Wednesday, we could start  
18 after the criminal calendar and go through lunch and then break early,  
19 but --

20 MS. MACHNICH: Oh, yeah.

21 MS. DIGIACOMO: Okay. Well, let --

22 THE COURT: All right. So --

23 MS. DIGIACOMO: -- why don't we see how far we get --

24 THE COURT: Yeah.

25 MS. DIGIACOMO: -- by next Tuesday.

1 THE COURT: So anyway. You guys weren't here for my two-  
2 month civil case coming up where I waited three months for an  
3 appointment in Arizona and I told them and that was -- so it's two  
4 months in one week.

5 Oh, well. All right. So we'll leave. Talk to your client.

6 MS. MACHNICH: Thank you.

7 MR. SPEED: Thank you, Your Honor.

8 THE COURT: Sandy is going to try to -- she's going  
9 downstairs to try to get the list. If she does, she'll hand it to you guys.

10 MR. SPEED: Okay.

11 MS. MACHNICH: Thank you, Your Honor.

12 MR. SPEED: We'll be here. We'll hang out, Your Honor.

13 Thank you.

14 [Recess taken from 11:11 a.m. to 1:02 p.m.]

15 MS. MACHNICH: Yes, Your Honor.

16 THE COURT: C-318461. Let the record reflect Defendant is  
17 present with an interpreter, and we already got your name.

18 Before you make your record, I want to just make sure it's  
19 Mr. Gunera-Pastrana? Did I say that right?

20 THE DEFENDANT: Yes.

21 THE COURT: And I don't want to know what you discussed  
22 with your attorney, but your attorney explained the possible sentences  
23 should you be convicted?

24 THE DEFENDANT: Yes.

25 THE COURT: And did you understand everything he

1 explained -- he or she, I don't know which explained to you?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you have any additional questions  
4 you'd like to ask him or me and we can do that outside the presence of  
5 the State if you'd like?

6 THE DEFENDANT: No.

7 MR. SPEED: Well, Court's indulgence.

8 THE COURT: Okay.

9 [Pause]

10 MR. SPEED: Your Honor, Kevin Speed for Mr. Gunera-  
11 Pastrana. We did have an issue and there are some things that I won't  
12 delve into them too far, because it touches and concerns a privileged  
13 communication, but there is a procedural question of law that doesn't  
14 require the Court to act or behave as a person giving legal advice that  
15 Mr. Gunera-Pastrana has a question on that neither myself nor Ms.  
16 Machnich has been able to answer, so if the Court would excuse the  
17 District Attorney's Office from the courtroom for just a few minutes, I  
18 think we can clear up a lot of things that will help Mr. Gunera-Pastrana  
19 make his decisions going forward.

20 THE COURT: Okay. Do we need to go off the record for that  
21 or seal it?

22 MS. MACHNICH: Seal it.

23 MR. SPEED: Probably seal it.

24 THE COURT: Seal it. Okay.

25 All right.

1 MR. SPEED: Hold on.

2 THE COURT: Hold on.

3 MR. SPEED: Go ahead.

4 [Record sealed from 1:05 p.m. to 1:11 p.m.]

5 THE COURT: All right. And you need to start translating.

6 Anything else we need to go over before we bring -- oh, you  
7 had something outside the presence you wanted to make a record on?

8 MS. MACHNICH: Yes, Your Honor. Prior to our break we  
9 had briefly discussed getting a list of the jurors who would be sent up as  
10 part of our venire, so that we could consider and review what has been  
11 provided by them regarding their race. There is a reporting section on  
12 the bio form attorney's list that is provided as part of the jury selection  
13 process that does have race as one of the questions.

14 The other option for doing this is, how my co-counsel would  
15 refer to as the eyeball test of when everyone comes up you try to put  
16 people into categories based upon what race they appear. This seems to  
17 be a little more straightforward, because everyone has put down  
18 something for the race category, although I will acknowledge that there  
19 were quite a few individuals who put other race as the option there.  
20 One of the things that we do when we receive these lists, or when we do  
21 eyeball the jury when they do -- when they are brought in, with regard to  
22 a fair cross section challenge, is to see if we have a representative  
23 makeup of the community.

24 And our basis for the numbers is the U.S. Census Clark  
25 County from -- there we go -- we have one from July 1st, 2018. That's

1 U.S. Census Bureau Quick Facts in Clark County, which put the  
2 breakdown of Clark County with 70.3 percent white, 12.5 percent black or  
3 African American, 1.2 percent American Indian or Alaskan Native alone,  
4 10.5 percent Asian alone, .9 percent Native Hawaiian and other Pacific  
5 Islander alone, two or more races would be 4.7 percent, Hispanic or  
6 Latino percent would be at 31.3, and white alone, not  
7 Hispanic -- yeah -- oh, okay, so we're getting --

8 THE COURT: In order to expedite, if you want to attach that  
9 as a part of the court record, I'm okay with that.

10 MS. MACHNICH: We would love to do that. And we would  
11 ask that you take judicial notice of those census figures.

12 I showing it to the State, so that they've -- it's the -- and I'll go  
13 on while they're reviewing that.

14 So we took the numbers and the legal basis for this and the  
15 legal basis for a fair cost action challenge comes from the 6th and 14th  
16 amendments of the US Constitution, which guarantee a venire selection  
17 from a fair cross section of the community. And we would cite  
18 specifically to *Morgan v. State*, which is 134 Nev. Adv. Op. 27 from 2018,  
19 and *Duren v. Missouri*, US 357, which is from 1979.

20 To demonstrate a prima facie case, the fair cross section  
21 requirement, we must show that a group alleged to be excluded is a  
22 distinctive group in the community; that the representation of this group  
23 in venires from which juries are selected is not fair and reasonable in  
24 relation to the number of such persons in the community; and that  
25 there's under representations due to systemic exclusion of the group in



1 the jury selection process. Again, citing to *Morgan*, quoting *Williams v.*  
2 *State*, 121 Nev. 934 from 2005.

3           So to -- specifically with relation to this case, we went  
4 through the bio form attorney's list that was provided. There were 82  
5 people on our panel. And we got our tally numbers at 50 of those  
6 individuals having identified -- self-identified as white; 4 as African  
7 American; 1 as American Indian; 9 as Asian; 1 as Native Hawaiian  
8 -- sorry, I should have not written all initials; 17 as other, which we'll  
9 address in just one moment; and no people identified on the forms as  
10 two or more races, or Hispanic or Latino.

11           We acknowledge that we're not going to argue to Your  
12 Honor that there are zero people of Hispanic or Latino descent on this  
13 jury. We went through, on further basis, and based upon what we have  
14 right now, took everyone, who identified as other and looked for any  
15 indication of Hispanic or a Latino origin in their names. That is what we  
16 could do at this point.

17           Obviously, for this analysis, we could certainly bring up the  
18 jury, but if we took that amount, we got it to, I believe 7 that would -- or  
19 maybe Hispanic would be 10 of the others, so of the 17, we thought  
20 potentially 10 could be Hispanic or Latino. So our challenge is based  
21 primarily on the number of African Americans; and secondarily,  
22 potentially on the number of Hispanic or Latinos in the panel that's been  
23 provided before this Court.

24           So to determine whether members of a distinct group are  
25 fairly represented, you look at the absolute and comparative disparities

1 between the actual percentage in the venire and the percentage of the  
2 group in the community. Comparative disparities over 50 percent  
3 indicate that the representation of the group is likely not fair and  
4 reasonable. Again, citing to *Williams v. State*.

5 We ran those numbers and saw that we had a 61 percent  
6 comparative disparity on both the African Americans and potentially  
7 even with our 10 going towards the Hispanic, Latino count, a 61 percent  
8 comparative disparity with the community from Hispanic or Latina  
9 members of the community.

10 Given that we do not have solid numbers on the second, I  
11 will primarily argue the first. It is a distinct group in the community.  
12 African Americans or black individuals in Clark County are a distinct  
13 group, as counted by the US Census. And in Clark County it's a specific  
14 number that is provided.

15 We ran, with respect to this panel, that number and  
16 the -- given that the comparative disparity is 61 percent, we would  
17 challenge the makeup of the jury panel that is coming up before Your  
18 Honor. There are four African Americans out of 82 people. And we are  
19 way off a fair representation of the community, based upon the  
20 numbers.

21 I can certainly go into the third prong as well at this point,  
22 but I would --

23 THE COURT: Well, that's the -- I believe, if I'm understanding  
24 you right, that's the -- how the panel is acquired and whether that's done  
25 with bias, which is the biggest issue?

1 MS. MACHNICH: Sure is, Your Honor. And our --

2 THE COURT: And I've had, by the way, the Jury

3 Commissioner testify several times regarding this, both before and after  
4 the addition of the latest group, and I don't know if that was how they  
5 did it, but they added another means of acquiring potential jurors, so go  
6 ahead and address that.

7 MS. MACHNICH: Well, Your Honor, you are absolutely  
8 correct. That that Nevada Revised Statutes were added, I believe it was  
9 three years ago now -- or it was implemented -- passed four years ago,  
10 implemented three years ago. NRS 6.0453, which states that the Jury  
11 Commissioner shall, for the purpose of selecting trial jurors, compile and  
12 maintain a list of qualified electors from information provided by -- and  
13 this was preexisting -- a list of persons who are registered to vote in the  
14 county, in the Department of Motor Vehicles, and a public utility. Those  
15 three were preexisting.

16 The new one that Your Honor is referring to is the  
17 Employment Security Division of the Department of Employment  
18 Training and Rehabilitation, pursuant to NRS 612.265; however, our  
19 understanding -- and I'm guessing that if you've spoken to the Jury  
20 Commissioner in the recent past, you're also aware of the fact that the  
21 Jury Commissioner is not complying with the statute, so she is not  
22 complying with Nevada law to obtain a fair cross section of the  
23 community, as specified by Nevada Law and Nevada Revised Statutes,  
24 and are assembly, and state senate.

25 She is not currently pulling data from the Employment

1 Security Division. Our understanding is that if she were to testify and be  
2 allowed to testify in the case, she would testify that they have not  
3 worked out a mechanism for that to happen at this point; however, we  
4 believe that that is not a justification for violating our client's right to a  
5 fair cross section of the community, based on the 6th and 14th  
6 amendments of the United States Constitution.

7 So at the point, Your Honor, we would ask for a new jury  
8 panel: one that is a fair cross section of the community. And obviously,  
9 the question before that posed to the Court would be, would Your Honor  
10 allow us to question the Jury Commissioner further. And I believe Your  
11 Honor is disinclined to do that; however, we would like to make that  
12 formal request.

13 THE COURT: Well, she's done it so many times. I think the  
14 record is very clear from her testimony on other cases. I don't see why it  
15 would have to be done yet again in this particular case, unless you know  
16 something I don't.

17 MS. MACHNICH: It depends --

18 THE COURT: I know she's testified in front of me two or  
19 three times and I know she's testified multiple times in other courts.

20 MS. MACHNICH: And is Your Honor aware of and  
21 understanding that her recent testimony is that they are not in  
22 compliance with NRS 6.045 (3) for a variety of reasons?

23 THE COURT: I was made aware of that.

24 MS. MACHNICH: Yeah.

25 THE COURT: All right. Anything else?

1                   Let's hear from the State. Well, before you do that, so really  
2 what you're asking is, to continue the trial because even if we got  
3 another panel, it wouldn't comply, according to you, with that last  
4 requirement?

5                   MS. MACHNICH: Your Honor, we only make these  
6 challenges when there are comparative disparities above 50 percent. I  
7 think that, as attorneys, we've all had representative panels, despite the  
8 current mechanism. We are not asking for a continuance of this trial.  
9 We are asking for a new panel and hopefully that panel will be a more  
10 fair representation and cross section of the community.

11                   It is theoretically possible, because we have seen it happen;  
12 however, based upon the panel that we have been provided specifically  
13 in this case. We have comparative disparity issues, so I'm not asking to  
14 continue the trial at all; just for a new --

15                   THE COURT: Okay.

16                   MS. MACHNICH: -- pool.

17                   THE COURT: All right. State.

18                   MS. SUDANO: Thank you, Your Honor. So what we're  
19 looking at is not whether this particular 80 people in front of us for this  
20 proceeding are a fair cross section of the community. What we're  
21 looking at is whether the jury selection process, as a whole, pulls from a  
22 fair cross section of the community.

23                   As Your Honor has indicated, we've had testimony in a  
24 number of different departments in this courtroom, including Your  
25 Honor, on a number of different occasions from the Jury Commissioner

1 for how it is that they currently pull people in from the community as far  
2 as who is actually being summoned for jury duty. So it's my  
3 understanding that that currently comes DMV, voter rolls, and from NV  
4 Energy or from Power.

5 Just because they send out jury summons to everybody, the  
6 Jury Commissioner cannot mandate that people come in. It's whoever  
7 receives a summons and comes back in front of the Court. So I don't see  
8 any reason to go back and have the Jury Commissioner testify when  
9 there hasn't been anything that's presented that would change this  
10 Court's understanding, or change the State's understanding, change the  
11 Nevada Supreme Court's understanding of where we are, as far as the  
12 jury selection process in general and how it is that the jury pool county  
13 wide is selected.

14 As far as the particular numbers that the Defense attorneys  
15 have posed in this particular case, that's all coming from what these  
16 individuals have included on their forms. I just want it to be incredibly  
17 clear at this point, on the record, that we have not seen these jurors.  
18 They have not been in our courtroom at this point.

19 So whether our Hispanic or Latino jurors are identifying as  
20 white, or whether they're identifying as other, this number that we  
21 have -- this ten may be Hispanic or Latino journals -- or jurors is  
22 completely speculative at best. And again, because we have nothing to  
23 indicate that there's some issue with the way that the jury panel county  
24 wide is compiled, I don't think that there's anything that we need to do  
25 further at this point.

1 I would also note for the Court that what counsel wants is for  
2 this panel to be excused and for another panel to be brought up, even  
3 though they're challenging the process for the jury pool county wide. So  
4 there is a case --

5 THE COURT: I thought I said that.

6 MS. SUDANO: Well, and I do just want to point this out,  
7 though that there is a case -- and I don't have the name, and I can get it  
8 in just a second and send it to Your Honor -- where there was a jury that  
9 was not representative for the pool that was in front of particular judge  
10 for a particular trial. And I believe the issue there was there were not  
11 enough African Americans, so the Jury Commissioner excused -- or they  
12 excused the first panel.

13 Jury Commissioner went down specifically selected a jury  
14 panel from the pool that was there in the court on that particular day.  
15 Brought them back up and decided that's our jury pool. So that was also  
16 determined to be inappropriate when the Jury Commissioner and the  
17 judge are specifically cherry picking individuals to match whatever  
18 community makeup.

19 So for us to excuse this particular panel, to go back down  
20 and get another panel, and potentially excuse that one until the Defense  
21 attorneys are satisfied with that panel being a representative makeup of  
22 the community is totally inappropriate, given that we don't have  
23 anything to suggest that the county-wide process is problematic.

24 THE COURT: Thank you.

25 I do have one other -- and again, this was an issue, where we

1 went through some of the jurors and a particular juror -- or venire person  
2 self-identified as white and when he was questioned he said he was  
3 African American. So the, if you will, guesswork, on this, or assumptions  
4 aren't always correct.

5 Go ahead.

6 MS. MACHNICH: Your Honor, I don't believe they're  
7 assumptions. They're actual people self-reporting and I believe our -- it  
8 would be our assumptions if we were looking at them saying the  
9 color -- we're going to assume the color of your skin means X; however,  
10 these are what people self-identify as. So taking apart and aside the --

11 THE COURT: And then they changed it when questioned, so  
12 that's my only comment.

13 MS. MACHNICH: You know, Your Honor, we're --

14 THE COURT: There's not a lot we can do.

15 MS. MACHNICH: Well, people generally self-identify  
16 correctly, or they don't -- most people do not incorrectly self-identify  
17 themselves as something they are not. I don't know what would  
18 motivate someone to do that.

19 THE COURT: Just tell you exactly what happened. And I  
20 don't remember the exact case, but it's on the record.

21 MS. MACHNICH: Your Honor, I can't speak to that, but what I  
22 can speak to is the data we have in front of us here today.

23 THE COURT: Yeah.

24 MS. MACHNICH: Our client is entitled to a fair cross section  
25 of the community. And I would state that, as the State has said, we have



1 it -- the State stated in their argument that we haven't established that  
2 there is any problem with the process, but we have, because the  
3 process -- our legislators, which is the process this is supposed to go  
4 through, the process that the Nevada Supreme Court specifically stated  
5 for them to go through. This is something that should be legislatively.

6 The legislature took it up. The legislature passed a law and  
7 now the Jury Commissioner is ignoring it. So at this point, and there can  
8 be all the excuses --

9 THE COURT: Well, correct me --

10 MS. MACHNICH: -- but there are years that now this has not  
11 occurred. So at this point, the Jury Commissioner is not in compliance  
12 with the law and it's a due process violation for my client, but, Your  
13 Honor, we will submit to your discussion on the issue.

14 THE COURT: And I appreciate it. I think this is a very  
15 interesting area. Maybe I shouldn't, you know, waste time saying that,  
16 but there is a problem, but the law is that under case law, et cetera, that  
17 we take a fair cross section of the community by using these means.  
18 Now, the one that you speak of, the commissioner has said that -- and I  
19 know you're easily as informed as I am -- that could not -- cannot comply  
20 with that particular statute that the legislature passed; in other words, if  
21 you legislate that you will -- I don't know,

22 I don't want to give a crazy example, but if you legislate to  
23 do -- that the federal government has to provide you -- a good example,  
24 the gun issue that was from before, where the state passed a thing  
25 saying we'll check backgrounds, but the feds said we can't do that. And

1 that was -- if you can't do it -- if there's no means to do it, then the law  
2 certainly is invalid, in that regard. And my understanding is that's  
3 exactly what's taking place regarding the fourth criterion.

4 What is that again? The --

5 MS. MACHNICH: It was specifically in the statute the  
6 Employment Security Division of the Department of Employment  
7 Training and Rehabilitation, pursuant to NRS 612.265.

8 THE COURT: Right. And they -- my understanding -- and  
9 again, correct me -- they can't comply by giving everybody's information  
10 out.

11 In any event, this isn't perfect. No doubt. I don't think  
12 anybody would say otherwise, but in selecting a cross section that does  
13 not discriminate in any manner, and is random, is what is required, and  
14 that's what the commissioner is complying with.

15 The fact that it doesn't meet the exact -- or even, in this case,  
16 less than your goal -- what would that -- less than the optimal standard,  
17 you know, criteria 80 percent this, whatever, is unfortunate, but I doubt  
18 that ever could take place. And even selecting from every, somehow,  
19 pulling everybody off the street would still not get a statistical cross  
20 section and that has to do with survey research and polling, et cetera, et  
21 cetera, which I had to say was my major in college. It's very, very hard  
22 to get the reality to comply with that.

23 So based on what testimony I have previously heard from  
24 the commissioner, I don't think that certainly any -- bringing her in again  
25 to reiterate what she does, since we're all aware of what criteria she

1 takes, and the fact that this doesn't -- it doesn't statistically meet it, but  
2 on the other hand, the most serious criteria is that we draw from a  
3 population, if you will, using a cross section that doesn't discriminate in  
4 any manner, and that's what we certainly want to do, and do our best to  
5 do. So I'm denying the motion for a new panel.

6 And again, just for the record, a new panel we could be  
7 doing this all day, because the next panel, even though that may be  
8 closer, would still have the flaw, if you will, regarding the statute passed  
9 by the legislature, and so -- okay.

10 MR. SPEED: Kevin Speed for the record, Your Honor. Or the  
11 Jury Commissioner's refusal to comply with those statutes?

12 THE COURT: Well, I think it's her -- you can say refusal. I  
13 think it's inability in, not just inability that there's no way to comply, but  
14 that you certainly, I would imagine, have had plenty of time to take up,  
15 so --

16 MR. SPEED: And in the Court's ruling, it is acknowledging  
17 that the Jury Commissioner -- in deciding that her testimony is  
18 unnecessary for this particular motion, the Court is acknowledging that  
19 the Jury Commissioner is not in compliance with the statute?

20 THE COURT: Well --

21 MR. SPEED: It is aware of that?

22 THE COURT: -- it's my understanding, she's not using that  
23 fourth -- what is it called? The -- again, that long -- yes.

24 MS. MACHNICH: The Employment Security Division of the  
25 Department of Employment Training and Rehabilitation, pursuant to

1 NRS 612.265.

2 THE COURT: Thank you. She is not using that, because she  
3 is unable to do so.

4 Okay.

5 THE CLERK: I need a copy of that for Court's exhibit.

6 MS. MACHNICH: For the -- oh, the census?

7 THE CLERK: Is that what you were referring to when you  
8 said you wanted to make a record?

9 THE COURT: Yeah, the -- I think there's --

10 MS. MACHNICH: Yes.

11 THE COURT: -- a census. And as long as that's published,  
12 and documented --

13 MS. MACHNICH: Yeah, we'd ask that the Court take judicial  
14 notice, but we'll make an exhibit of the copy that we have --

15 THE COURT: That's fine.

16 MS. MACHNICH: -- pulled yesterday --

17 THE CLERK: Okay.

18 MS. MACHNICH: -- and it's from July 2018, which is the  
19 most recent version.

20 THE COURT: Okay. Anything else?

21 MS. MACHNICH: I don't believe so, Your Honor.

22 THE COURT: State.

23 MS. DIGIACOMO: No, Your Honor.

24 MS. SUDANO: No, Your Honor.

25 THE COURT: All right. Bring them in.

1 THE MARSHAL: I've got to go get them, Judge.

2 THE COURT: Oh, okay. Right. All right. So it's going to  
3 be that seat, because --

4 THE CLERK: Steve, can you put 34 in Number 15 seat. Here,  
5 I'll give you my list.

6 THE COURT: Up here, because she was in the box.

7 THE CLERK: Oh, yeah.

8 MS. DIGIACOMO: Well, just --

9 THE MARSHAL: 34 and 15 seat.

10 THE COURT: Well, because

11 MS. DIGIACOMO: In other words --

12 THE COURT: -- because she did this. She already did this, so  
13 did you guys --

14 THE CLERK: Yeah.

15 THE COURT: -- probably.

16 THE MARSHAL: Uh-huh Okay. Give me a moment to try to  
17 figure this out.

18 MS. DIGIACOMO: Can you just put a paper or something on  
19 seat 15, and he knows to skip over it.

20 THE CLERK: That's, that's true.

21 MS. DIGIACOMO: Yeah. If you put like --

22 THE CLERK: I could do that.

23 MS. DIGIACOMO: -- or something on --

24 THE CLERK: Never mind --

25 MS. DIGIACOMO: -- on seat 15.

1 THE CLERK: -- I'll take care of it.  
2 THE MARSHAL: Okay, yeah. That would be easier. Give me  
3 that --  
4 THE COURT: All right. Yeah.  
5 THE MARSHAL: Give me a post-it.  
6 THE CLERK: Just a post-it?  
7 THE MARSHAL: Yeah.  
8 THE COURT: Yeah.  
9 THE MARSHAL: And we'll just put that there.  
10 MS. DIGIACOMO: And then I will --  
11 THE COURT: That's what happens when we do it early.  
12 THE MARSHAL: Yeah.  
13 MS. DIGIACOMO: Yeah.  
14 THE MARSHAL: Now which seat?  
15 MS. DIGIACOMO: It's going to be the fifth one from here.  
16 THE CLERK: From the middle row.  
17 THE MARSHAL: The second row, in the box.  
18 MS. DIGIACOMO: No --  
19 THE COURT: Yeah.  
20 MS. DIGIACOMO: -- one more.  
21 THE COURT: In the box.  
22 MS. DIGIACOMO: In the box. The fifth seat down.  
23 THE CLERK: The front row.  
24 THE COURT: The front row.  
25 [Counsel and clerk confer confer]

1  
2  
3 THE CLERK: Perfect.  
4 THE MARSHAL: Yes, sir.  
5 THE CLERK: Yeah. I'll tell them to skip that seat.  
6 THE MARSHAL: Okay.  
7 THE COURT: Okay.  
8 THE CLERK: And then we'll --  
9 THE COURT: Thank you.  
10 MS. DIGIACOMO: -- plug the person in after. So the first  
11 person that comes in, after you give me this group will stay up here, and  
12 the others you can load back.  
13 THE COURT: I think you know not to do that next time.  
14 [Court and clerk confer]  
15 THE COURT: All right.  
16 [Pause]  
17 THE MARSHAL: Please rise for the jurors.  
18 THE COURT: Okay. We are going to be full.  
19 [Prospective jurors in at 2:07 p.m.]  
20 [Inside the presence of the prospective jurors]  
21 THE COURT: Okay. Please be seated everyone.  
22 Good afternoon, ladies and gentlemen.  
23 GROUP RESPONSE: Good afternoon, Your Honor.  
24 THE COURT: Well, that was pretty good for an afternoon.  
25 Now usually you're asleep. I understand you're sitting there

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GUSTAVO GUNERA-PASTRANA, ) No. 79861  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 THE STATE OF NEVADA, )  
 )  
 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:

AARON FORD  
STEVEN S. OWENS

DEBORAH L. WESTBROOK  
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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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BY /s/ Carrie M. Connolly  
Employee, Clark County Public Defender's Office