

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

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3 GUSTAVO GUNERA-PASTRANA,) No. 79861

4 Appellant,)

5 v.)

6 THE STATE OF NEVADA,)

7 Respondent.)

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9 **APPELLANT'S APPENDIX VOLUME X PAGES 2205-2297**

10

11 DARIN IMLAY

12 Clark County Public Defender

13 309 South Third Street

14 Las Vegas, Nevada 89155-2610

15 Attorney for Appellant

STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

AARON FORD
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

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1 BY MS. DIGIACOMO:

2 All right. So as you are telling the story, you say on Tuesday,
3 the guy in front of me was so nice, he bought my drink. On Wednesday,
4 my barista was there, but on Thursday I spilled my drink everywhere in
5 my car, all over me, and then today was just a normal day.

6 And you end up going home on that Friday and you're
7 talking to your significant other and you're telling them about the week
8 you had, but when you're talking about the person who bought you the
9 drink on Tuesday in front of you, you tell them oh, you know what,
10 honey, I think you know it's that guy that we've seen there on the
11 weekends and talks to us, usually there on his computer. And then when
12 you are telling your significant other about Wednesday when you ran
13 into your favorite barista, and you're like, oh, you know him. He's the
14 guy with the crew cut and always makes your tea perfectly and she's
15 like, oh, right. How's he doing?

16 And then on -- when you're talking about on Thursday when
17 you spilled it all over the car and your significant other is like, you spilled
18 it what? Did you clean that up? Am I going to be sticking to stuff when I
19 get in there? You know I like my car clean and he's like no, I got it all
20 cleaned and wiped up. It's not a problem. Most of it was on my pants,
21 not an issue.

22 And then maybe a week down the road, you're talking to
23 another friend of yours about everything that happened in Starbucks but
24 when you're telling that friend, you leave out the part about how you
25 spilled it all over you in the car. You just say oh, the top came off

1 because you don't want to say ah, yeah, I'm a dummy. I just got it all
2 over me in the car because I lifted the cup up by the top. So you might
3 just say I spilled it in my car.

4 And then when you're talking another time with somebody
5 else, and you're just telling them generally what happened, they might
6 start asking you questions. Well, wait, they have the pumpkin latte back?
7 When did that come back? And then what's in that drink and you tell
8 them that.

9 Now, when you're telling these different versions, does it
10 mean that these things didn't happen every day? Of course not. Now,
11 what if two years down the road and you're at Starbucks and you're
12 hanging with your friend and the barista, and it's a different Starbucks,
13 walks in and it reminds you of that week that you had, that great week at
14 Starbucks until you spilled it on yourself, and you start telling your friend
15 and the barista about hey, do you remember back then at that other
16 place and the first day I saw you, I hadn't seen you in a while, and then
17 the next day it was so nice that the pumpkin lattes were back, and then
18 the next day though I spilled it all over me and in the car, but then
19 the -- on Thursday it was so nice, that this car in front of me bought my
20 drink. Now, is the order wrong on what really happened that week?
21 Sure it is. But does it mean that those things didn't happen each day in
22 Starbucks? No.

23 Defense counsel said the truth doesn't change and that's
24 right. The core of what's at every story or event that happened doesn't
25 change, but details can -- or be told differently because first of all, does

1 anybody tell the same story twice the exact same way? Of course not.
2 It's going to depend on who they're talking to. It's going to depend upon
3 whether or not they're being questioned about their story, and it's also
4 going to depend upon how they're remembering it. No one, no one
5 repeats a story the exact same way twice, and if they do, then I submit to
6 you they got it memorized, that that's not probably what happened
7 because nobody does that.

8 And if somebody comes in here and tells you and gets the
9 days mixed up, does that change the fact that one day that week you
10 spilled coffee all over yourself? No. Does it change the fact that one day
11 that week some really nice person in front of you bought that drink? No.
12 The core of what happens in a story is the truth and it doesn't change.

13 And in this case, the Defense wants you to believe that Meily
14 lied. That slide was put up over and over for you and in fact, the last
15 time he left the slide up that simply says Meily lied for I think five or
16 seven minutes because that's what you want you to believe. That's what
17 the Defense wants you to believe and that's what they need you to
18 believe in order to find him not guilty. Why? Because if Meily's telling
19 the truth, then the Defendant is guilty of all of these sexual abuse crimes
20 against her. It's what this case boils down to.

21 And when you are looking at whether or not she's telling the
22 truth, you need to look at that credibility instruction and you need to look
23 at her motives. The Defense has provided you a couple of motives that
24 first of all, that she is making all of this up and has to get -- had to go
25 through -- Sorry, am I on, now?

1 COURT RECORDER: Uh-huh.

2 MS. DIGIACOMO: Okay. Sorry.

3 BY MS. DIGIACOMO:

4 They want you to believe that she's making all this up just
5 because she wants the Defendant gone, wants him out of the house.
6 That makes no sense. The reason why she wanted him gone was not to I
7 guess break up the family or I'm not sure exactly what her motive would
8 be of why she would want him gone and gets this idea from her other
9 friend at school, but she told you on the stand the reason she wants him
10 gone is because she doesn't want the verbal and sexual abuse anymore.

11 When talking about how the truth doesn't change, here the
12 truth is. There were three incidents of physical abuse, sexual abuse, by
13 the Defendant on Meily. Three of them. The forced kissing with the
14 tongue on her mouth, the incident where he stuck his finger in her
15 vagina and used his tongue on and in her vagina, and also the very first
16 one where he had the ploy of checking her scars and then took his hand
17 down and not just touched her vagina, rubbed it around, rubbed his
18 hand around like a wiping motion.

19 That's the truth, that's the core, and that truth doesn't
20 change. How she tells the story about that core may change, depending
21 on who she's talking to, but it's not really changing, it's more adding
22 stuff or maybe not including everything, but that core has not changed.

23 And you had a lot of I guess different times that she had to
24 talk about it to consider in this case. It's not just her coming on the stand
25 and saying it now. She told her brother first. She told her mom. She

1 had to tell the patrol officers. She then had to have the forensic
2 interview. She then had to even speak to CPS about it. Then she had to
3 go into court and testify. Then go to another court proceeding and
4 testify, and then come in here. And you know what? The overall
5 consistency of what she says, that is proving it to you beyond a
6 reasonable doubt. Think about it. The Defense wants you to say nope,
7 she's lying about everything. No, she is not.

8 The truth has not changed, not one iota. The Defendant
9 sexually abused her. He sexually penetrated her vagina. He rubbed her
10 vagina. He kissed her on the lips in a lewd manner. That's the core. Not
11 changed. Not changed at all. And think about, too, you know, with the
12 Starbucks story, you know, recalling a couple of years down the road,
13 you can kind of remember the main theme. I spilled my coffee. The guy
14 bought me coffee in front -- or bought my coffee in front of me, my
15 favorite barista was there, they had the pumpkin latte. Are you going to
16 remember who was in line in front of you? How long was the line?
17 What were you wearing when you spilled it? Which car were you in? Do
18 you remember what size drink you got?

19 As time goes on, the little details kind of fade from our
20 memory and that's normal. But the crux of it, what was the major thing
21 that happened, you remember, or you don't. Me, probably not. Five
22 minutes goes by and I don't remember, you know, what I had for lunch,
23 but most people remember something. And then when you take it a step
24 further and it is a traumatic experience, a traumatic experience,
25 something that was horrible for you, and as you heard from

1 Ms. Espinoza, kids remember the actions and the experience and that's
2 what Meily three years later, 16 now, remembers.

3 She remembers the things he did, putting the finger in her
4 vagina, using his tongue on her vagina, rubbing her vagina, kissing her
5 on the mouth. You know, she said it felt disgusting. She was mad about
6 it. That's what she remembers. She remembers the horrible actions and
7 she remembers that experience. And, you know, she gave less of a
8 description than she did when she talked to Ms. Espinoza because again,
9 as time goes on, you remember the core things that really -- that you've
10 held onto versus, you know, the little minutia details. But that's what
11 we're here for.

12 When, you know, Defense counsel started off with about how
13 you guys are here because this decision has a profound impact on the
14 Defendant. Well, I submit to you, that's not why you're here. You're
15 here because there's been a profound impact on the victim. She's gone
16 through a traumatic experience and the reason you're here is to hold the
17 State to its burden to prove beyond a reasonable doubt that what Meily
18 told you is what happened, that the Defendant sexually abused her.
19 That's why we're here. This isn't about the Defendant. It's about Meily
20 and that we are proving this case.

21 These kind of crimes, too, keep in mind, they're done in
22 secret, right? You don't normally have somebody molesting a child out
23 on the street and, in fact, in this case, Meily even explained to you as
24 well as Jose that it was trying to be done in secret. He would leave Jose
25 at work and go home which he knew that mom's at work and nobody

1 else is alone. It was done.

2 And think about, too, the -- Meily described the verbal abuse,
3 but think about the things that the Defendant did to kind of mess with
4 her mind so that she wouldn't tell anyone of these crimes that were
5 happening in secret. You know, the first time -- and you know, she told
6 you she would tell him no. She told you she tried to like push his hand
7 away. So it's not like she was, you know, just getting rolled over. She
8 tried and then what did he do that first incident, when she brought up to
9 him why did you do that to me? The Defendant said as punishment for
10 wearing those clothes. Think about it. A child, at that time she's 12, like
11 what kind of impact and how is that going to mess with your mind? Like
12 wait a minute. I'm being punished? This was my fault? No, it wasn't.
13 But it goes to keeping that crime secretive. Keeping her from telling her
14 mom.

15 He also would tell her your mom will never believe you. That
16 made her question and doubt herself as well and why she didn't say
17 something sooner. And then she finally got to the point that she had to
18 tell her brother because she needed to tell somebody, and he obviously
19 believed her because his reaction was should we tell mom and she said
20 no. And she was afraid to tell her mom and she was afraid because the
21 Defendant, again messing with her mind, had threatened to kill her, to
22 kill her mom, to kill her brother, Jose, and to take her little -- her baby
23 brothers away.

24 And she even told you on the stand, she felt responsibility. A
25 responsibility a child should not feel. A 12 and 13-year-old child. It's not

1 her responsibility to do what he wants to keep the family together, but
2 that's how she felt because he messed with her mind. He also told her
3 she was useless, she was nothing, a dumb girl. Again, tearing her down
4 so she won't have the strength to say what he's been doing to her.

5 And she tried to tell him no. She tried to even reason with
6 him and tell him what he was doing was wrong. You're my mom's
7 boyfriend. But again, the verbal abuse and trying to, you know, get
8 her -- try and convince her, because she was saying no, to have sex with
9 him. Don't you want to have sex with me, and she was like no. It's just
10 all kind of part of the game. You have to think about that when you're
11 considering, you know, is what she said what happened? And it surely
12 is. When you look at everything, how manipulative he was with her and
13 the fear she felt to tell her mom, then it's clear again that the core is
14 there. The truth is that the committed these crimes.

15 The Defense also -- Mr. Speed also brought up about that,
16 you know, she came up with this story because of her friend who was
17 sexually abused, but as Ms. Sudano pointed out, no, that actually
18 probably made her more fearful to tell because she didn't have a dad to
19 go to. If her mom didn't believe her, you know, what would happen
20 then? They all expressed that they were afraid of the Defendant.

21 The health class, now, oh, certainly that's how she came up
22 with these allegations of him putting stuff in her vagina is because she
23 went to health class, but that doesn't even make sense either because
24 she had even said, you know, he wanted to have sexual relations with
25 me and that could be trying to speak in English, but she's not oh, well, he

1 was going to have sexual intercourse with me and he was doing
2 cunnilingus on me. Like that's not what it was. She was using words a
3 child would use to describe these acts.

4 And, you know, Mr. Speed talked about well, Officer Kravetz,
5 he suggested that he -- she was penetrated by a finger. He suggested
6 that because he asked her did she ever put a finger inside you. Now,
7 Officer Kravetz, now think about how hard it is for a child to come in here
8 and talk about this. It's hard for adults to and if you listen to that body
9 cam video, you'll hear Officer Kravetz like kind of almost hesitate as he's
10 trying to ask her these sensitive questions.

11 This is not an easy subject, and if she's really being
12 suggested this, and it really didn't happen, and she really wants to get
13 rid of the Defendant, why did she respond, yes, one time. Why didn't
14 she go oh, it happened like weekly? He was always doing this stuff to
15 me. Because she was being honest. It was only three times he
16 physically touched her, and she's been consistent on that. That is the
17 truth and it has not changed.

18 And then, even when Mr. Speed was talking about, well,
19 Ms. Espinoza, she's the one that suggested the oral and it's like no, she
20 asked an open-ended question. Meily was talking about one thing, that
21 he had inserted his finger, and she asked did any of his other body parts
22 touch that. Legitimate question. And she answered with what
23 happened.

24 Defense counsel also was talking about Jose and how, you
25 know, he's just going along with what she said because they're close.

1 He wants to protect her, his sister. But again, he believed her. And also,
2 too, when she finally broke down and told her mom that day because
3 she was scared she was going to have to have sex with him, what
4 happened? Now, Mr. Speed makes a big deal about well, mom didn't
5 rush home. No, and she told you why. She told you she told her
6 daughter to act like nothing's happened and she told you she didn't go
7 home right away because then the Defendant would have known that
8 she knew, that Meily had told her, and she said I was scared for his
9 reaction. That's legit. That is legit.

10 She has just been told by her daughter that her boyfriend,
11 the father of her two youngest kids, has been molesting her. She's
12 trying to process it, but she's also trying -- what's the first thing she
13 thinks of? Keeping her kids safe and tells Meily don't say anything.
14 We'll figure this out. The minute the Defendant leaves the next morning,
15 she told you, I had a conversation with Meily. I called the police. That is
16 very legit in this kind of situation.

17 MR. SPEED: Objection, Your Honor. May we approach?

18 THE COURT: Yes.

19 [Sidebar begins at 12:08 p.m.]

20 MR. SPEED: The characterization of a witness' testimony as
21 legitimate by the District Attorney amounts to witness vouching. We
22 would object and ask the Court to instruct the members not to consider
23 that comment.

24 MS. DIGIACOMO: I'm just responding to what he said. He
25 told -- he said her reaction was not appropriate. I can change the term if

1 you like, but I don't think what I said was improper. I'm not witness
2 vouching. He said her reaction was not the way she should have
3 responded and I'm just saying that is a legitimate response for
4 somebody in that situation.

5 THE COURT: Well, tell me if I'm wrong, you did argue that
6 her reaction was improper and although maybe the wording legit, I don't
7 know but are you saying that she can't argue that the reaction was
8 proper?

9 MR. SPEED: No. Her statement was the reaction was
10 legitimate and the District Attorney saying that a witness' testimony is
11 legitimate amounts to witness vouching and we would object to that.

12 MS. DIGIACOMO: I'll rephrase, but I'm just responding to
13 what he said that it wasn't legitimate.

14 THE COURT: I think certainly, you can rephrase.

15 MS. DIGIACOMO: Okay.

16 THE COURT: But the actual -- I don't -- I'm not --

17 MS. DIGIACOMO: All right. Thank you.

18 MR. SPEED: Thank you, Your Honor.

19 THE COURT: I'll sustain the objection.

20 [Sidebar ends at 12:09 p.m.]

21 THE COURT: I'm sustaining the objection.

22 BY MS. DIGIACOMO:

23 When Mr. Speed was talking to you and talking about how
24 the fact that Mom did not rush home, did not catch a ride home, was not
25 an appropriate response to this kind of situation. And the State submits

1 when you look at their situation and her fear of what the Defendant's
2 reaction would be and her trying to protect her kids, it was an
3 appropriate response for her in that situation.

4 Defense counsel talked to you a lot too about how Meily has
5 been able to keep this story going for all these years. And Mr. Speed
6 wants you to believe that it's because everybody just believes somebody
7 when a child molestation charge is made. No. The reason why a
8 witness or a victim would be able to keep, as he calls it, a story going for
9 this many years is because it's what happened. It is the truth and that
10 truth has not changed.

11 When Mr. Speed was talking about, in this case, the proof is
12 beyond a reasonable doubt. That is correct. And if you believe Meily
13 then -- beyond a reasonable doubt, then the State's proven its case. But
14 you do have all the other things to consider. You have the -- her
15 behavior, how she disclosed, who she disclosed to. You have all that
16 that you get to look at in its totality. And when you look at all that it does
17 show that the State's proven its case beyond a reasonable doubt.

18 Keep in mind too -- and Ms. Espinoza kind of touched on it
19 when she was talking about kids remember the actions and the
20 experiences, and think about this, disclosure is a process not an event.
21 Now, what do I mean by that? Think about something that would be
22 hard to say, like, you know, go back to Starbucks and spilling the coffee,
23 maybe your significant other, it's their car and they'd be mad and you're
24 afraid of their reaction. How do you tell somebody something that
25 you're like oh, they're going to be mad at me? Or, oh, you know, I'm

1 afraid they're not going to like what I'm going to tell them. Do you just
2 jump right in and say, oh, this is what happened? No. You kind of test
3 the waters, right? You say a little bit, see what their reaction is and then
4 you kind of go a little further, see what their reaction is, and then go a
5 little further.

6 And especially in a type of crime like this, it's not easy.
7 Remember Meily when she was -- told Officer Kravetz? It was not an
8 easy thing and she just broke down. It's not an easy subject to talk
9 about. And Defense counsel wants you to put expectations on a child of
10 how they should or shouldn't have done it, but keep in mind disclosure
11 comes slowly. It doesn't just come all at once. And the child is at the
12 discretion of whoever's asking them the questions. And keep in mind,
13 different people have different motives when questioning that child.
14 Officer Kravetz and Officer Delaria, they told you their goal is to get just
15 enough to see if a crime is committed to call detectives. And that's what
16 they did.

17 Then when they get down to the -- well, even going back,
18 when Meily told Jose, she told Jose enough just to get him to protect,
19 right? She told her mom just to get Mom -- enough just to get Mom to
20 stop it. Tells Kravetz, you know -- they're asking questions, you know,
21 just enough to get information to detectives. Then Elizabeth Espinoza
22 told you "my job is neutral. I just ask open-ended questions and then
23 see what they want to tell me, and then I can follow up, but that's it." But
24 then when you come to court proceedings, it's different now. The
25 person asking questions now has a burden. It's different and the child

1 doesn't get to pick. The child just has to answer the questions.

2 And in this case too, keep in mind with language barrier and
3 she's answering in her second language, sometimes it can get confusing
4 for child just being asked questions especially by attorneys. We're not
5 always so artful. And then when you have that language issue as well, it
6 can get confusing.

7 Meily even told you -- and this kind of goes back to the
8 Starbucks reference. As she sat there on the stand during the trial, the
9 dates or the order of what happened to her wasn't what was important.
10 What was important to her were the actions and the experience that she
11 had when she was sexually assaulted or when the Defendant committed
12 the lewdness on her. That's what she takes away from this three years
13 later. And that does not mean her truth has changed. That just means
14 that's what she remembers at this time, which obviously is going to be
15 less when something just happens and is fresher in their minds.

16 And also too, think about -- you know, we talk about like her
17 consistency in her story or in corroboration and her change of behavior,
18 but also think about too, as Ms. Sudano said, when the Defendant came
19 home that morning with Jose and the police where there, his first
20 reaction was not oh my gosh, is my family okay, what's going on. His
21 first reaction was oh, I'm out of here and that's because he knew what he
22 had said to her the day before. And he knew that he had told her for
23 months don't tell your mom. She's not going to believe you or don't tell
24 your mom. I'm going to hurt your family. That's why he ran that day.
25 And that also is corroboration for what Meily has told you.

1 The truth hasn't changed, ladies and gentlemen. Meily didn't
2 lie. The Defense wants you to think she did, because if you find that
3 Meily hasn't lied, that Meily has stuck to the truth and told you what had
4 happened, then the Defendant's guilty. It's as simple as that. There
5 really are two people who know exactly what happened in that living
6 room and that bedroom that can talk about it. And that's Meily and the --

7 MR. SPEED: Objection, Your Honor.

8 MS. DIGIACOMO: Excuse me. let me rephrase.

9 THE COURT: Sustained.

10 MS. DIGIACOMO: Thank you. Sorry.

11 BY MS. DIGIACOMO:

12 There's two people that know what happened, and Meily told
13 you what happened. She told you what he did to her.

14 And the State asks you to go back there, deliberate, look at
15 all the evidence, look at all the times she's testified, look and everything.
16 And when you look at all that, come back in here, find the Defendant
17 guilty, and tell him you know what happened too.

18 Thank you.

19 THE COURT: Thank you.

20 Go ahead and swear him in.

21 The Clerk's now going to swear in the Marshal and my JA to
22 take charge of the jury and the alternates.

23 [The Clerk swore in the officers to take charge of the jury during
24 deliberations and the alternate jurors]

25 THE COURT: I'm going to have Kathy tell you the names of

1 the alternates. I want to thank everybody for being here. It's been now
2 10 days, whatever. You certainly participated in every way. As far as the
3 alternates, I have had cases where we've had to call alternates back. You
4 are not free to talk about the case until we call and tell you if the case is
5 over.

6 We are going to let you go home, but please don't talk to
7 anybody about the case, and hopefully we won't have to call you back,
8 but it has happened. So I want to thank you for participating.

9 Kathy, go ahead.

10 THE CLERK: Breann Dusina-Bakken and Rhonda Rafferty and
11 Myron Lesane.

12 THE COURT: You're going to go with Sandy. She's going to
13 get your cellphones so we can maintain contact and if necessary, call
14 you back.

15 The rest of you are going to go with Officer Moody back to
16 the jury deliberation room. Take all your things. We will have the
17 exhibits and the evidence back there in a minute or two and along with
18 the lunch, I think. Thank you. Go ahead.

19 The alternates please leave your notebooks there. We will
20 maintain them. I told the alternates to leave their notebooks there and
21 we'll keep them in case they're needed. And Sandy will be out that door
22 so you can go out there too.

23 [The jury retired to deliberate at 12:30 p.m.]

24 THE COURT: All right. Thank you. We're going to be in
25 recess. We'll get your phone numbers, cellphone numbers, and --

1 THE CLERK: And I need a laptop.

2 THE COURT: Right. A clean laptop. All right. Thank you.

3 MR. SPEED: Your Honor, before we dismiss, I believe it's
4 necessary that I say something for the record.

5 THE COURT: Go ahead.

6 MR. SPEED: I experienced a technical glitch in closing my
7 PowerPoint presentation during the State's rebuttal closing. I want to
8 apologize to Ms. DiGiacomo personally for that. I did not intend that.

9 MS. DIGIACOMO: And I know, Mr. Speed. It was just a little
10 awkward because it was "Meily lied and not guilty, not guilty, not guilty."

11 MR. SPEED: I'm sorry.

12 THE COURT: It happens.

13 MR. SPEED: Thank you.

14 THE COURT: All right. Have a good until we see you. Good
15 lunch.

16 [Recess taken from 12:31 p.m. to 4:33 p.m.]

17 THE COURT: So we got a question. Members of the jury
18 would like to review the video of the Family Court. And I'm not sure --

19 MR. SPEED: Okay.

20 THE COURT: I'm not sure why, but then they sent out "we
21 the jury would like to see the entire video of the Family Court hearing". I
22 guess, they were clarifying.

23 MS. DIGIACOMO: Okay.

24 MR. SPEED: And that's the video that was played in court,
25 right? That was State's snippets of the video. That wasn't the whole

1 thing.

2 THE COURT: It was --

3 MS. DIGIACOMO: That is correct. That was what we played
4 that is just talking about -- and this is Sandra DiGiacomo -- just talking
5 about --

6 MR. SPEED: Oh, sorry. That was schedule B, yes.

7 MS. DIGIACOMO: Yes, allegations.

8 THE COURT: Well, and we don't have it. What we would do
9 if that --

10 THE CLERK: We do have it.

11 THE COURT: We have the JAVS of the -- what was played in
12 court.

13 MS. DIGIACOMO: Okay.

14 THE CLERK: We have the Court's exhibit.

15 MS. DIGIACOMO: Yep.

16 THE COURT: I don't know if that's --

17 MS. DIGIACOMO: I think you'd have to get --

18 THE COURT: We have a court's exhibit, but I don't know if
19 that's the -- is that the -- just the parts?

20 MR. SPEED: No. It would --

21 MS. DIGIACOMO: Yes. Ms. --

22 MR. SPEED: Kevin Speed. It would go to the instruction that
23 there's readbacks and playbacks that are time consuming. Before we
24 played it back -- because that's about 45 minutes -- I would say --

25 MS. DIGIACOMO: It's -- it's --

1 MR. SPEED: Disrespectful, Your Honor -- I would ex --
2 THE COURT: All right. Mr. Speed, yes.
3 MS. DIGIACOMO: Sandra DiGiacomo. It's 25 minutes.
4 MR. SPEED: How long is it, Sandy? Kevin Speed.
5 MS. DIGIACOMO: Sandra DiGiacomo. It is 24 minutes and
6 like 30 seconds. So it's 25 minutes. Because we clipped it all together
7 where we cut out the rest of it. The whole thing was like an hour.
8 MR. SPEED: Okay. I see. All right. Well, that's not so bad.
9 Kevin Speed again. I would leave it to Your Honor's discretion. We
10 could start with that instruction or if we just want to fly right into it, if it's
11 only 24 minutes, I suppose that's fine.
12 THE COURT: You want to come back for them to -- I think we
13 have to play it on the JAVS in here, right? Judy?
14 MS. DIGIACOMO: Correct. This is Sandra DiGiacomo.
15 MR. SPEED: Yes.
16 THE COURT: So do you want to come back or no? It's all or
17 none.
18 MR. SPEED: I'll head that way. We're across the street, Your
19 Honor. Kevin Speed.
20 THE COURT: It's -- all right then.
21 MS. DIGIACOMO: Sandra DiGiacomo. We'll head over.
22 THE COURT: We need the Defendant.
23 MS. DIGIACOMO: Yes, sir.
24 THE COURT: That's going to take a while.
25 THE CLERK: And an interpreter.

1 THE COURT: And an interpreter.

2 MR. SPEED: I will head upstairs to Mr. Hanks' office. I
3 believe we can scramble up someone from over there.

4 THE CLERK: Great. Thank you. I'll call the CCDC.

5 THE COURT: All right.

6 MS. DIGIACOMO: Thank you.

7 MR. SPEED: All right. See you in a few. Kevin Speed.
8 Thank you.

9 THE CLERK: Thanks. Bye.

10 [Proceedings concluded at 4:36 p.m.]

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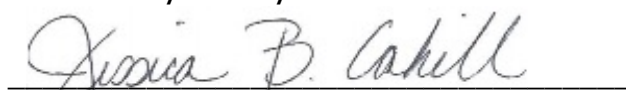
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

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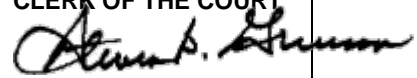
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Jessica B. Cahill, Transcriber, CER/CET-708



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,
9 Plaintiff,

10 vs.

11 GUSTAVO ADONAY GUNERA-
12 PASTRANA,
13 Defendant.

)
) CASE#: C-16-318461-1
)
) DEPT. XXVIII
)
)
)
)
)

14 BEFORE THE HONORABLE RONALD J. ISRAEL
15 DISTRICT COURT JUDGE
16 MONDAY, JUNE 17, 2019

17
18 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 10**

19 APPEARANCES:

20 For the Plaintiff:

SANDRA DIGIACOMO, ESQ.
MICHELLE SUDANO, ESQ.

21 For the Defendant:

22 KEVIN SPEED, ESQ.
23 TEGAN MACHNICH, ESQ.

24
25 RECORDED BY: JUDY CHAPPELL, COURT RECORDER

1 Las Vegas, Nevada, Monday, June 17, 2019

2

3 [Case called at 10:52 a.m.]

4 THE CLERK: -- 461. State of Nevada versus Gustavo Adonay
5 Gunero-Pastrano.

6 THE COURT: Okay. We're going to do the playback of the
7 CPS hearing?

8 MS. DIGIACOMO: Correct.

9 THE COURT: And you guys -- both sides have reviewed what
10 Judy has queued up?

11 MS. MACHNICH: Yes, Your Honor.

12 MS. DIGIACOMO: Yes, Your Honor. And the notice -- the
13 notes as well.

14 MS. MACHNICH: That's correct.

15 THE COURT: Okay. All right. And as soon as Steve comes
16 back, we'll replay it.

17 [Pause]

18 THE COURT: I know one of the jurors was -- was late, but
19 downstairs. And so as far as I know they all should be upstairs now.

20 MS. MACHNICH: That's what we were told.

21 MS. DIGIACOMO: He said they were.

22 MR. SPEED: Right.

23 THE COURT: Okay, so --

24 MS. DIGIACOMO: Maybe someone ran to the restroom.

25 Here he is.

1 THE COURT: Okay.

2 THE MARSHAL: You ready?

3 THE COURT: Yep.

4 THE MARSHAL: Please rise for the jury pool.

5 [Jury in at 10:56 a.m.]

6 [Inside the presence of the jury]

7 THE MARSHAL: Why don't you sit in the same seats.

8 THE COURT: Please be seated. Good morning, ladies and

9 gentlemen.

10 IN UNISON: Good morning.

11 THE COURT: Just have a seat. Okay. We got your note, and

12 we're going to play the JAVS and that's it. So take it away.

13 (Whereupon, a video recording, was played in open court at 10:57

14 a.m. and was not transcribed.)

15 MS. DIGIACOMO: This is not it. This is not the right piece.

16 MS. MACHNICH: It's right after.

17 MR. SPEED: Oh, okay.

18 MS. DIGIACOMO: No, we want to skip past that and just play

19 when the video starts. When we come back.

20 THE COURT: Okay. Ladies and gentlemen, see this is

21 technical IT stuff. That's what happened on Friday. Who -- I don't

22 understand IT and so we're going to ask you to wait in the hall during

23 this recess. You're once again admonished do not talk or converse

24 amongst yourselves or with anyone else on any subject connected with

25 this trial, or read, watch, or listen to any report of, or commentary on this

1 trial, or any person connected with this trial by any medium of
2 information, including, without limitation, newspapers, television, radio
3 or internet. Do not form or express any opinion on any subject
4 connected with the trial until the case is finally submitted to you.

5 Hopefully five minutes. I'm sorry. Go ahead.

6 THE MARSHAL: Please rise for the jury.

7 [Jury out at 10:58 a.m.]

8 [Outside the presence of the jury]

9 THE CLERK: Judge, that's my fault because we played it and
10 then I went too far back, so that's my fault.

11 THE COURT: I just want to make sure that when you're
12 cutting to the right place, you don't accidentally show -- I don't
13 remember what that conference was. That's why I asked you guys to
14 review it.

15 MS. MACHNICH: And we did.

16 MS. DIGIACOMO: And we did, and I --

17 THE COURT: All right.

18 MS. DIGIACOMO: I --

19 THE COURT: Yes, yes, yes.

20 MS. DIGIACOMO: So now it should be where it's supposed
21 to be.

22 MS. MACHNICH: Can we check, or --

23 THE COURT: Go ahead.

24 MS. MACHNICH: This is it.

25 THE COURT: All right. And there was no interruptions.

1 Any -- there was no --

2 MS. DIGIACOMO: No, it was just --

3 THE COURT: Objections? Okay.

4 THE CLERK: Can they come?

5 THE COURT: Yeah.

6 THE MARSHAL: Please rise for the jury.

7 [Jury in at 11:01 a.m.]

8 [Inside the presence of the jury]

9 THE COURT: Please be seated. Okay. The part you
10 requested, take two.

11 [Whereupon, a video recording, State's Exhibit was played in
12 open court from 11:02 a.m. to 11:17 a.m., not transcribed.]

13 THE CLERK: Timed out, so let me see if I can get it going
14 again. I'm going to have to reboot. Judge. Judge.

15 THE COURT: Yeah, the whole thing?

16 THE CLERK: Yeah, I'm going to have to redo it because it
17 timed out.

18 THE COURT: All right. We'll take another break. During
19 this recess, you're admonished do not talk or converse amongst
20 yourselves or with anyone else on any subject connected with this trial,
21 or read, watch, or listen to any report of, or commentary on this trial, or
22 any person connected with this trial by any medium of information,
23 including, without limitation, newspapers, television, radio or internet.
24 Do not form or express any opinion on any subject connected with the
25 trial until the case is finally submitted to you. Five minutes.

1 THE MARSHAL: Please rise for the jury.
2 [Jury out at 11:19 a.m.]
3 [Recess taken from 11:19 a.m. to 11:21 a.m.]
4 THE COURT: Okay. I think we're ready to go again. You
5 didn't start at the beginning, did you?
6 THE CLERK: No.
7 THE COURT: Okay. Let's go.
8 THE MARSHAL: You ready, Judge?
9 THE COURT: Yep.
10 THE MARSHAL: Please rise for the jury.
11 [Jury in at 11:24 a.m.]
12 [Inside the presence of the jury]
13 THE COURT: Please be seated. Parties acknowledge
14 presence of the jury?
15 MS. DIGIACOMO: Yes, Your Honor.
16 MR. SPEED: Yes, Your Honor, thank you.
17 THE COURT: Okay, continue. We're continuing from where
18 it stopped.
19 [Whereupon, a video recording, was played in open court from
20 11:25 a.m. to 11:34 a.m., not transcribed.]
21 THE COURT: That's it? Okay. Thank you, ladies and
22 gentlemen. You go back and deliberate. We ordered, I believe you
23 lunch. So you should have that in a little -- Sandy did.
24 THE MARSHAL: She ordered it, it's not here.
25 THE COURT: Yeah, well, okay. It will be here.

1 THE MARSHAL: Please rise for the jury.
2 [Jury out at 11:35 a.m.]
3 [Outside the presence of the jury]
4 THE COURT: All right. We'll call you if we need you.
5 THE CLERK: Numbers are all still the same, correct? I guess
6 so.
7 [Off the record at 11:36 a.m.]
8 [On the record at 1:47 a.m.]
9 THE COURT: We the jury have reached a decision on Counts
10 1 and IV, however, we are at an impasse on Counts II and III. I'm going
11 to tell them continue to deliberate. They've only been gone a few hours,
12 really. Okay.
13 MS. DIGIACOMO: Okay.
14 MR. SPEED: All right. Thank you.
15 MS. DIGIACOMO: That's it? Okay.
16 THE COURT: That's it. I tried to do it by telephone, or I
17 wanted to, but --
18 MS. DIGIACOMO: No worries.
19 MR. SPEED: It works.
20 THE COURT: So I will say please continue to deliberate.
21 [Off the record at 1:48 p.m.]
22 [On the record at 4:55 p.m.]
23 THE MARSHAL: Do you want me to bring them out now, or
24 do you need them to be -- do you want to say some things?
25 MS. DIGIACOMO: Yes.

1 THE COURT: Well, just is there anything C-318461, Gustavo
2 Gunera-Pastrana. Anything you guys want to talk about before we bring
3 them in?

4 MS. DIGIACOMO: Not by the State.

5 MR. SPEED: Not by the Defense, Your Honor. Thank you.

6 THE COURT: Okay, bring them in. Do you guys want to talk
7 to them after, if they want to talk to you?

8 MR. SPEED: It depends on what they're going to say to us,
9 Judge.

10 MS. SUDANO: Yes, please.

11 MS. DIGIACOMO: Sure.

12 THE COURT: I always figure that, you know. It's educational,
13 no matter what happens, but that's fine. You -- you don't have to.

14 MR. SPEED: Right.

15 MS. MACHNICH: It's really educational the first 20 or so
16 trials.

17 MR. SPEED: I was about to say --

18 MS. MACHNICH: After that, you're like yeah.

19 THE COURT: Yeah, I guess you're --

20 MS. MACHNICH: Too forcefully, or too forced -- you're not
21 forced enough. Everything is -- there's no -- there's no such thing as not
22 having a problem.

23 THE COURT: I'm way older than you, and I still learn every
24 day.

25 MS. MACHNICH: Oh, I definitely learn every day.

1 MR. SPEED: Yeah.

2 MS. MACHNICH: It tends to be from my colleagues.

3 MR. SPEED: Oh, yes.

4 THE MARSHAL: Please rise for the jury.

5 [Jury in at 4:59 p.m.]

6 [Inside the presence of the jury]

7 THE COURT: Please be seated. Parties acknowledge the
8 presence of the jury?

9 MS. DIGIACOMO: Yes, Your Honor.

10 MR. SPEED: Defense does, Your Honor, thank you.

11 THE COURT: Ladies and gentlemen of the jury have you
12 chosen a foreperson, and if so, who is the foreperson?

13 Have all 12 members of the jury reached a unanimous verdict
14 as to the charges presented to them.

15 UNIDENTIFIED MALE JUROR: We have, Your Honor.

16 THE COURT: Give it to Officer Moody. Thank you. Go
17 ahead.

18 THE CLERK: District Court, Clark County, Nevada, Case
19 Number C-16318461, Department 28, State of Nevada vs. Gustavo
20 Adonay Gunera-Pastrana, Defendant.

21 Verdict. We the jury in the above-entitled case find the
22 Defendant, Gustavo Adonay Gunera-Pastrana as follows: Count I,
23 lewdness with a child under the age of 14. Guilty of lewdness with a
24 child under the age of 14.

25 Count II, sexual assault with a minor under 14 years of age.

1 Guilty of sexual assault with a minor under 14 years of age.

2 Count III, sexual assault with a minor under 14 years of age.

3 Guilty of sexual assault with a minor under 14 years of age.

4 Count IV, lewdness with a child under the age of 14. Guilty
5 of lewdness with a child under the age of 14.

6 Dated this 17th day of June 2019. Foreperson, and I can't
7 read the writing. Is it Gene?

8 FOREPERSON: David Coleman.

9 THE CLERK: Or David Coleman. Okay. ladies and
10 gentlemen of the jury, is this your verdict, as read?

11 (All jurors indicate in the affirmative.)

12 THE CLERK: So say you one, so say you all?

13 (All jurors indicate in the affirmative.)

14 THE COURT: Does either party wish to have the jury
15 individually polled?

16 MR. SPEED: We would, Your Honor, thank you.

17 THE COURT: Poll the jury.

18 THE CLERK: William Collins, is this your verdict, as read?

19 JUROR NO. 1: Yes.

20 THE CLERK: Jeremiah Nickerson, is this your verdict, as
21 read?

22 JUROR NO. 2: Yes.

23 THE CLERK: Sergio Solis -- is it Sauri?

24 JUROR NO. 3: Yes.

25 THE CLERK: Is this your verdict, as read?

1 JUROR NO. 3: Yes.
2 THE CLERK: Courtney Rutledge, is this your verdict, as read?
3 JUROR NO. 4: Yes.
4 THE CLERK: Arlene Schultz, is this your verdict, as read?
5 JUROR NO. 5: Yes.
6 THE CLERK: Gene Eschardies, is this your verdict, as read?
7 JUROR NO. 6: Yes.
8 THE CLERK: Okay. David Coleman, is this your verdict, as
9 read?
10 JUROR NO. 7: Yes, ma'am.
11 THE CLERK: Alexis Velasquez, is this your verdict, as read?
12 JUROR NO. 8: Yes.
13 THE CLERK: Nichole Lacy, is this your verdict, as read?
14 JUROR NO. 9: Yes.
15 THE CLERK: Brenna Melcher, is this your verdict, as read?
16 JUROR NO. 10: Yes.
17 THE CLERK: Is it Jocelyn Parker, is this your verdict, as
18 read?
19 JUROR NO. 11: Yes.
20 THE CLERK: Is it Kate --
21 JUROR NO. 12: Natalia.
22 THE CLERK: Natalia, okay, Worthy, is this your verdict, as
23 read?
24 JUROR NO. 12: Yes.
25 THE CLERK: Okay.

1 THE COURT: The verdict of the jury shall now be recorded in
2 the minutes of the Court. You may be seated. Ladies and gentlemen, I
3 want to thank all of you for participating. This went longer than you
4 were -- we expected. I apologize but as I said at the very beginning,
5 things are fluid and we can't always predict. You certainly -- you're --
6 first of all, you're free to discuss this now with anyone. And you
7 certainly should be proud of your service. Not everybody gets chosen
8 for a jury, as you sought -- as you saw. And it is an obligation of citizens
9 and you certainly fulfilled that, taking time out of your every day
10 schedule to be here and to deliberate.

11 After the trial, after -- by the way, I'm going to shake your
12 hand back in the jury deliberation room. You can get all your personal
13 items. I want to thank you individually. After that, you'll be free to talk
14 to anybody. The parties may want to talk to you. If you want to talk to
15 them, you're free to do so. It is, as I said, a learning experience for
16 everybody.

17 So they may have questions, how did I do, what did -- what
18 did you think? Whatever it might be. You're free to talk to them.
19 However, if you don't want to talk to them, you don't have to. Steve will
20 show you -- well, it's a few minutes after 5:00, but you'll be able to leave
21 directly. If you want to talk to them, it's going to be out here, right
22 outside the courtroom, and they'll be glad to speak to you, if you have
23 the time. I know it's, again after 5:00, and that will be your choice.

24 Having said that, again, I want to thank you and go ahead
25 and take them back.

1 THE MARSHAL: Please rise for the jury. Folks follow me on
2 out.

3 [Jury excused at 5:05 p.m.]

4 THE COURT: Okay, the Defendant is remanded to custody.
5 This matter is referred to Department of Parole and Probation for a PSI.
6 And sentencing --

7 MS. DIGIACOMO: And for an evaluation, too, right?

8 MS. MACHNICH: They don't have to do that.

9 MS. DIGIACOMO: It's mandatory for prison, so --

10 MR. SPEED: Right. These are all mandatory prison.

11 THE CLERK: Okay, sentencing date would be September 18,
12 9:00 a.m.

13 MS. DIGIACOMO: And you said right outside, Your Honor?

14 THE COURT: Yeah.

15 MS. DIGIACOMO: Okay, thank you.

16 MS. SUDANO: Thank you.

17 THE COURT: All right.

18 MR. SPEED: Thank you.

19 THE COURT: You guys both -- all four of you did a great job.
20 Tough, tough case, but you all are excellent trial lawyers.

21 MS. DIGIACOMO: Thank you, Your Honor.

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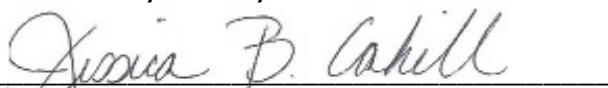
MR. SPEED: Thank you, Judge.

THE COURT: Okay.

MR. SPEED: We'll be back. We'll be back.

[Proceedings concluded at 5:06 p.m.]

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



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RTRAN

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

CASE#: C-16-318461-1

DEPT. XXVIII

vs.

GUSTAVO ADONAY
GUNERA-PASTRANA,

Defendant.

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE
TUESDAY, JUNE 18, 2019

***RECORDER'S TRANSCRIPT OF HEARING
AT REQUEST OF COURT***

APPEARANCES (See Page 2)

RECORDED BY: JUDY CHAPPELL, COURT RECORDER

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APPEARANCES:

For the State:

SANDRA K. DIGIACOMO, ESQ.
Chief Deputy District Attorney

MICHELLE SUDANO, ESQ.
Deputy District Attorney

For the Defendant:

KEVIN C. SPEED, ESQ.
Deputy Public Defender

TEGAN C. MACHNICH, ESQ.
Deputy Public Defender

Also Present:

RICARDO PICO
Spanish Interpreter

1 Las Vegas, Nevada, Tuesday, June 18, 2019

2
3 [Case called at 1:32 p.m.]

4
5 THE CLERK: Case Number C318461, State of Nevada
6 versus Gustavo Gunera-Pastrana.

7 THE COURT: Counsel, state your appearance for the record.

8 MS. DIGIACOMO: Sandra DiGiacomo and Michelle Sudano
9 for the State.

10 MR. SPEED: Kevin Speed and Tegan Machnich for
11 Mr. Gunera-Pastrana who is present, in custody, Your Honor.

12 THE COURT: So I'm sure you're curious as to why I called
13 you here and not to make levity, it's not because I missed you.
14 Yesterday evening my marshal advised that the foreperson of the – in the
15 jury told him that he Googled the definition of common sense. And so
16 that's it. I assume, although certainly we can get him in to see if he told
17 the people what the definition of common sense was.

18 MR. SPEED: Your Honor, do we have any indications when
19 he Googled common sense?

20 THE COURT: Well during deliberations.

21 MR. SPEED: All right.

22 THE COURT: It's all I know.

23 MR. SPEED: Some point during deliberations.

24 THE COURT: I mean everybody – both sides were, you
25 know, heavily emphasizing common sense. I certainly – one would think

1 that the definition is self-evident, but then again I don't know.

2 MR. SPEED: Your Honor, we would request an evidentiary
3 hearing to, I suppose, flesh more information out of the foreperson of our
4 jury. When he looked up the word, if he shared his findings with the
5 other jurors, and whether that was the controlling factor in their decision
6 making process.

7 THE COURT: State.

8 MS. DIGIACOMO: And I'll –

9 THE COURT: Certainly that's what I anticipated, yes.

10 MS. DIGIACOMO: All right. We'll submit it on that.

11 THE COURT: So that's what we will do. And quite frankly,
12 you, meaning both sides, will have to, subsequent to that, brief – I
13 certainly know if there's something significant, it would lead to a mistrial.
14 But I have no idea what the standards, what, you know, does just
15 anything they were to do. I would doubt that would be the case. So
16 you're going to have to do some research unless you have those cases
17 on the tip of your tongue.

18 MR. SPEED: Your Honor, we have – oh, I'm sorry. I don't
19 know if the Court was finished.

20 THE COURT: Yeah.

21 MR. SPEED: I'm looking at, this is *Meyer versus State*, Your
22 Honor and the cite is –

23 THE COURT: Well I'm going to give you time –

24 MR. SPEED: Okay, I see.

25 THE COURT: -- to do briefing --

1 MR. SPEED: All right.

2 THE COURT: -- after -- after we find out what exactly
3 happened.

4 MR. SPEED: Understood.

5 THE COURT: I'm certainly assuming he wasn't joking,
6 although, one might draw that conclusion with common sense. Isn't
7 it -- the definition common? But potentially not. But assuming it wasn't
8 and the circumstances, yes, we'll have to have an evidentiary hearing.
9 And I don't know, tell me what your -- do we start with the foreperson and
10 then ask everybody? What is it you are looking to do?

11 MR. SPEED: We would ask for our evidentiary hearing within
12 seven days, Your Honor, because if we're going to file a motion for a new
13 trial, we'll have to have that done within seven days of yesterday, --

14 MS. DIGIACOMO: Seven judicial days.

15 MR. SPEED: -- the 17th.

16 MS. DIGIACOMO: Seven judicial days, yeah.

17 MR. SPEED: Seven judicial days of the 17th so that's first.

18 THE COURT: Yes. That's fine with me pending -- that still
19 doesn't answer my question. Do you want to bring in just the foreperson
20 or everyone?

21 MR. SPEED: We have --

22 THE COURT: And then --

23 MR. SPEED: -- to bring them all. In order to save time, Your
24 Honor, instead of having an evidentiary hearing, will we speak to the
25 foreperson only and then we learn through that proceeding that other

1 jurors may have been impacted, let's just bring them all.

2 THE COURT: Okay. Which –

3 MR. SPEED: It would be my suggestion.

4 THE COURT: Yeah, which of course also brings up the
5 problem, you know –

6 MR. SPEED: They were leaving town, et cetera.

7 THE COURT: Exactly. So that's going to be an issue. I'm
8 trying to look at the calendar.

9 [colloquy between the Judge and the law clerk]

10 THE CLERK: Seven days would be like Tuesday.

11 THE JUDICIAL EXECUTIVE ASSISTANT: Judicial.

12 THE COURT: Okay. So we're on the 18th. We could
13 certainly try to do it on Friday.

14 THE JUDICIAL EXECUTIVE ASSISTANT: Logistically, how
15 do we compel them to come back, though? I mean –

16 THE COURT: Another question.

17 THE JUDICIAL EXECUTIVE ASSISTANT: -- I have their
18 addresses, I have telephone numbers, but.

19 THE COURT: Another question.

20 MS. DIGIACOMO: I – Your Honor, I think, well, I know they
21 want everybody. I think we need to start with the foreperson because
22 one, to see if he really did it. And two, whether or not he shared it with
23 the other jurors. If he didn't, then we can stop there.

24 THE COURT: Well, that's true but also my JEA brought up a
25 good point. How do we compel them? We'd have to issue a subpoena.

1 MS. DIGIACOMO: Or – an issue to subpoena or an order to
2 show cause.

3 THE COURT: And then get it served.

4 MS. DIGIACOMO: Right.

5 MR. SPEED: And that I –

6 THE COURT: He may voluntarily be able to make it on
7 Friday.

8 MS. DIGIACOMO: Do we have a phone number?

9 THE JUDICIAL EXECUTIVE ASSISTANT: Yes

10 MR. SPEED: Yes. Should have all of their information.

11 THE COURT: We do have that.

12 MS. DIGIACOMO: Do you want to –

13 THE JUDICIAL EXECUTIVE ASSISTANT: I have phone --

14 MS. DIGIACOMO: -- try and call him --

15 THE JUDICIAL EXECUTIVE ASSISTANT: -- numbers, I
16 have --

17 MS. DIGIACOMO: -- while we're standing here. Maybe try
18 and call him and see if he is cooperative and if he is, we don't have to
19 worry, he'll come in. If --

20 THE COURT: Yeah, all right.

21 MS. DIGIACOMO: -- he's not, then we have to figure it out.

22 THE CLERK: Phone conference here.

23 THE COURT: What? That's all -- no, we're not going to, we
24 want him in, sworn in and everything.

25 THE CLERK: Oh, okay.

1 THE COURT: But you can see if we can get him. Go
2 ahead, --

3 MR. SPEED: That's a good idea.

4 THE COURT: -- see if he's -- was he retired? Does anybody
5 know, remember what he did?

6 MS. DIGIACOMO: No, he's not retired, but I don't remember
7 what he did.

8 THE CLERK: I can find out. Hang on, it'll take me --
9 Oh, I think he wants you to call him.

10 THE COURT: No, call him here.

11 THE JUDICIAL EXECUTIVE ASSISTANT: No, right here.

12 THE CLERK: Oh, okay. Okay, hang on. You want me to look
13 up the juror.

14 THE COURT: Of course, we must have told them at least
15 twenty times, literally twenty times, don't Google anything. I was
16 adamant about that.

17 THE JUDICIAL EXECUTIVE ASSISTANT: Realtor.
18 Occupation, Transportation and material moving.

19 THE COURT: Mr. Coleman? If that's who it is, --

20 MS. DIGIACOMO: Yes.

21 THE COURT: -- whatever, if you have the number.

22 THE JUDICIAL EXECUTIVE ASSISTANT: Spouse's
23 occupation --

24 THE CLERK: Okay. What do you want me to --

25 THE JUDICIAL EXECUTIVE ASSISTANT: -- is the realtor.

1 THE CLERK: -- ask him when I call him?

2 THE COURT: What? Just get him on the phone, I'll talk to

3 him. Give me that thing because it just -- oh, you've got the phone? All

4 right, --

5 THE CLERK: Yeah.

6 THE COURT: -- I'll go over there when you get him.

7 THE LAW CLERK: Is it David Coleman?

8 THE COURT: Yeah. What does he --

9 THE CLERK: Okay. If I get a message, then you want me

10 just to have him call?

11 THE COURT: Yeah. Call --

12 THE CLERK: What's your number, --

13 THE COURT: -- Sandy.

14 THE CLERK: -- Sandy? 3631?

15 THE JUDICIAL EXECUTIVE ASSISTANT: Yes.

16 THE COURT: Did you try his cell?

17 THE CLERK: I only have this one number.

18 THE COURT: Here's his cell.

19 THE JUDICIAL EXECUTIVE ASSISTANT: Yeah, it's the

20 same number.

21 THE COURT: Oh, yeah, you're right.

22 THE CLERK: Voicemail.

23 THE COURT: Yeah, we can leave a message but otherwise

24 it's --

25 THE CLERK: It's full, can't accept any messages at this time.

1 THE COURT: All right. All right.

2 THE CLERK: Can't even reach him.

3 THE COURT: So otherwise we have an add – let me take
4 that. We'll try both of this. We'll have to send him a letter also. All right,
5 any better ideas? To get him in by – because I do have Friday available.

6 THE JUDICIAL EXECUTIVE ASSISTANT: I can try to email
7 him and ask if he call.

8 THE COURT: Yeah, there is – although, I'm questionable that
9 that's not say his, because it didn't look like it's his email. Sort of looks
10 like it's his spouse's.

11 MS. DIGIACOMO: Well --

12 THE COURT: Does it say who his spouse is?

13 THE JUDICIAL EXECUTIVE ASSISTANT: Yeah, no, I don't
14 think they list the spouse's email. I think that's his.

15 THE LAW CLERK: There's a work phone.

16 MR. SPEED: Ms. Jeter, is that the number that the Jury
17 Commissioner has? Or that's the --

18 THE JUDICIAL EXECUTIVE ASSISTANT: Yes.

19 MR. SPEED: -- number that's on his roster?

20 THE JUDICIAL EXECUTIVE ASSISTANT: Yes, it's on the
21 roster.

22 MR. SPEED: Yeah.

23 THE JUDICIAL EXECUTIVE ASSISTANT: And then our
24 marshal gets a list of all their telephone --

25 MR. SPEED: Right.

1 THE JUDICIAL EXECUTIVE ASSISTANT: -- numbers and it
2 matches. It's the same number.

3 THE COURT: All right. At this point, we will try to get a hold
4 of him and that's all we can do.

5 THE CLERK: Do we want to set it for Friday or not?

6 THE COURT: If we have to mail him, it --

7 MS. DIGIACOMO: Do you want --

8 THE COURT: -- won't even --

9 MS. DIGIACOMO: -- do you want to send it tentatively and
10 then the Court can let us know --

11 THE COURT: That's fine.

12 MS. DIGIACOMO: -- if it's going forward.

13 THE CLERK: Okay.

14 THE COURT: 10:30, 10 o'clock on Friday.

15 THE CLERK: That's 10 a.m. and that's June 21st.

16 THE COURT: So call us in the morning.

17 MR. SPEED: Okay.

18 THE COURT: And we'll maybe know something.

19 THE CLERK: Okay.

20 THE COURT: We'll try his work number too and email.

21 THE JUDICIAL EXECUTIVE ASSISTANT: I don't have a
22 work number and it does indicate Nevada Energy, NV Energy.

23 THE LAW CLERK: Right here's a work number.

24 THE COURT: What's that?

25 THE LAW CLERK: There's a work phone right here.

1 THE COURT: Yeah, we'll try that one.

2 All right. I assume certainly I have the power to issue a
3 subpoena but that's going to take a while because we have to serve him.
4 And I'm sure he'll also show up once we do. But, so I don't know how
5 that works with your seven days. I don't –

6 MS. DIGIACOMO: They could file it and then –

7 MR. SPEED: I was about to say --

8 MS. DIGIACOMO: -- supplement it.

9 MR. SPEED: -- anticipating whatever issues arise in the
10 course of our investigation, Your Honor, we'll file the motion.

11 THE COURT: Very well.

12 MR. SPEED: So that we're ahead of the game that way.

13 THE COURT: Okay.

14 MR. SPEED: Anything else for us, sir.

15 THE COURT: Unless you resolve it before Friday, we'll see
16 you again.

17 MS. DIGIACOMO: All right. Thank you.

18 MR. SPEED: All right.

19 THE COURT: You didn't imagine you'd be spending this
20 much time with me.

21 MR. SPEED: Your Honor, that's why they – that's why we
22 play the game. So it is. We tell new deputies, you can never anticipate
23 what'll happen when you go to trial.

24 THE COURT: I continue to be amazed how a lack of
25 intelligence. All right.

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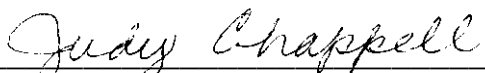
MR. SPEED: Thank you, sir. Thank you everyone.

MS. MACHNICH: Thank you. Bye.

[Hearing concluded at 1:46 p.m.]

* * * * *

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



Judy Chappell
Court Recorder/Transcriber



RTRAN

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

CASE#: C-16-318461-1

DEPT. XXVIII

vs.

GUSTAVO ADONAY
GUNERA-PASTRANA,

Defendant.

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE
FRIDAY, JUNE 21, 2019

RECORDER'S TRANSCRIPT OF HEARING
AT REQUEST OF COURT: EVIDENTIARY HEARING

APPEARANCES (See Page 2)

RECORDED 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

TEGAN C. MACHNICH, ESQ.
Deputy Public Defender

Also Present:

RICARDO PICO
Spanish Interpreter

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Las Vegas, Nevada, Friday, June 21, 2019

[Case called at 10:08 a.m.]

THE COURT: State versus Gustavo Gunera-Pastrana, C318461. Counsel, state your appearance for the record.

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

MS. MACHNICH: Tegan Machnich, Public Defender's Office as well.

MS. DIGIACOMO: Good morning, Your Honor. Sandra DiGiacomo for the State.

THE COURT: Okay, thank you. You can be seated. So my JEA was able to contact all of the jurors. We sort of staggered them to come in so they're not waiting quite as long. The foreperson, the one who talked to Marshal Moody will be first. I've done, that is my law clerk did some research. I assume, and I wasn't, but I assume you're aware of NRS 50.065 which limits the inquiry.

MS. DIGIACOMO: Yes, Your Honor.

THE COURT: Especially, and I'll read it: Upon an inquiry into the validity of a verdict or indictment, a jury shall not testify concerning the effect of anything upon the juror's or any other juror's mind or emotions as influencing the juror to assent or to dissent from the verdict or the indictment or concerning the juror's mental process in connection therewith.

1 Federal Rules 606 is even more explicit. And as I said, since
2 it appears, I think I said in this case, certainly in the civil, our Supreme
3 Court is, for all the NRCP, has moved to following the federal rules.

4 During an inquiry into the validity of a verdict – and I’m quoting
5 from 606(b)(1): During an inquiry into the validity of a verdict or an
6 indictment, a juror may not testify about any statement made or incident
7 that occurred during the jury’s deliberations; the effect of anything on that
8 juror’s or another juror’s vote; or any juror’s mental process concerning
9 the verdict or indictment. The court may not receive a juror’s affidavit or
10 evidence of a juror’s statement on these matters.

11 Then there is the exception: extraneous, prejudicial
12 information was improperly brought to the juror’s attention.

13 That’s, I believe, the only thing that we’re here about today.

14 Okay, so any questions?

15 MR. SPEED: Yes, Your Honor, we did have one issue. I did
16 hear the Court mention that it planned on calling the former foreperson
17 first, but we would like to have testimony from the Court’s officer so that
18 we’ll know when the information was received by an Officer of the Court
19 and when that information that an alleged incident of misconduct
20 occurred was communicated to Your Honor.

21 THE COURT: Well, what’s the relevance to what we have
22 here today? Whether or not the jurors committed misconduct?

23 MR. SPEED: Yes. In a nutshell, Your Honor, yes. The Court
24 obviously was made aware that an incident occurred. We wanted to
25 make sure that we had on the record when that incident occurred, when

1 the --

2 THE COURT: Well that would be the subject that we're going
3 to ask the juror.

4 MR. SPEED: Well, and I understand that, but we do want to
5 have Officer Moody's testimony on record as well. So it doesn't have to
6 be first necessarily. I did hear the Court mention that he wanted to call,
7 that it wanted to call Mr. Coleman first, but as long as we're able to at
8 least --

9 THE COURT: State.

10 MR. SPEED: -- ask those introductory questions to --

11 THE COURT: Okay.

12 MR. SPEED: -- Officer Moody, we'd like to do that.

13 THE COURT: State.

14 MS. DIGIACOMO: And, Your Honor, I don't think that the
15 State, any testimony by Officer Moody is necessary at this point. It may
16 become necessary if maybe the juror denies making the comment to him,
17 but at this point all we need to know is whether or not the foreperson
18 actually did any research into, I guess, the definition of common sense
19 and then whether or not he communicated that to the other jurors. That's
20 all we need to know for this issue. If he denies saying it, then maybe it
21 becomes an issue, but at this point, I think we --

22 THE COURT: Well, actually it doesn't --

23 MS. DIGIACOMO: -- just need to hear --

24 THE COURT: -- because we're going to ask all the other
25 jurors.

1 MS. DIGIACOMO: Okay.

2 MR. SPEED: Right.

3 MS. DIGIACOMO: Well, and Your Honor, I would –

4 THE COURT: All right. I don't see the need at all. It's not the
5 issue we're here about today, when, whatever. There's two issues on
6 every case that I saw, and by the way, I read every state court case and
7 several federal court cases on the issue. Specifically, and I'll cite them
8 when we get to that, but I'll let you provide written briefs after this
9 regarding using a dictionary, just so you have them in case you haven't
10 had the chance to. So I don't see any relevance to that. This –

11 MR. SPEED: And before –

12 THE COURT: -- is what the juror, what the – the juror in this
13 case, the foreperson may have said to other jurors, if anything, period.
14 So I don't see any relationship to why we're here today.

15 MR. SPEED: If I may inquire, Your Honor, what were those
16 two key issues that the Court observed? Whether the research was
17 conducted and if –

18 THE COURT: Whether he –

19 MR. SPEED: -- the results were conveyed.

20 THE COURT: -- whether he communicated to his fellow jurors
21 and what that was. The cases are very clear that not everything
22 communicated is prejudicial. So we need to – if he communicated to the
23 other jurors, and that's why all the other jurors are here, and what was
24 communicated. And it's up to the Court to determine whether or not
25 that's prejudicial. That's all the cases I found and I'll let you, again, do

1 research and argue. So let's go.

2 Bring, is it, Mr. Coleman, in.

3 MS. DIGIACOMO: And, Your Honor, will you be questioning
4 him or will it be myself?

5 THE COURT: Well it's, no the burden, as it says, –

6 MS. DIGIACOMO: Is on the defense.

7 THE COURT: -- is on the defense.

8 MR. SPEED: Right.

9 THE COURT: So I'll let them.

10 Go ahead and swear Mr. Coleman in.

11 **DAVID COLEMAN III**

12 [having been called as a witness and being first duly sworn testified as
13 follows:]

14 THE CLERK: Please be seated. Your Honor, do you want
15 me to just state what his badge number is or have him state and spell his
16 first and last name?

17 THE COURT: It'll be, no, he'll be seat number 7.

18 THE WITNESS: Yes, sir.

19 THE CLERK: And his badge was 050.

20 THE COURT: Okay. Thank you.

21 Go ahead.

22 **DIRECT EXAMINATION**

23 BY MR. SPEED:

24 Q Mr. Coleman, yes?

25 A Yes, sir

1 Q You served as the foreperson in our jury trial, State
2 versus Gustavo Gunera-Pastrana. Isn't that right?

3 A Yes, sir.

4 Q We understand that there may have been an incident in
5 which you violated one of the Court's instructions and his, Your Honor's,
6 repeated admonishment. Did you conduct Google research on the term
7 common sense?

8 A In the jury room, yes.

9 Q And when was that?

10 A That was on the second day of deliberation.

11 Q Was it on your cellular device, your cell phone, or a
12 computer?

13 A It was not on my personal device. It was on one of the
14 other juror's device. It –

15 Q Do you –

16 A -- was on a phone.

17 Q And do you remember which juror that was?

18 A I do not. I believe that when we were – we were
19 discussing the term –

20 MS. DIGIACOMO: I would object, Your Honor, --

21 THE WITNESS: -- common sense –

22 MS. DIGIACOMO: -- to what they were discussing.

23 THE COURT: Yeah, we don't want to know what your
24 discussions were regarding anything to do with deliberations.

25 THE WITNESS: Okay. I believe there was a few people that

1 looked it up at the time.

2 BY MR. SPEED:

3 Q And returning for just a moment to the other juror's
4 phone, can – was it a male or a female juror? Do you remember? Can
5 you describe the person?

6 A The definitions – when we –

7 Q No, no. Which juror's phone it was.

8 A That's what – that's, I'm trying to state that.

9 Q Oh.

10 A When the definitions were read back, they were read
11 back by a couple of different people. And I know that one of them was
12 female, the other one I don't remember. I don't recall.

13 Q All right. We received word that the jurors had made a
14 decision as to Counts 1 and 4, but were still discussing Counts 2 and 3.
15 Now, I don't want you to go into what those discussions were, but was
16 this research before about 1:30 on –

17 What day was that, Friday?

18 MS. MACHNICH: It was Monday.

19 MS. DIGIACOMO: No, it was Monday, the ten – or --

20 MS. MACHNICH: Yeah.

21 MS. DIGIACOMO: -- 10th.

22 BY MR. SPEED:

23 Q Was that before or after about lunchtime on the 10th.

24 The –

25 A We had --

1 MS. MACHNICH: Seventeenth.

2 BY MR. SPEED:

3 Q -- 17th. The 17th.

4 A We had come to a decision on 1 and 4 before.

5 Q Before lunch.

6 A Yes, absolutely before lunch. The Google was done
7 toward the end of deliberation.

8 Q And, again, Mr. Coleman, we have to be very careful
9 about what we elicit from you as far as your testimony here is concerned.
10 I don't want to know about your discussions or any – your thoughts or
11 any particular juror's thoughts that you may have perceived, but were
12 you – because we weren't clear on this point, were you deadlocked on
13 Counts 2 and 3 or still deliberating?

14 MS. DIGIACOMO: I'm going to object, Your Honor. I think –

15 THE COURT: Yeah.

16 MS. DIGIACOMO: -- the note stands for itself and now we're
17 getting into their –

18 THE COURT: I'm going to sustain the objection.

19 MS. DIGIACOMO: Thank you.

20 THE COURT: So do not answer that.

21 BY MR. SPEED:

22 Q You said that there was a read back of definitions and
23 one – and the read backs were performed by several people. One was
24 female, the other you can't recall. Were people reading definitions that
25 were retrieved in your research or instructions? I'm not sure if –

1 MS. DIGIACOMO: I'm going to object to the form of the
2 question. That was compound and confusing. And I'm not sure what the
3 relevance is with where it appears he's going. The –

4 MR. SPEED: The witness just –

5 MS. DIGIACOMO: -- fore – the foreperson had already stated
6 that the research regarding common sense Googling it came towards the
7 end of deliberations.

8 MR. SPEED: But he hasn't been allowed to answer the
9 question, Your Honor. If the Court believes that I need to rephrase it, I
10 certainly will.

11 THE COURT: Yeah, please.

12 MR. SPEED: All right.

13 BY MR. SPEED:

14 Q You mentioned earlier, Mr. Coleman, that people were
15 reading back definitions. Is that the definitions that were retrieved?

16 A What they had read was, obviously when you look up
17 the definition of something, there's different phrases for that.

18 Q Okay.

19 A And those were – those were the definitions that were
20 read back. The reason being that somebody didn't understand what the
21 definition of common sense was. They actually did, but they had it –

22 MS. DIGIACOMO: I'm – I'm –

23 THE WITNESS: -- worded differently.

24 MS. DIGIACOMO: Okay.

25 THE COURT: All right. I'll allow it.

1 MS. DIGIACOMO: I think we need to stop --

2 THE COURT: Anything --

3 MS. DIGIACOMO: -- that line.

4 THE COURT: -- else?

5 MR. SPEED: Court's indulgence, please.

6 THE COURT: Sure.

7 BY MR. SPEED:

8 Q Did you Google anything else?

9 A No, sir.

10 Q And so that our record is clear, Mr. Coleman, this
11 occurred before the jury announced that it had reached a decision on all
12 four counts.

13 A Yes, sir.

14 Q And before the verdict form was delivered to the Court.

15 A Yes, sir.

16 Q When did you notify Officer Moody?

17 A Of?

18 Q That --

19 THE COURT: Counsel, again, I said -- what is the purpose of
20 that?

21 MR. SPEED: When --

22 THE COURT: I'm not going to allow it. We discussed that,
23 Counsel. I think in detail. I'm not allowing it. I don't see any -- thank you.

24 MR. SPEED: All right. I think that's all we had, Your Honor.

25 Thank you.

1 THE COURT: State.

2 MS. DIGIACOMO: Thank you.

3 **CROSS-EXAMINATION**

4 BY MS. DIGIACOMO:

5 Q So if I have this correctly. Count – verdicts had been
6 reached on Counts 1 and 4 and then the Google research regarding
7 common sense was done.

8 A Correct.

9 Q And the – the research regarding what the definition of
10 common sense is, was that done after the verdict form had been filled out
11 for Counts 1 and 4?

12 A At that point, we hadn't filled out the paper at --

13 Q At all. Okay.

14 A -- all. That's where we were having the --

15 Q Oh, okay, so the decisions had been made, but the
16 verdict form had not been touched.

17 A That is correct.

18 Q Were you one of the people that actually Googled the
19 term --

20 A No, ma'am.

21 Q -- common sense? Just --

22 A No, ma'am.

23 Q Okay.

24 MS. DIGIACOMO: I have nothing further.

25 THE COURT: Anything else?

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REDIRECT EXAMINATION

BY MR. SPEED:

Q Just so that I'm clear, Mr. Coleman. The research was conducted in front of the entire panel.

A Yes, sir.

Q Okay. And you didn't Google the term, but you used another juror's device to actually perform the definition – or the search?

A I didn't tell anybody to do it. That's –

Q Right.

A -- that's not how it went down. One of us was confused on the definition of it and it just kind of happened.

Q I'm sorry, sir, who controlled the device? Who actually performed the search on the cellular phone?

A There was two, I believe, it was two other jurors and one was a female and the other one I don't recall if it was one of the males or not. I want to – I want to say it was a couple of females that did it, but.

Q But you didn't do that.

A I did not.

Q Okay.

A No, I did not. I did not pick up my phone –

Q Okay.

A -- at any time.

Q Okay.

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

1 THE COURT: And just so it's clear, there was no other
2 research done to your knowledge.

3 MR. COLEMAN: Nothing. We just had – we had one person
4 that was unclear of what the definition of common sense was. That was
5 the only reason we looked at it.

6 THE COURT: All right. Thank you. Why don't you go and
7 wait in the ante room for a minute and we may – we may be done.

8 Thank you.

9 MR. COLEMAN: Thank you, sir.

10 THE COURT: All right. He's outside the presence. And just
11 to reiterate, he's already stated that it happened. So your inquiry, yet
12 again, regarding when he told him is way beyond the scope of what we're
13 here for.

14 MR. SPEED: Well, Your Honor –

15 THE COURT: So he's admitted that it did happen and we will
16 inquire. Is there any reason I need to keep him here?

17 MR. SPEED: The reason we were asking those questions
18 about when he informed the Court was because we needed to know
19 whether there was an opportunity for the defendant to ask the Court to
20 declare a mistrial. If juror misconduct took place before a verdict was
21 reached, before a decision was reached, and before the verdict form was
22 delivered to the Court, then there was an opportunity, a window opened
23 through which Mr. Gunera-Pastrana could ask the Court to declare a
24 mistrial based on juror misconduct, per se, juror misconduct.

25 Again, one of my first questions was in violation of the Court's

1 repeated admonishments and instructions. I believe it was one of the
2 instructions in our packet – twenty –

3 MS. DIGIACOMO: It was.

4 MR. SPEED: -- six or 27, that clearly instructed them not to
5 instructed them not to conduct their own independent research. We
6 received news after the verdict was delivered to us on Tuesday that juror
7 misconduct took place. It's important for us to know, for the record, when
8 that was notified or when news of that was conveyed to an Officer of the
9 Court so we can at least convey to our client that there was an
10 opportunity to ask the Court to declare a mistrial that was not given to us.

11 MS. DIGIACOMO: And, Your Honor, this Court, when you
12 called us in on Tuesday, stated it was after discharge when the comment
13 was made so –

14 THE COURT: Yes, I did.

15 MS. DIGIACOMO: -- we know when the comment was made.
16 So I don't – I don't feel there's any reason to question your officer, who's
17 an Officer of the Court and informed the Court what he was told after
18 they were discharged. And if I may address his other concerns as well.

19 MR. SPEED: Well that wasn't, so that we are clear on the
20 record, Your Honor, that wasn't clear to us. I didn't – I don't recall
21 hearing –

22 THE COURT: I said that.

23 MR. SPEED: -- someone say that it occurred after they were
24 discharged. I'm not, and I don't want to impune anyone's character here.
25 That's not what I'm doing. Because we were asking these questions,

1 because we appeared at this hearing with the intent on asking those
2 questions, it was because we didn't know when this information was
3 communicated to the Officers of the Court.

4 THE COURT: I think I was very clear on the record last on
5 that, whatever, Tuesday, that it was after they were leaving. But I
6 remember saying that. So that's exactly when the Court found out.

7 So is there any reason we need to keep him here?

8 MS. DIGIACOMO: No. But – and I would also submit, I don't
9 know if there's a reason to keep bringing in the jurors. He clearly
10 stated –

11 THE COURT: That's my next --

12 MS. DIGIACOMO: -- it was done in --

13 THE COURT: -- question.

14 MS. DIGIACOMO: Yeah.

15 THE COURT: Can I ask the first question first.

16 MS. DIGIACOMO: Sorry.

17 THE COURT: Any reason you want to keep Mr. –

18 MS. DIGIACOMO: Coleman.

19 THE COURT: -- Coleman?

20 MR. SPEED: No. No, he's made –

21 THE COURT: State.

22 MR. SPEED: -- his involvement –

23 MS. DIGIACOMO: I –

24 MR. SPEED: -- crystal clear.

25 MS. DIGIACOMO: -- I would ask if we're going to go forward

1 with all the jurors that they all remain until we're done so that we don't
2 have to call them back if something else comes up. But –

3 THE COURT: Well, all right. Now the next --

4 MS. DIGIACOMO: -- not that it would.

5 THE COURT: -- question. He said it happened. Does it
6 matter who did it? And, yeah, is any of that – he told us what happened.
7 He told us what they searched. I suppose we could ask all twelve what
8 they searched, but what would be the point?

9 MR. SPEED: I believe the Court, and respectfully, sir, I
10 believe that Your Honor is in the best position to answer that. Our stance
11 I believe is clear at this point, but if it's not, again, we were intending on
12 asking certain questions of the Officers of the Court to determine whether
13 an opportunity at asking this court for a mistrial was deprived.
14 Mr. Gunera-Pastrana was deprived of that opportunity. We now have
15 evidence on the record, admissible evidence on the record, that juror
16 misconduct did in fact occur with not just this individual juror but with
17 perhaps the entire panel.

18 THE COURT: Well I think most of the cases assume – have
19 you read, I'll be glad to give it to you and I realize you haven't had much
20 time and maybe you're even in a new trial. But the cases, most of
21 them – most of them discuss whether or not even the, I guess they
22 assume that the entire panel has discussed that. So in any event.

23 MR. SPEED: We have proof that our entire panel has now.

24 THE COURT: You know, I'll allow, I'm going to go ahead just
25 so the Supreme Court is clear, I'll allow Officer Moody to tell us when he

1 became aware and, as I said, there was no chance for – it was as they
2 were leaving, potentially after they had left because I was in my
3 chambers at 5:15 or 5:30 that I was made aware of anything.

4 Officer Moody, will you take the stand.

5 [having been called as a witness and being first duly sworn testified as
6 follows:]

7 THE CLERK: Please state and spell your first and last name
8 for the record.

9 THE WITNESS: Steve Moody. S-T-E-V-E M-O-O-D-Y.

10 THE COURT: Go ahead

11 **DIRECT EXAMINATION**

12 BY MR. SPEED:

13 Q Officer Moody, when were you informed that one or
14 several of our jurors had conducted independent research in
15 contravention of the Court's instructions?

16 A After the verdict had been delivered to the Court and
17 the jurors had left, we were chit chatting while going into the jury room.
18 The jury foreman spontaneously stated something to the words of the
19 fact that it took Googling common sense to get them to reach a verdict.

20 THE COURT: Anything else?

21 MR. SPEED: Court's indulgence, Your Honor, I'm just writing.

22 BY MR. SPEED:

23 Q And when did you communicate that to His Honor?

24 A I had some things to do with getting them checks and
25 getting them signed out. Giving them instructions to leave and maybe

1 10, 15 minutes as they were leaving, I had an opportunity to speak with
2 the Judge. And at that point, I let him know. The jurors were already
3 walking out.

4 MR. SPEED: That is all, Your Honor.

5 THE COURT: Thank you. Anything?

6 MS. DIGIACOMO: No, Your Honor.

7 THE COURT: Thank you. You can step down.

8 All right. So now, again, the question is do you want to inquire
9 of all of them? I think it's clear that they all did hear the research but if
10 you'd like to inquire, we can do that.

11 MR. SPEED: I think our record is clear from the foreperson,
12 Your Honor. Thank you.

13 MS. DIGIACOMO: Yes, I'm fine with that, Your Honor.

14 THE COURT: So we can let everybody go?

15 MS. DIGIACOMO: Yes.

16 MR. SPEED: Yes.

17 THE COURT: All right.

18 THE MARSHAL: Yes, Judge.

19 THE COURT: Let them all go.

20 Okay. So, do you want to – how long do you want to file a
21 brief?

22 MR. SPEED: Will the Court, I'm sorry, Your Honor.

23 THE COURT: It's okay.

24 MR. SPEED: Will the Court expand the time allowed for us to
25 file a motion for a new trial?

1 THE COURT: Reasonably, yes, I realize we all have things to
2 do. I don't want to extend this six months, but if you're talking about a
3 couple of weeks, I see no harm. And I haven't looked up the statute. Am
4 I allowed to extend that? Or is --

5 MR. SPEED: Yes.

6 THE COURT: Okay.

7 MR. SPEED: Yes, the Court is.

8 THE COURT: All right. Two weeks to get a brief? Because
9 they're going to have to file, they're going to need time.

10 MR. SPEED: July 8th.

11 THE COURT: All right. July --

12 MR. SPEED: Is that --

13 THE COURT: July 8th, that's reasonable.

14 MR. SPEED: Thank you. Thank you, Your Honor.

15 THE COURT: How long for response.

16 MS. DIGIACOMO: Court's indulgence. If I could have until
17 July 22nd.

18 THE COURT: Twelve days. That's fine.

19 And a reply?

20 MR. SPEED: Friday, August 2. Is that all right?

21 THE COURT: That's fine.

22 THE CLERK: Your Honor, do you want me to put it on your
23 Wednesday calendar for argument? Because that's a Friday. I don't
24 know if the briefs are going to be --

25 THE COURT: Let me ask you, is there any need for -- these

1 briefs should be thorough. Is there a need for oral argument? You know,
2 in Reno nobody gets oral argument.

3 MS. DIGIACOMO: Your Honor, I would just ask you set it for
4 argument in case you have any questions of us and –

5 THE COURT: All right.

6 MS. DIGIACOMO: -- then we could just submit it on our briefs
7 if you don't.

8 MR. SPEED: That's fine.

9 THE COURT: Okay.

10 MR. SPEED: That's reasonable.

11 THE COURT: All right.

12 MR. SPEED: I agree with that.

13 THE COURT: To give you a, I guess some, again I don't
14 know if you've had the time. *Barker* is one case, 95 Nevada 309. I know
15 you guys don't have the luxury of having law clerks. *Meyer versus*
16 *State* –

17 MR. SPEED: Everybody's a law clerk in our office.

18 THE COURT: Okay.

19 MR. SPEED: Former law clerk.

20 MS. DIGIACOMO: And *Meyer*, I have, if you're talking
21 about –

22 MR. SPEED: Yes, I've got *Meyer* in my file, Your Honor. I'm
23 looking at it right now.

24 THE COURT: All right, *Meyer*. I'm just showing. And *Meyer*,
25 by the way, goes through everything. I've got lots of highlights on that.

1 Then they – *Bowman*, 387 Pacific 3rd, 202. *Granada-Ruiz*, 422 Pacific 3rd
2 732.

3 MS. DIGIACOMO: I'm sorry, did you say 732, Your Honor?

4 THE COURT: Yes, that's a –

5 MS. DIGIACOMO: Thank you.

6 THE COURT: -- I believe that may be an unpublished. Let
7 me see. It appears to be – that certainly by the entire court, so. Then
8 there's *Jeffries*, 397 Pacific 3rd, 21.

9 MR. SPEED: Your Honor, I have *Meyer* cited at 80 Pacific 3rd,
10 447.

11 THE COURT: Okay.

12 MS. DIGIACOMO: And that is, that's it. He gave you the
13 Nevada cite.

14 THE COURT: Oh, sorry.

15 MR. SPEED: Right.

16 THE COURT: Yeah, sorry.

17 MS. DIGIACOMO: It's the same case he cited.

18 MR. SPEED: Yep.

19 THE COURT: Then let's see now, one of our cases, or one of
20 the cases is also *Tanksley*, 113 Nevada 997. So one of the – either that
21 case or the federal referred to, three federal cases regarding the,
22 specifically and that's, you know, we have to go more broadly if we're
23 going to get specifics. Three federal cases on the use of a dictionary as
24 being the misconduct. 90, Federal 3rd 490, *Williams-Davis*. I'm just
25 trying to save you some effort. 61 Federal 3rd, 457, *Gillespie*, I believe

1 was one. Well, I'm not sure if that was one on – anyway, these are all
2 the ones they gave me. 121 Federal 3rd, 12.

3 MS. DIGIACOMO: Just 12?

4 THE COURT: Yeah.

5 MS. DIGIACOMO: Okay.

6 THE COURT: Oh, some of these were just on the standards.

7 [Colloquy between the Law Clerk and the Judge]

8 THE COURT: Well, they're dismissed.

9 THE LAW CLERK: Oh, okay.

10 THE COURT: Yes, they're outside talking now. They've been
11 dismissed. He was worried.

12 MS. DIGIACOMO: Oh.

13 MR. SPEED: Still talking.

14 THE COURT: Yes, they're talk – because I told Steve to tell
15 them not to talk to each before they or when they got here, at all. Not
16 that they listen.

17 Yeah, here's one on dictionary, 812 Fed 2nd, 499. I think that
18 was – anyway, you guys, I'm sure, can do great research. I just was
19 trying to give you a little heads up.

20 MS. DIGIACOMO: Appreciate it, Your Honor. And –

21 THE COURT: Okay, anything else?

22 MS. DIGIACOMO: Yes, Your Honor.

23 THE COURT: Yeah.

24 MS. DIGIACOMO: Because we have a sentencing date and
25 you referred my file to P&P, I'd ask to vacate that at this time and then

1 after this is deciding we can see where we're going. That way I can keep
2 my file.

3 THE COURT: Okay. Yeah, we will and we'll reset it –

4 THE CLERK: And do a status check to set sentencing?

5 THE COURT: Yeah.

6 THE CLERK: And did you want to do Wednesday, Your
7 Honor, if the last brief is due on a Friday to give you a few extra days?

8 THE COURT: Say that again.

9 THE CLERK: Did you want to do the Wednesday after the
10 last brief is due for argument?

11 THE COURT: Yeah. That's –

12 THE CLERK: Okay.

13 THE COURT: -- a good idea.

14 THE CLERK: That would be, the last brief was due August
15 2nd. So we're looking at August 7th, at 9 a.m. --

16 MS. DIGIACOMO: Thank you.

17 THE CLERK: -- for the argument –

18 THE COURT: All right.

19 THE CLERK: -- and the status check.

20 THE COURT: And if there's any question, defendant to
21 remain in custody.

22 THE CLERK: Okay. Thank you, Your Honor

23 THE COURT: All right. Thank you.

24 MR. SPEED: Your Honor, thank you very much.

25 MS. MACHNICH: Thank you.

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MR. SPEED: May we have a few moments to speak with
Mr. Gunera-Pastrana in the Court's –

THE COURT: Take whatever time you want.

MR. SPEED: Thank you.

[Hearing concluded at 10:46 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



RTRAN

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

CASE#: C-16-318461-1

DEPT. XXVIII

vs.

GUSTAVO ADONAY
GUNERA-PASTRANA,

Defendant.

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE
WEDNESDAY, AUGUST 7, 2019

RECORDER'S TRANSCRIPT OF HEARING
ARGUMENT: DEFENSE MOTION FOR NEW TRIAL

**DEFENDANT'S MOTION FOR A JUDGMENT OF ACQUITTAL
AFTER A VERDICT OF GUILTY, OR IN THE ALTERNATIVE, MOTION
FOR NEW TRIAL BASED UPON PER SE JURY MISCONDUCT**

STATUS CHECK: RESET SENTENCING DATE

APPEARANCES (See Page 2)

RECORDED BY: JUDY CHAPPELL, COURT RECORDER

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APPEARANCES:

For the State:

MICHELLE SUDANO, ESQ.
Deputy District Attorney

For the Defendant:

KEVIN C. SPEED, ESQ.
Deputy Public Defender

Also Present:

MAGDALENA BECERRA
Spanish Interpreter

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Las Vegas, Nevada, Wednesday, August 7, 2019

[Case called at 10:43 a.m.]

THE COURT: Gunera-Pastrana. First of all, the interpreter's name.

THE INTERPRETER: Magdalena Becerra, Certified Spanish Interpreter.

THE COURT: Thank you. Mr. Speed is present with the defendant in custody.

MR. SPEED: Good morning, Your Honor.

THE COURT: This is your motion for an acquittal or new trial. I've read all this. As you know, we've been – I even provided you with some preliminary cases. Anything you have to add?

MR. SPEED: No, Your Honor. We will submit it on the briefs.

THE COURT: I appreciate that you actually – you know, all the time, they think I don't read this stuff. So I appreciate that, you know. State, anything to add?

MS. SUDANO: Good morning, Your Honor. Michelle Sudano for the State. I will also submit it unless Your Honor had questions.

THE COURT: No. Thank you.

There are two basic grounds, the motion for judgment of acquittal. It's, first of all, I'll address it. The defense argued the inconsistencies and multiple inconsistencies in their interpretation of the statements, the multiple statements over a course of years given by the

1 victim as grounds for acquittal or a new trial, one. I – they certainly, and
2 I'll say Mr. Speed you did an excellent job of bringing out the
3 inconsistencies to the jury. They were not unknown and the State, of
4 course, brought out the age of the individual initially over a period of four
5 years, I believe, or longer. And the jury had all of that to consider and did
6 so in returning their verdict. The inconsistencies, given the age of the
7 minor initially and over a period of time, are not, and this is sort of a
8 double negative, not inconsistent with what normally happens in
9 statements over a period of years given – given time and given the, in
10 this case, the victim's age. The jury certainly had all of that to more than
11 adequately consider in reaching their verdict and they did. So I'm
12 denying the motion based on that.

13 The second issue was the jury misconduct. And we found out
14 that the – someone in the panel definitely, there's no question that they
15 did a Google search on the definition of common sense. I think we all
16 are somewhat surprised that common sense isn't common sense. Or the
17 definition isn't readily available. I will make no comment on our
18 educational system. But in any event, in reviewing all of the cases – oh,
19 and by the way, I need to say that it was clear that, again, that one of the
20 juries did do – jurors did do that research and did disclose it to, my
21 recollection, was the entire jury. It also should be pointed out that prior to
22 that Google search, the jury had convicted on Counts 1 and 4, that's the
23 notes I have. And so we go to the – both the Supreme Court cases and
24 the Federal Appeals Court cases to determine whether or not the use of
25 the search, if you will, dictionary, was prejudicial. It is important to note

1 that the Google search was not any of the elements of the crime. Nor
2 was it any of the definitions of what is required in order to commit those
3 crimes. In other words, in this case, there was both the, you know, the
4 crime charged and then it was explained this is what is meant by that.
5 Now there is the instruction that the jury can and should use their
6 common sense in every case. And that, for whatever reason, they
7 decided to even over and above my ad nauseam instructions don't do,
8 specifically don't do any Google searches, they did.

9 But the Supreme Court in – no, that's the Appeals Court case,
10 well, certainly I gave you the names of most all of the ones we found,
11 said that the issue is prejudice to the defendant. And in all of the cases
12 that were both, that we looked up, and certainly the cases submitted to
13 us prior to even the evidentiary hearing, the cases that found no
14 prejudice were, by my interpretation, more serious. I hope that I'm not
15 using more or less double negatives. But the cases that allowed or found
16 that there was no prejudice were more serious investigations than we
17 even have in this particular case. These were not, the investigation was
18 not as one as, well, I'll give you the case, as in *Williams* where it was, I
19 believe they called it a – the: obviously, where the word is critical to a
20 necessary determination, a finding of prejudice is likely.

21 We do not have that. The court also said the court
22 therefore – in that particular case: the court therefore decided that a jury
23 consideration of a dictionary definition of that word does not implicate the
24 dangers usually associated with this form of juror misconduct.

25 Well I certainly, you know, I had some good underlying

1 quotes. Okay, so in, oh here's the Supreme Court case, 87 Supreme
2 Court, 824, *Chapman versus State of California*. The Supreme Court
3 said: that before a federal constitutional error can be held harmless, the
4 court must be able to declare a belief that it was harmless beyond a
5 reasonable doubt.

6 And I find that the jurors were credible in their – or the
7 foreperson credible that, yes, a search was done and that it was
8 disclosed to everyone. I find beyond a reasonable doubt that no
9 prejudice can be found from the search of common sense. And there are
10 other cases that, well, no, this one of course says: before a federal
11 constitutional error can be held harmless, the court must be able to
12 declare a belief that it was harmless beyond a reasonable doubt.

13 That is exactly what I find given all the cases, our case, this
14 case is the, if you will, least, the most inconsequential of Google
15 searches. Yeah, they certainly shouldn't have done it, but it is so
16 extraneous to the finding beyond a reasonable doubt of guilt that I find
17 that there is no prejudice beyond a reasonable doubt. So I'm denying the
18 request for a new trial based on all of that.

19 And, as I said before, I need everything I just said. I just got
20 one back. I think we, you know, where I will say the D.A. just denied.
21 That's certainly not enough. I want all of that in there.

22 MS. SUDANO: Yes, Your Honor.

23 THE COURT: Okay?

24 MS. SUDANO: May I request a copy of the JAVS from the
25 hearing today?

1 THE COURT: Absolutely. And although I think you need the
2 order within ten days because I want it clearly detailed, if you need
3 additional time, now's the time to tell me.

4 MS. SUDANO: Assuming that I can have the JAVS within the
5 next day or so that shouldn't be an issue.

6 And looking at Madame Recorder. It's fine. She's saying it's
7 fine.

8 THE COURT: And do you want to review it? I'll even allow
9 you to review it.

10 MR. SPEED: Certainly, Your Honor. I would ask the Court's
11 recorder to make a copy for both parties.

12 THE COURT: No, I mean, even review her proposed order.

13 MR. SPEED: Oh, yes, oh, absolutely. Of course.

14 THE COURT: Yep, okay. Anything else?

15 MS. SUDANO: We need to set a sentencing date.

16 MR. SPEED: Sentencing date.

17 THE COURT: Absolutely. Ordinary whatever.

18 THE CLERK: September 25th at 9 a.m.

19 THE COURT: And as I said before, you both did excellent
20 jobs of handling that. Very professional. Everybody.

21 Okay?

22 MS. SUDANO: Thank you, Your Honor.

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MR. SPEED: Thank you, Your Honor.

THE COURT: All right.

[Hearing concluded at 10:56 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



RTRAN

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

CASE#: C-16-318461-1

DEPT. XXVIII

vs.

GUSTAVO ADONAY
GUNERA-PASTRANA,

Defendant.

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE
WEDNESDAY, SEPTEMBER 25, 2019

***RECORDER'S TRANSCRIPT OF HEARING
SENTENCING***

APPEARANCES:

For the State:

SANDRA K. DIGIACOMO, ESQ.
Chief Deputy District Attorney

For the Defendant:

KEVIN C. SPEED, ESQ.
Deputy Public Defender

Also Present:

ELISSA MENDOZA
Spanish Interpreter

RECORDED BY: JUDY CHAPPELL, COURT RECORDER

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Las Vegas, Nevada, Wednesday, August 7, 2019

[Case called at 10:04 a.m.]

THE COURT: 318461.

THE CLERK: What's the –

THE COURT: Oh, let's –

THE CLERK: -- what page?

THE COURT: Page 7.

THE CLERK: Page 7.

THE MARSHAL: Page 7, Gunera-Pastrana.

THE CLERK: Okay. Do we have an, oh, can the interpreter –
Go ahead and state your name.

MR. SPEED: Kevin Speed for Mr. Gunera-Pastrana, who is
present, in custody, Your Honor. Good morning.

THE COURT: Good morning.

MS. DIGIACOMO: Sandra DiGiacomo –

THE CLERK: And the –

MS. DIGIACOMO: -- on behalf of the State.

THE CLERK: -- the interpreter.

THE COURT: And we'll get in a second, the Spanish
Interpreter.

THE INTERPRETER: Elissa Mendoza.

THE COURT: Wait a second.
Steve.

1 That's a brand new one and so we know it works. But you
2 push the bottom, I think, and hold it.

3 THE CLERK: Yeah, turns it back on.

4 THE COURT: And that turns it back on.

5 Steve. Thank you.

6 THE INTERPRETER: It's on.

7 THE COURT: Oh, now it's on.

8 THE MARSHAL: Test, one, two.

9 THE COURT: Okay, your name.

10 THE INTERPRETER: Elissa Mendoza. E-L-I-S-S-A
11 M-E-N-D-O-Z-A.

12 THE COURT: Thank you. This is the time set for sentencing.
13 State.

14 MS. DIGIACOMO: Your Honor, the PSI in this case
15 recommends that all of the counts be run consecutive for a total of nine
16 years on the bottom. And, you know, the thing that I'd like to point out. I
17 know you heard the trial, I know you've heard arguments on this case
18 and you know the facts. This is a defendant who not just committed the
19 sexual offenses against a young girl, but he also terrorized the family.
20 He – the mom believed, based upon his violence towards her, that the
21 defendant would kill her and her older kids and take her two younger
22 babies, the ones that defendant had with her and take them to Honduras.
23 She had that legitimate fear. When she sat in our office for pretrial
24 discussing the prior domestic violence that occurred about a week before
25 the reporting and talking about how he choked her to unconsciousness,

1 she became so visibly upset and fearful. Like she couldn't even talk, she
2 could just hold her throat. And then you have what he did to the kids.
3 And our victim in this case still having issues over this, not just because
4 of the sexual nature of the crimes he committed on her, but also the
5 physical and psychological abuse that she endured for years at his hand.
6 She really was afraid to talk about what he was doing to her because she
7 did fear that he would call her mom, and herself, and her brother, Jose,
8 and take the kids.

9 You know, when you look at everything, not just take it out in
10 pieces part, this is a defendant who terrorized not just the victim when he
11 sexually assaulted her and committed these lewd acts, but also terrorized
12 the entire family. They are legitimately still afraid of him even though he's
13 been in custody so long. They're legitimately afraid that if he got out, he
14 would come after them. And I think the recommendation in this case by
15 P&P is appropriate. He deserves – these sex acts occurred over the
16 course of a year. He tried to convince her in that time to do it willingly,
17 would ask her don't you want to have sex with me. And when that didn't
18 work, she didn't want to do it willingly, then that's when he started
19 threatening her.

20 So it's appropriate and I would ask this Court to follow P&P's
21 recommendation. And with that, I'll submit it.

22 THE COURT: Thank you.

23 Before your attorney speaks on your behalf, is there anything
24 you'd like to say?

25 THE DEFENDANT: No.

1 THE COURT: Mr. Speed.

2 MR. SPEED: Obviously, Your Honor, I'm going to ask the
3 Court to depart downward from the Department's recommendation. The
4 Court did preside over the trial in this case. I won't belabor any of the
5 points of fact that were fleshed out in our two weeks of trial here, but to
6 note for the Court, in case the Court has forgotten some of the testimony
7 that we heard from the chief complainant in this case that these were
8 allegations that were inconsistent in their description and in their recall for
9 the jury in our case. So much so that the State had to amend its
10 charging document in the middle of our trial to conform with the testimony
11 that we received from the complainant in the case.

12 Obviously Mr. Gunera-Pastrana is not an old man but to
13 sentence someone to 90 years before they are eligible for probation in a
14 case where – or eligible for parole in a case where there were such
15 glaring inconsistencies from the chief complainant and where we couldn't
16 get a straight story from any of the other family members, I believe this
17 excessive. The one count, or one of the counts of sexual assault with a
18 minor under 14 for which the jury brought back a guilty verdict carries 35
19 years to life. I think adding to that is excessive, it's unusual. It's overkill
20 to say the least. And I would ask the Court to sentence him to one of the
21 sexual assault counts, it carries 35 years to life, running every other
22 count after that concurrently. And I think that would be a fair and
23 reasonable sentence to deliver in this case.

24 And on that, I would submit it.

25 THE COURT: Thank you.

1 Mr. Gunera-Pastrana, I hereby adjudicate you guilty of Count
2 1 and Count 4, lewdness with a child under the age of 14.

3 Count 2 and 3, sexual assault with a minor under 14 years of
4 age.

5 I assess you the \$25 administrative assessment, DNA of 150
6 and DNA administrative assessment of \$3.

7 Although, Mr. Speed, I don't agree that it was entirely
8 inconsistent, you made that argument before, we're talking about a
9 young person over – testifying over periods of years.

10 However, I do agree and I'm going to find you guilty, well I
11 found you guilty of all those.

12 I'm sentencing you on Count 2, 35 years to life.

13 Count 1, 10 years to life.

14 Count 3, 35 years to life.

15 Count 4, 10 years to life.

16 I'm running Counts, let's see now. I'm running them
17 concurrent with Count 2. So the aggregate is 35 years to life. So Counts
18 4, 3, I guess, two – two are running concurrent to one.

19 THE CLERK: No, you had said Count 2 was –

20 THE COURT: Count 2 is 35 years to life.

21 THE CLERK: Right. So Count 1, --

22 THE COURT: So it's the aggregate --

23 THE CLERK: -- 3, and 4 --

24 THE COURT: -- is 35 years to life.

25 MR. SPEED: And, Your Honor, upon any release to parole,

1 Mr. Gunera-Pastrana would have to register as a sex offender and he is
2 subject to lifetime supervision. That must be made part of the Court's –

3 THE COURT: Yes, --

4 MR. SPEED: -- sentencing order.

5 THE COURT: -- under 179D.460, he has to register as a sex
6 offender within 48 hours of his release. And that is for life. You're
7 correct. And I did forget there was –

8 MS. DIGIACOMO: Restitution.

9 THE COURT: -- restitution of –

10 MS. DIGIACOMO: \$840.

11 THE COURT: How much?

12 MS. DIGIACOMO: 840.

13 THE COURT: Eight hundred and who does that go to?

14 Clark –

15 MS. DIGIACOMO: That goes to Clark County –

16 THE COURT: Social Services.

17 MR. SPEED: Social Services.

18 MS. DIGIACOMO: -- Social Services and victims of crime;
19 600 to Clark County, 240 to victims of crime.

20 THE COURT: All right. And I – the PSI has 1,171 days' credit
21 for time served. Is that correct?

22 MS. DIGIACOMO: That is.

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

24 THE CLERK: That was 1,171 days?

25 MR. SPEED: That is --

1 THE COURT: Correct.

2 MS. DIGIACOMO: Correct.

3 MR. SPEED: -- correct, 1-1-7-1.

4 THE CLERK: Thank you. And then he's to register as a sex
5 offender.

6 THE COURT: He's to register within 48 hours –

7 THE CLERK: So –

8 THE COURT: -- and I think that covers it.

9 THE CLERK: So I just want to make sure the concurrent time.
10 Count 1 is concurrent to Count 2? Or?

11 THE COURT: Well the --

12 MR. SPEED: The larger sentence will control. So –

13 THE COURT: Yes.

14 MR. SPEED: -- Count 2, because it carries 35 to life will be –

15 THE COURT: Yes, --

16 MR. SPEED: -- the controlling sentence.

17 THE COURT: -- all the other ones are concurrent.

18 THE CLERK: Okay. So 1 is concurrent to Count 2.

19 MR. SPEED: That is correct. Yes.

20 THE COURT: Correct.

21 THE CLERK: Okay, great. Thanks.

22 MS. DIGIACOMO: And you did order lifetime supervision,
23 correct?

24 THE COURT: Yes.

25 MR. SPEED: Yes.

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MS. DIGIACOMO: Okay.
THE COURT: I said –
MS. DIGIACOMO: That’s what I thought.
THE CLERK: Life, yeah. Thank you.
THE COURT: -- lifetime supervision.
MR. SPEED: Thank you all.
THE COURT: All right.

[Hearing concluded at 10:14 a.m.]

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



Judy Chappell
Court Recorder/Transcriber

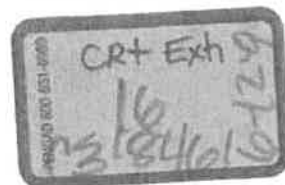
Jurior #15

? Is your Stepfather a legal
or Illegal citizen

? Was your Stepfather afraid of
being deported if he had any
contact with the police when
you worked with him

? Was your step dad always afraid of
having any contact of any kind with
the police

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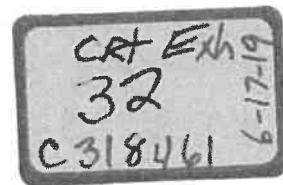


224Ce

Juror #7

We The Jury have reached
a decision on Counts
1 & 4 however we are at an
impasse on Counts 2 & 3

6-17-19
@ 1:20 PM



Please continue to deliberate.

06/17/19 1:55 P.M.

Ronald J. Israel

Judge Ronald J. Israel

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GUSTAVO GUNERA-PASTRANA,) No. 79861
)
 Appellant,)
)
 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
)

DARIN IMLAY Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610 Attorney for Appellant	STEVE WOLFSON Clark County District Attorney 200 Lewis Avenue, 3 rd Floor Las Vegas, Nevada 89155 AARON FORD Attorney General 100 North Carson Street Carson City, Nevada 89701-4717 (702) 687-3538 Counsel for Respondent
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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 19 day of May, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
STEVEN S. OWENS

DEBORAH L. WESTBROOK
HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

GUSTAVO GUNERA-PASTRANA, #1223501
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

BY /s/ Carrie Connolly
Employee, Clark County Public Defender's Office